



Ministry of Housing,
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Your ref:

Our ref: PCU/RARE/Z1775/3352981

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Dear Lucy

Referral to the Secretary of State under Regulation 107(3) of the Conservation of Habitats and Species Regulations 2017 (as amended).

**Imperative Reasons of Overriding Public Interest opinion request on a Pre-Submission allocation in Portsmouth City 2040 Local Plan
Tipner West and Horsea Island East**

1. I refer to your letter of 1 October 2024, notifying the Secretary of State under regulation 107(3) of the Conservation of Habitats and Species Regulations 2017 (as amended) ("The Habitats Regulations") that Portsmouth City Council proposes the above allocation in its Pre-Submission Local Plan ("LP"), notwithstanding a negative assessment of the implications for the Portsmouth Harbour Special Protection Area ("SPA") and Ramsar sites.
2. The Secretary of State, as the appropriate authority, must consider, and notwithstanding her further consideration at the project stage, may give her opinion whether Imperative Reasons of Overriding Public Interest ("IROPI") exist where a local planning authority as competent authority ("CA") proposes to agree to a plan, notwithstanding that negative assessment.
3. An opinion was issued on 28 February 2025 which stated the Secretary of State was not satisfied, having regard to the national interest, that the reasons advanced by the CA constituted IROPI. That opinion was withdrawn on 9

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May and is being reissued today. This reissued opinion seeks to address the CA's concerns with the first opinion.

4. The Secretary of State notes that on 29 April 2025, an updated Local Development Scheme ("LDS") was approved at an Extraordinary Cabinet meeting of Portsmouth City Council, and would have effect from 30 April 2025. That LDS provides that an addendum to the current Pre-Submission LP will be consulted on in Winter 2025, before being submitted to the Secretary of State for Examination in Spring 2026.

Background

The Proposal

5. The proposed allocation (currently draft Policy PLP3) in the emerging LP is for a marine employment hub ("the hub") with a working quayside, involving dredging to provide deep water accesses and up to 58,000 m² of marine employment floorspace; 814-1,250 residential dwellings (enabling development); a bridge between Tipner West and Horsea Island East, for sustainable transport modes only; flood defences along the peninsula edges of Tipner West and Horsea Island East; shops selling essential goods; and meeting places for the local community.
6. The Secretary of State notes that the CA considers the proposed LP allocation is critical to the regeneration of Portsmouth. However, it also considers that the proposal would have direct adverse effects on the Portsmouth Harbour SPA/Ramsar/SSSI sites. While the site also falls within the Solent and Dorset Coast SPA, the CA concludes that this SPA was not at risk of likely significant effects arising from the proposed allocation.
7. The proposed LP allocation is likely to significantly affect the SPA/Ramsar sites, and is not directly connected with or necessary for the management of that protected site. The CA therefore must, in accordance with regulation 105 of the Habitats Regulations, make an Appropriate Assessment of the implications of the proposed allocation for the sites, in view of the sites' conservation objectives.

Habitats Regulations Assessment by Portsmouth City Council

8. The CA produced a Habitats Regulations Assessment ("HRA"), which includes an Appropriate Assessment, which concluded that the LP policy will result in adverse effects, including the direct loss of habitat from the SPA/Ramsar sites. This is due to the fact that it will inevitably cause the loss of 2.1ha of intertidal habitat, as a result of dredging; likely cause the loss of 0.3ha of intertidal habitat, for the insertion of bridge piers; and possibly cause the loss of 0.5ha of subtidal habitat, as a result of land reclamation for the hub; and up to 3.6ha of terrestrial habitat for housing, on land south of the firing range. Potential indirect impacts have also been identified, such as atmospheric pollution and disturbance from construction. It also produced a HRA supplement which included further information about the compensation proposed.

9. The Secretary of State is satisfied that the Appropriate Assessment has been carried out in accordance with the Habitats Regulations and considers that the CA has provided the requisite information to the Secretary of State as the appropriate authority, as required by regulation 107(3).

