

Appendix A

Solent Special Protection Areas

Supplementary Planning Document - draft for consultation

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Solent Special Protection Areas
Supplementary Planning Document
Draft for consultation approved on 24th January 2014

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Consultation Arrangements

The draft SPD is available for consultation until xxxxx. Please send any comments in writing to planningpolicy@portsmouthcc.gov.uk, or

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Section 1: Introduction

- 1.1 Portsmouth has an ambitious agenda for growth and development, which is set out in the Portsmouth Plan and the Regeneration Strategy. These plans recognise that the city and the wider Solent area have a wealth of natural habitats and an incredibly scenic coastline which are part of the attractiveness of the area. Large sections of the Solent coastline have been internationally recognised as Special Protection Areas (SPAs).
- 1.2 For the purposes of this guidance, the "Solent SPAs" refers to:
 - Portsmouth Harbour SPA
 - Chichester and Langstone Harbours SPA
 - Solent and Southampton Water SPA
- 1.3 Evidence shows that new development can reduce the quality of the habitat in the Solent SPAs. As a result, in order to meet the requirements of the Habitats Regulations¹, mitigation measures will need to be provided where necessary from development schemes before works can lawfully go ahead. More detail on both the importance of the Solent SPAs and the city council's legal obligations is given below.
- 1.4 This Supplementary Planning Document (SPD) has been prepared to address the identified issues. It will facilitate and guide residential development in the city whilst ensuring that the city council continues to comply with the regulations protecting the SPAs. It ensures that developers can have certainty that the issue can be addressed quickly, simply and at minimal cost.
- 1.5 SPDs expand on or provide further guidance on policies in the Portsmouth Plan. The role of this SPD is to provide advice and detail on the implementation of Policy PCS13 which sets a policy framework to ensure that new development complies with the Habitats Regulations.

The city council's responsibilities

- 1.6 The European Habitats² and Birds Directives³ protect rare species and habitats. Member States are required to classify particular habitats as Special Protection Areas (SPAs) and manage them to a favourable condition. Other 'European Sites' (Special Areas of Conservation (SACs) and Ramsar sites) have also been designated for other habitats and species but the potential impact of development on these sites is not covered by this guidance.
- 1.7 The Directives have been transposed into UK law through the Habitats Regulations. Under these regulations, the city council must assess whether or not a proposed development is likely to have a significant effect on an SPA. This assessment is called a Habitats Regulations Assessment (HRA). It involves an initial 'screening stage' to determine whether the proposal is likely to have a significant effect on a European site. This assessment needs to identify the interest features of the European sites and whether the plan or project would cause harm to them. If necessary, avoidance or mitigation measures could be included to remove the harm which otherwise would have occurred. It is also necessary to look at the

¹ The Conservation of Habitats and Species Regulations 2010 (and subsequent amendments).

² European Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

³ European Council Directive 2009/147/EC on the conservation of wild birds.

proposal in combination with other developments in the local area. A second stage, called the Appropriate Assessment (AA), comprises a detailed assessment to determine whether there will be a significant effect on the site. Only once the HRA has determined that there will not be a significant effect can the proposal be authorised.

- 1.8 Due to the precautionary approach⁴ in the regulations, it is necessary to demonstrate, with a reasonable degree of certainty, that the project will not be likely to have an effect on the SPA before it can lawfully be authorised.
- 1.9 The Habitats Regulations also ensure that any planning permission which is deemed to be granted through the mechanisms of the General Permitted Development Order (GPDO)⁵ is compliant with the regulations. If consent is given through the GPDO then under Regulation 75 of the Habitats Regulations, a separate HRA will also need to be done.
- 1.10 The National Planning Policy Framework (NPPF) sets out the Government's planning policies and how they should be applied and is a material consideration in planning decisions. The Framework contains a presumption in favour of sustainable development, which informs the framework. However the NPPF also states that this presumption does not apply where development requiring an appropriate assessment is being considered, planned or determined.

The Solent SPAs

- 1.11 A map showing the boundaries of the Solent SPAs is in figure 1 below. These SPAs have been designated mostly for the protection of significant numbers of waders and waterfowl which spend the winter in the Solent.
- 1.12 At their winter peaks, the population of Brent geese in Chichester and Langstone Harbours SPA represents 13% of the national population and 6.5% of the global population of this species. The three SPAs together have been estimated to support between 10% and 13% of the global population of Brent geese and about a third of the UK population.
- 1.13 The Solent also supports in excess of 90,000 waders. Many of these will travel thousands of kilometres to over-winter at the Solent. The intertidal habitat which the Solent provides, particularly the mudflats, shingle and saltmarsh provide ideal feeding and roosting grounds for these species which are specially adapted to feeding in such habitat.