Other Derogation Tests

10. The Secretary of State notes that the CA has undertaken the required consideration as to whether there is an alternative solution or site. The assessment undertaken indicates that the CA considers that there are no viable alternative solutions that would fully meet the objectives of the draft LP policy PLP3 which would have a lesser effect or no effect at all on the site's integrity. The Secretary of State notes paragraph 8.14 of the HRA states that:

“...the assessment of alternative solutions to each element of the proposal, as conducted below, is somewhat theoretical. The financial reality is such that it is likely the allocation will be delivered as a package or not at all.”

11. As such, the assessment of alternatives was carried out against the objectives of the whole of draft LP policy PLP3.
12. In addition, the Secretary of State has noted the views of Natural England (“NE”) and the Environment Agency, as to the extent that suitable compensation has been agreed and will be delivered.
13. While the Secretary of State's opinion as to the adequacy of the assessment of alternatives and suitable compensation are not required for her opinion on IROPI under regulation 107, and therefore do not form part of her consideration for this opinion, it is useful context to note.

Appropriate Authority Consultation

14. As required under regulations 107(4A)(a) and (b), the Secretary of State has consulted with the Joint Nature Conservation Committee (“JNCC”) and devolved nations. Based on the particular facts of this request, she has also consulted with the Marine Management Organisation (“MMO”) under regulation 107(4A)(d). Responses to this consultation were received from the JNCC and the Scottish Government (both of which are appended to this letter).

Secretary of State's Consideration of IROPI

15. The CA is asked to consider whether there are IROPI to justify the plan, despite a potentially negative effect on site integrity. These may include reasons relating to human health, public safety, or beneficial consequences of primary importance to the environment, plus reasons relating to social or economic benefit.

16. The Secretary of State has considered the CA's case for the allocation on the grounds of IROPI, as set out and summarised below.

Public Interest Benefits of the Proposed Plan

17. While some of the claimed IROPI relate only to certain elements of the draft plan allocation, the Secretary of State has proceeded on the basis that the different elements are to be considered as a single "package" given the financial position whereby the Southampton and Portsmouth City Deal of 2013 ("City Deal"), as well as delivery of housing, enable the main elements of hub, decontamination and improved flood defences.
18. The broad rationale for the proposed allocation was established by the City Deal. The Tipner-Horsea Island site was described as consisting of five pieces of land: Port Solent; Tipner West; Tipner East; Horsea Island East; and the Tipner Firing Range.
19. The Guiding Principles for development of the site seek to guide progression of the emerging PLP3 allocation in respect of Tipner West and Horsea Island East. There were set out in the CA's letter of 1 October 2024:

"(1) Develop options that have regard to the Conservation Objectives of the SPA/Ramsar Sites in respect of their bird populations and other qualifying features, subject to the procedures set out within the Conservation of Habitats and Species Regulations 2017 (as amended) (The Habitats Regulations).

(2) Deliver nature-focused place-making to contribute to Greening of the City, in line with the City Vision 2040, which achieves more than the statutory biodiversity requirement.

(3) Provide a minimum of 814 homes and maximum of 1,250 homes & a minimum of 58,000 sqm of marine focussed employment space (Minimum affordable housing at 30%) alongside enabling infrastructure to satisfy the terms of City Deal.

(4) Maximise local job creation.

(5) Minimise costs and impact on City Council finances & services to the public.

(6) Seek to continue to work in partnership with Royal Society for the Protection of Birds (RSPB), Hampshire & Isle of Wight Wildlife Trust (HIWWT), Ministry of Defence and Historic England to develop proposals that are capable of satisfying the regulatory requirements of Natural England (NE), the Marine Management Organisation (MMO) and the Environment Agency (EA).

(7) Minimise land reclamation to meet the principles listed above."

20. The Project Objective as set out in paragraph 4.13 of the Pre-Submission Portsmouth LP dated July 2024 is:

“To create a marine employment hub in the Solent region with access to deep water, and of sufficient scale to enhance and expand the marine business cluster, along with critical infrastructure, and sufficient housing to help enable delivery of the development as well as support the growth in the marine workforce.”