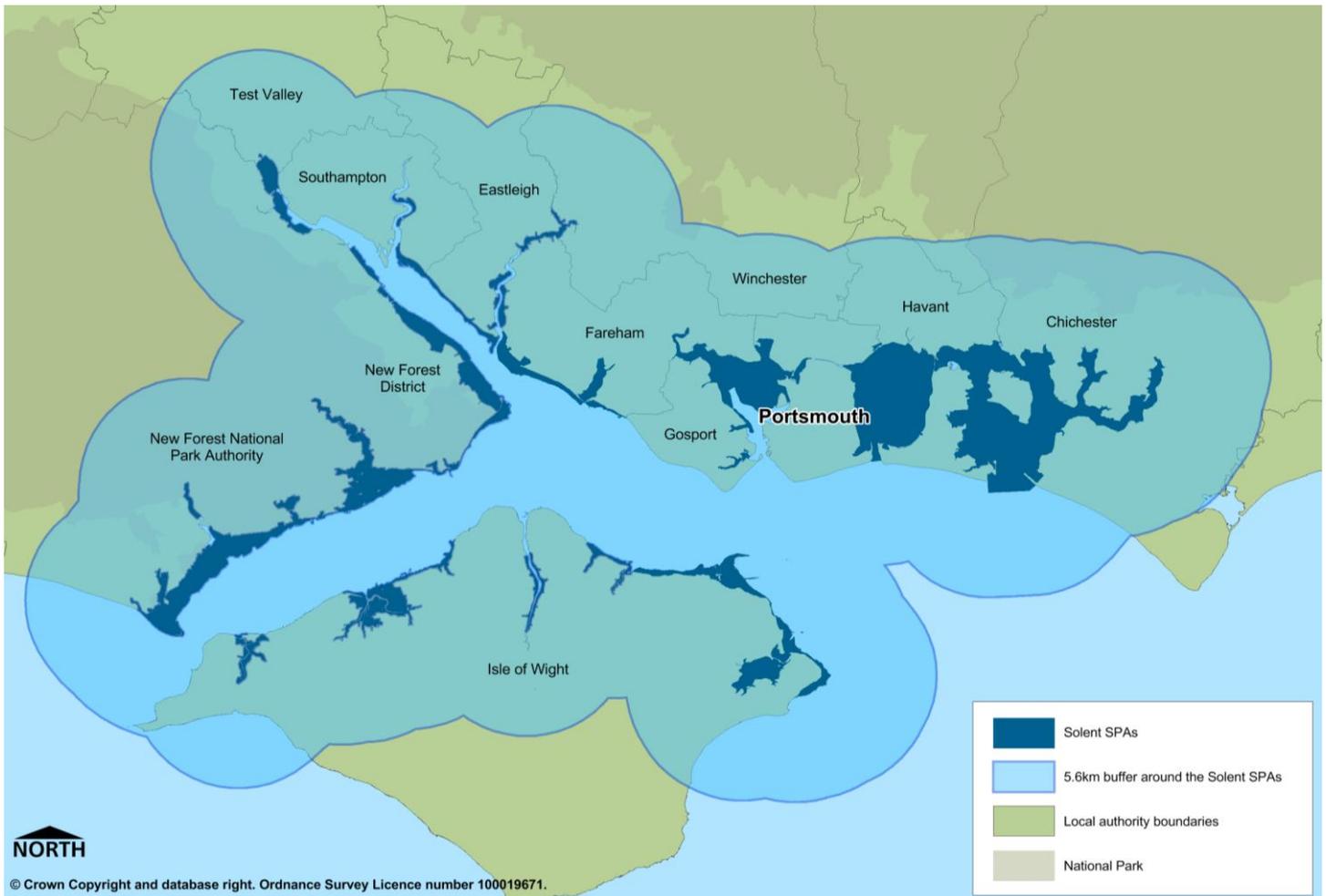
⁴ The precautionary principal: if an action or policy has a suspected risk of causing harm to the public or to the environment in the absence of scientific consensus that the action or policy is harmful, the burden of proving it is not harmful falls on those seeking to take the action or adopt the policy.

⁵ Town and Country Planning (General Permitted Development) Order 1995.

Section 2: Current research

- 2.1 Human disturbance to birds is essentially understood to arise from any activity which results in a change in the bird's behaviour. An acknowledged issue is the impact which disturbance, much of which is caused by recreation, can have on the protected species which use the Solent SPAs and thus on the conservation objectives of the SPAs themselves. Development can increase the population at the coast and thus increase the level of disturbance and the resultant effect on the SPA's conservation objectives.
- 2.2 Disturbance can have a variety of impacts, but these generally involve a reduction in the amount of energy which birds have available:
- habitat that would otherwise be perfectly suitable and has a high density of food could be unused or underused
 - birds could be forced to fly away from the source of the disturbance, using more energy as a result
 - birds could be more alert when feeding, reducing their feeding efficiency over a given time period
- 2.3 Ultimately, this can cause a reduction in the amount of energy which the individual bird has available at the end of the winter period to migrate back to their breeding grounds. If such a reduction occurs, birds will be unable to make the journey and this can result in mortality in the bird population.
- 2.4 Disturbance can often be absorbed by changes in the bird's behaviour, for example increased feeding at night when there are less people and dogs, which would mean that the disturbance would not be likely to cause a significant effect on the SPA because mortality is not being caused.
- 2.5 The city council has been working with neighbouring local authorities along the Solent, the Partnership for Urban South Hampshire, Natural England and other stakeholders to investigate this issue. A great deal of research has now been done, through the Solent Disturbance and Mitigation Project (SDMP)⁶, to assess whether the Solent SPAs suffer from mortality in the bird population due to disturbance caused by recreation. This research has involved:
- a desktop review of existing national and local research
 - a survey of visitors at the Solent SPAs asking them about their visit
 - a survey of households living close to the Solent SPAs about their use of the coast
 - bird disturbance fieldwork at the SPAs to assess how birds respond to potential disturbance events
 - computer modelling to establish whether the patterns of activity which were observed at the Solent SPAs lead to mortality in SPA bird populations
 - advice on the kinds of mitigation measures that could be used to remove any mortality in the SPA bird population.
- 2.6 The research looked at where people travel from to reach the coast and the distance they have to travel. It found that 75% of all visits to one of the Solent SPAs are from 5.6km or less.

⁶ This research is available at www.solentforum.org/forum/sub_groups/Natural_Environment_Group/Disturbance_and_Mitigation_Project/



Map 1: 5.6km buffer around the Solent SPAs.

- 2.7 The computer modelling looked at SPA bird populations and specifically modelled the level of activity which was recorded, how the birds reacted and where the food was. This modelling found that some species were able to compensate for increased disturbance by altering their feeding habits. However a number of species suffered mortality as a result of disturbance and the rate of mortality would increase as a result of a new development.
- 2.8 Natural England have advised the city council that *"the (Solent Disturbance and Mitigation Project) work represents the best available evidence, and therefore avoidance measures are required in order to ensure a significant effect, in combination, arising from new housing development around the Solent, is avoided"*⁷.
- 2.9 The available evidence shows that a significant effect on the Solent SPAs from recreation caused by new development is likely. As a result, under the regulations, it will be necessary for an HRA to be done on all developments which would result in a net increase in population to ensure that this effect is avoided or mitigated in order to be able to lawfully authorise the development.
- 2.10 In the long-term the most effective solution to this issue would be a joint mitigation framework amongst all local authorities within 5.6km of the Solent SPAs. However whilst work continues on this, an interim mitigation framework will enable development to provide the necessary mitigation in order to go ahead in compliance with the Habitats Regulations.

⁷ Letter from Simon Thompson to the PUSH Planning Officers Group (31st May 2013)

Section 3: The solution

- 3.1 The city council is proposing the mitigation framework below as an interim measure. This will be a way for developments to provide a sufficient mitigation package in order to go ahead whilst further discussions take place between local authorities, PUSH, the Solent Local Enterprise Partnership and Natural England to establish a long-term mitigation framework.

What type of development is this applicable to?