21. On a plain reading of the Project Objective, the Secretary of State has therefore interpreted the position as being that the delivery of the hub element of the overall package is the main element of the proposed plan allocation, in turn partially facilitating flood defence works, land remediation, and other public benefits.

Flooding Risk

22. The IROPI request acknowledges that the requirement for flood defences stems from non-statutory coastal policy independent of the LP. This is summarised below.

23. The ‘Hold the Line’ policy set out in the Shoreline Management Plan (“SMP”) extends for all three ‘Epochs’ covering a 100-year period (Epoch 1: 0 to 20 years; Epoch 2: 21-50 years; Epoch 3: 51-100 years). ‘Hold the Line’ means that it is necessary to maintain or upgrade the level of protection provided by existing coastal defences, upgrades being necessary due to the predicted effects of climate change. The SMP was found to demonstrate IROPI in a 2011 decision issued by the Department for Environment Food and Rural Affairs. The SMP covers a much wider geographic area than the case before the Secretary of State now. It was considered that as flooding and coastal erosion would threaten 51,000 residential and commercial properties, two major ports, industrial assets and key infrastructure, that a strong IROPI case had been made in that instance.

24. The argument for IROPI in respect of flooding risk in this instance focusses on there being no current prospect that the flood defences envisaged in the City Deal and the SMP will be delivered without developer funding through Policy PLP3. The cost of defending the existing land mass is currently estimated to be in the order of £35m.

25. The Portsea Island Coastal Strategy Study (2011) identified the key concern for Tipner as requiring improvements of defences to protect the Portsmouth Harbour SPA from ingress of harmful contaminants caused by exposure of the hinterland to a breach in the defences. It identified a single residential property as being at risk of a breach (0.5% AEP storm).

26. The development is intended to subsidise delivery of required sea defences for the northern part of Portsea Island, where there is a risk to human health and safety and more than 200 existing homes at risk from flooding, should the defences at Tipner West and Horsea Island East fail, allowing flood waters to pass through Tipner East and Stamshaw.

27. Currently these defences are subject to a 'Hold the Line' approach under the North Solent SMP, which is a high-level, non-statutory, policy document setting out a framework for future management of the coastline and coastal defences. The CA considers that in the absence of the proposed LP allocation or alternative funding, there would likely be a scenario of continued maintenance and urgent repair of defences. In this scenario, defence works would be identified purely on the basis of immediate need, determined by emergency failures resulting in isolated, but increasingly frequent, flood events. In the long-term, the CA's opinion is that this emergency patching would cease to become effective.
28. Paragraph 8.86 of the Habitat Regulations Assessment of the Portsmouth LP concludes that the need to mitigate significant flooding risks comprise imperative reasons that are in the public interest.
29. In considering the weight to be attached to the delivery of sea defences via the PLP3 allocation, the Secretary of State has borne in mind regulation 9 of the Habitats Regulations, in particular regulation 9(3) which provides that a CA, in exercising any of its functions, must have regard to the requirements of the Directives so far as they may be affected by the exercise of those functions. This duty will continue in respect of the SPA/Ramsar sites notwithstanding her finding in respect of IROPI.
30. The Secretary of State recognises that there are benefits arising from the delivery of new sea defences in comparison to the likely position in the 'Hold the Line' approach. She considers that the weight to be attached to delivery of these defences is moderate in the short term, potentially rising to significant in the longer term should the Hold the Line approach prove to become less effective. She also considers that the certainty of harm to the SPA/Ramsar sites arising from the PLP3 allocation is greater than the certainty of harm arising in the Hold the Line approach in the short term. Given the inherent uncertainties associated with longer term forecasts, funding and opportunities, she considers that the weight to be attached to this benefit is moderate for the purposes of this opinion.

Contaminate Leachate Risk

31. The CA also considers there would be human health and environmental benefits delivered by the LP allocation through the remediation of the sites. The CA considers that this remediation would address risks arising from the potential for contaminant leachate to damage the integrity of the SPA/Ramsar sites.
32. Should flood defences fail, the CA considers that there is a risk of contaminants being released into Portsmouth Harbour. This is considered to pose a risk to the integrity of the designated sites and citation species and habitats. The Secretary of State notes that the waterbody where works are proposed is currently of 'moderate' ecological status and 'fails' on chemical status. She also notes that the HRA recognises that there may be conflicts between the damage to the international site caused through pollution and the

encroachment on the SPA/Ramsar sites if defences have to be constructed to protect the area.

33. In considering the weight to be attached to the claimed benefits, the Secretary of State has had regard to NE's Supplementary Advice Note for the SPA / Ramsar sites. This identifies the water quality status to be in poor condition, affected by anthropogenic impacts including treated sewage effluent, diffuse agricultural fertiliser runoff and flood alleviation discharge.
34. While recognising that site remediation would bring important benefits in terms of contaminate leachate, the Secretary of State considers that current concerns relating to the SPA/Ramsar sites arise from anthropogenic impacts. Site remediation would do little to affect these concerns.
35. The Secretary of State considers that the weight to be attached to remediation of the site is linked to the efficacy of the sea defences. As with her assessment of flooding risk, she considers that the weight to be attached to the remediation benefits is moderate in the short term, potentially rising to significant in the longer term. She has also borne in mind that further direct pollution could arise from construction works in respect of plan allocation PLP3. She considers that the PLP3 allocation does not offer significant benefits in respect of likelihood of harm arising from contaminate leachate in the short term. Given the inherent uncertainties associated with longer term forecasts, funding and opportunities, the Secretary of State considers that the benefits arising from this matter should carry moderate weight.

Social and Economic Benefits and Enabling Development

36. There are also claimed social and economic benefits arising from the hub, which would help deliver a national strategic ambition and develop a world leading marine and maritime economy.
37. The request for an IROPI opinion considers that delivery of the hub has imperative social and economic reasons. The claimed need for the hub is national (market demand of the UK marine sector), regional (growth of the marine economy in the Solent area), and local (addressing deprivation and skills shortages). A central government grant of £48.75m was part of the City Deal, the purpose of which included maximising the economic impact of marine and maritime assets in the area, and the transfer of land at the site from the Ministry of Defence to the CA.
38. Paragraph 8.114 of the HRA states:
- “the delivery of development to meet the needs of the UK marine sector is considered to be both imperative and critical and in the public interest in support of the draft allocation.”*
39. Appendix G of the HRA Supplement (October 2024) quantifies some of these benefits as being the delivery of 58,000 m² of marine employment floorspace and 1,900 FTE jobs.

40. National strategies focus on a number of key marine and maritime clusters.
41. The provision of enabling development is considered by the CA to be both imperative and in the public interest to ensure the delivery of the site allocation and the benefits associated with that.
42. The Secretary of State considers that taken together, the social and economic benefits, and enabling development, should carry significant weight.

Other Benefits

43. Other claimed IROPI benefits relate to the social and economic benefits arising from the delivery of housing in and of itself (rather than as an enabler of the wider development), sustainable transport and connectivity, and public access to open space and heritage assets. In the opinion of the Secretary of State these benefits carry more limited weight than those mentioned in the preceding paragraphs. While a clear benefit of the proposal, the delivery of between 814 and 1,250 homes has to be seen in the context of a requirement in the area for 899 new dwellings per year (under the standard methodology figure). Similarly, while recognising that improving the condition of, and access to, five listed buildings with a maritime history is a highly desirable outcome, the scale of the benefits does not match those identified in the preceding paragraphs. Improved opportunities for access to open space are also welcome, but in a situation where 91% of people in Portsmouth already use their local parks or playgrounds¹, the weight to be attached to this benefit is more limited. They are not directly related to protecting the long-term integrity of Habitats sites.