- 3.2 Following the results of the research, mitigation will be sought from any development which would lead to a net increase in population. Mitigation will be sought at either the outline or full planning stage. Developments which will lead to a net increase in population will be:
- proposals for one or more (net) new dwellings falling within class C3 of the Use Classes Order (please note that this includes new dwellings created as a result of approval granted under Class J of the General Permitted Development Order).
 - development intended to provide residential accommodation on a permanent basis outside of the C3 use class, including purpose built student accommodation.
- 3.3 Mitigation will generally not be sought from proposals for changes of use from dwellinghouses to houses in multiple occupation (HMOs) (classes C4 or sui generis) as there would not be a net increase in population.
- 3.4 Developments such as care homes for the elderly (Class C2) are unlikely to need to provide mitigation but will be assessed on a case-by-case basis.
- 3.5 All other proposed development will generally not need to provide mitigation. Nonetheless, if it is considered necessary to do so in accordance with the regulations, the city council will conduct project level HRAs on such proposals in consultation with Natural England.
- 3.6 Local authorities along the Solent have agreed that mitigation should be sought from all relevant developments within 5.6km of a Solent SPA. This covers all of Portsmouth and so mitigation measures will be sought from any applicable development proposed in the city.
- 3.7 It should be noted that the proposals in this SPD are one way in which developments could provide a package of mitigation measures which would remove the likelihood of a significant effect as a result of disturbance on the Solent SPAs. Applicants are free to propose an alternative approach to the protection of the Solent SPAs from disturbance caused by recreation and this will be considered by the city council.
- 3.8 A development could also have a significant effect on the Solent SPAs due to other issues, such as coastal squeeze, disruption to flightpaths or air quality which this SPD does not cover. Furthermore, it should be noted that there may be some developments which, due to the scale or location, could cause a significant effect alone, regardless of other development which might take place nearby. In these situations, developers will need to present a bespoke mitigation package for the development.

What type of mitigation will be put in place and how much will it cost?

- 3.9 Based on evidence gathered through the recent research, the following interim mitigation scheme will be implemented:

- a team of rangers who will work on the ground at European sites to reduce disturbance levels and initiate specific measures at the sites to reduce disturbance levels
- a project officer to oversee the rangers
- a monitoring scheme

3.10 This package of measures is considered sufficient in order to effectively mitigate the significant effect which will arise from that development in current Local Plans across the Solent. The package of measures will need to be secured in perpetuity, in order to ensure that it is in place for the lifetime of the development. As such, sufficient funds will need to be invested so that at the end of the plan period, the mitigation scheme is self-financing.

3.11 Natural England has endorsed this approach as an effective interim solution.

3.12 The local authorities along the Solent have coordinated an assessment of the costs of funding the interim mitigation scheme and of the amount of housing which will be delivered within 5.6km of the Solent SPAs. The methodology which was used can be found at Appendix 1 of this SPD.

3.13 The total cost of the mitigation framework will be £172 per net additional dwelling provided through a development scheme. An administration charge will also apply.

Implementing the framework

3.14 The city council will conduct an HRA on all development proposals at the full or outline planning stage, as required by the Habitats Regulations. For most developments, if a planning obligation or funds by Deed⁸ is completed prior to granting planning permission which provides a necessary level of mitigation, proportionate to the scale of development being proposed, then it should be possible for the HRA to conclude that a significant effect on the SPA as a result of the development is unlikely.

3.15 Development proposed under Class J of the General Permitted Development Order will require a separate HRA to be done, alongside the prior approval process. As part of this process, mitigation will be need to be secured from the new development, proportionate to the scale of development being proposed. This will require a Section 106 agreement to be prepared.

3.16 The measures set out in the interim mitigation scheme are not considered to be infrastructure under Regulation 123 of the Community Infrastructure Levy Regulations. As a result, they can be secured from new development using a legal agreement.

3.17 The mechanism for collection will be available on the city council's website.

⁸ A planning obligation, secured by agreement with the city council, by the landowner or a unilateral undertaking given by deed in accordance with Section 106 of the Town and Country Planning Act 1990 (as amended). For further details, please see the city council's website.

Section 4: Next steps

- 4.1 The interim mitigation framework is designed to allow developments to provide a suitable mitigation package in order to proceed in compliance with the Habitats Regulations. It is designed to secure the funds necessary to provide a proportionate amount of mitigation in relation to the harm caused to the Solent SPAs from the new development.
- 4.2 The city council will keep the framework under close review to ensure that it continues to meet these goals.
- 4.3 The city council will continue to work with other local authorities, PUSH, the Solent LEP and Natural England to establish a long term mitigation framework which will replace this SPD in due course.
- 4.4 The annual monitoring report will be used to monitor the implementation of this framework and the long term framework once it has been approved.

Appendix 1: Interim mitigation framework methodology

A1.1 The methodology below is based on predicting the likely housing delivery per year and the cost of funding the mitigation scheme at a Solent-wide level. In order to comply with the Habitats Regulations, it is necessary that after the housing proposed in the Portsmouth Plan's is delivered, the mitigation scheme should be self-funding and so an allowance has been made to ensure that this will be possible.

Housing delivery

A1.2 A potential figure for annual housing delivery is set out below in table 1.