Risks of Harm from the Proposed Allocation

44. Against the wide range of public benefits claimed by the CA in respect of the draft allocation, the Secretary of State has considered the harm arising from the direct adverse effects on the Portsmouth Harbour SPA/Ramsar sites.
45. The Secretary of State agrees that the correct approach is to assume a worst-case scenario. As set out in paragraph 8 of this opinion, that envisages the loss of up to 6.5 hectares of different habitat types. Table 1 of the HRA Supplement sets out the functional importance of those areas within the SPA/Ramsar sites that may be lost to development. The subtidal and terrestrial habitats (up to 4.1 ha of which will be lost) were given a high level of functional importance. Intertidal habitat was rated as both high (0.3ha) and medium (2.1ha). The Secretary of State attaches substantial weight to the direct loss of habitat.
46. The Secretary of State notes that development schemes in Habitats sites can result in the disturbance of qualifying SPA / Ramsar bird species in Habitats sites or functionally linked habitats through several mechanisms. Noise and visual disturbance arising from construction activities may result in behavioural changes (e.g. flight from the nest, cessation of foraging) in birds.

¹ <https://www.portsmouth.gov.uk/services/leisure/parks/parks-gardens-and-open-spaces/#map>

Furthermore, post-construction disturbance from site usage, road traffic and operational lighting might also arise. The Portsmouth Harbour SPA/Ramsar are identified as being sensitive to visual and noise disturbance, and at least some of the construction works to deliver the 13,603 net new dwellings and at least 138,429m² of employment land will be carried out within or directly adjacent to the Portsmouth Harbour SPA / Ramsar sites. The Monitoring and Delivery Framework element of draft allocation PLP3 envisages that development will take place over a 15-year timeframe. Given the sensitivity of the site and the lengthy timeframe envisaged, the Secretary of State attaches significant weight to this harm.

47. In respect of recreational pressure, paragraph 8.122 of the HRA refers to improved management to mitigate / avoid recreational disturbance. While recognising that this may be possible, the Secretary of State considers that the delivery of between 814 and 1,250 homes on the PLP3 allocation would represent a significant increase in nearby residents, and she considers that adverse effects arising from recreational pressures in this regard cannot be ruled out, and she considers that this should attract moderate weight.

Secretary of State's Conclusion on Balance of Benefits and Harms

48. Taking all of the above into account, the Secretary of State has considered whether the benefits are sufficient to override the identified harms to the Portsmouth Harbour SPA/Ramsar sites and constitute IROPI.
49. The Secretary of State has attached significant weight to the benefits of the scheme in terms of social and economic benefits and enabling development, moderate weight in respect of flooding and contaminate leachate risks, and more limited weight to the benefits identified in paragraph 43 above.
50. Against these benefits, she has attached substantial weight to the direct loss of 6.5ha of habitat, significant weight to the harms from noise and visual disturbance arising from construction activities, and moderate weight in respect of recreational pressure.
51. Overall, in the opinion of the Secretary of State and having regard to the national interest, the identified benefits are not sufficient to override the harms arising to the Portsmouth Harbour SPA/Ramsar sites and IROPI for the proposed allocation have not been demonstrated.

Other matters

52. Given the Secretary of State has concluded IROPI have not been demonstrated, the Secretary of State has not further considered measures to ensure that the overall coherence of the network of SPAs and SACs is protected.

Conclusion and Decision

53. The Secretary of State has undertaken a comprehensive assessment of the proposed allocation in the Pre-Submission LP and considered the national

interest as well as evidence submitted by the CA, NE and other statutory agencies, organisations and bodies, in addition to those resulting from statutory consultation undertaken as the appropriate authority. She considers that insufficient justification has been made to demonstrate that it is essential that the allocation should proceed for public interest grounds, and she has accordingly concluded that the public interest does not outweigh the predicted harm, or risk of harm, to the integrity of the SPA/Ramsar sites. The Secretary of State therefore concludes that, overall, the test of IROPI in the Habitats Regulations has not been satisfied.

54. I am sending a copy of this letter to NE, the JNCC, MMO and the devolved administrations.

Yours sincerely

Andrew Lynch

Andrew Lynch

Head of Jurisdiction and Environmental Casework

This decision was made by the Minister of State, Matthew Pennycook, on behalf of the Secretary of State, and signed on her behalf