Table 1: housing delivery		
Chichester (part)	340	<p>Notes</p> <p>The housing delivery figures are a projection of the amount of housing which will be provided per annum in that local authority within 5.6km of the Solent SPAs.</p> <p>Housing projections are based on the following methodology:</p> $\frac{A - (B+C)}{D}$ <p>A - total housing target in the Local Plan (draft Local Plan if this is most up to date figure) B - total housing completions from the start of the plan period to 31/3/13 C - outstanding residential planning permissions on 31/3/13 D - number of years left in the plan period at 31/3/13</p> <p>The total delivery for New Forest District, New Forest National Park Authority, Test Valley, East Hampshire, Winchester, Eastleigh and Chichester are based on the likely amount of development which will take place inside the 5.6km buffer.</p> <p>Housing delivery at Welborne has not been included in the framework as no delivery is anticipated within the lifetime of the interim framework and the impact due to recreation from the development will largely be met on-site.</p>
Eastleigh (part)	274	
Fareham (excl. Welborne)	26	
Gosport	100	
Havant	262	
New Forest District (part)	98	
New Forest NPA (part)	3	
Portsmouth	422	
Southampton	485	
Test Valley (part)	80	
Winchester (part)	62	
East Hampshire (part)	15	
TOTAL:	2,167	

Costs of the mitigation

A1.3 Potential annual costs of the mitigation package are set out below in table 2. Please note all costs have been rounded up or down to the nearest pound.

Table 2: mitigation package		
Ranger 1	£20,022	<p>Notes</p> <p>Costs are per annum.</p> <p>Ranger salaries include an allowance for uniform, personal protective equipment, equipment, vehicle rent, maintenance and fuel. Ranger 4's salary is based on a full year contract. The remaining three ranger salaries are divided by two to reflect the fact that the rangers would be on six month contracts.</p>
Ranger 2	£20,022	
Ranger 3	£20,022	
Ranger 4	£40,058	
Project implementation officer	£41,456	

Operating budget	£7,500	Operating budget includes printing, signage and web-design. Monitoring based on initial estimate from Footprint Ecology, including two days monitoring of bird and visitor behaviour at 20 locations. This would come to c£25,000 but monitoring would only be necessary once every three years.
Monitoring	£8,333	
Sub-total of mitigation costs:	£157,413	
In perpetuity allowance (†):	£215,184	Set at 136.7% of annual mitigation costs, which is the level that allows for sufficient interest to be gained by the end of the plan period to cover the annual mitigation costs. See table 3 for full cash-flow analysis.
TOTAL ANNUAL COSTS:	£372,597	Includes annual mitigation and in perpetuity allowance.
Cost per new dwelling	£172	Total annual costs divided by total housing delivery.

A1.4 The methodology to ensure that the mitigation measures can be secured in perpetuity is set out below based on a cash flow analysis. For accuracy over the time period, no rounding of figures has taken place.

A1.5 This shows the input from development in each year, the rolled over totals from previous years and the interest that can be gained on the investment⁹. By year 2027/28 sufficient annual interest can be gained on the investment (figure which is highlighted) that the mitigation scheme can be self-funding from that point onwards.

Table 3: in-perpetuity allowance cash flow

Row	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
1	-	£215,183.57	£438,974.48	£671,717.04	£913,769.29	£1,165,503.63	£1,427,307.35
2	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%
3	£0.00	£8,607.34	£17,558.98	£26,868.68	£36,550.77	£46,620.15	£57,092.29
4	£215,183.57	£215,183.57	£215,183.57	£215,183.57	£215,183.57	£215,183.57	£215,183.57
5	£215,183.57	£438,974.48	£671,717.04	£913,769.29	£1,165,503.63	£1,427,307.35	£1,699,583.21

Row	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28
1	£1,699,583.21	£1,982,750.11	£2,277,243.69	£2,583,517.00	£2,902,041.26	£3,233,306.48	£3,577,822.31	£3,936,118.77
2	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%
3	£67,983.33	£79,310.00	£91,089.75	£103,340.68	£116,081.65	£129,332.26	£143,112.89	£157,444.75
4	£215,183.57	£215,183.57	£215,183.57	£215,183.57	£215,183.57	£215,183.57	£215,183.57	£0.00
5	£1,982,750.11	£2,277,243.69	£2,583,517.00	£2,902,041.26	£3,233,306.48	£3,577,822.31	£3,936,118.77	£4,093,563.52

Row	Cost	Calculation
1	Input from previous year (a)	Carried over from (e) of previous year
2	Interest rate (b)	Assumed rate
3	Interest gained that year (c)	$a \times b$
4	Input from development (d)	Carried over from (†) in table 2
5	Sub-total (e)	$a + c + d$

⁹ 4% has been used to calculate likely interest. It is acknowledged that interest rates will inevitably vary over time.

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