

1 October 2024

Dear Andrew,

1. As you know, Portsmouth City Council (**'PCC'**) is progressing the preparation of its Local Plan which will set local planning policy for Portsmouth City to 2040 (**'the Local Plan'**). The Pre-Submission version of the Local Plan is attached as **Appendix 1** to this letter. Tipner West and Horsea Island East is allocated as a strategic site for a new employment marine hub, some housing, flood defences and a bridge to the mainland under draft Policy PLP3. This is mission critical to the regeneration of Portsmouth.
2. It has been clear to PCC for some time that the development of a new marine employment hub at Horsea Island East and Tipner West cannot be delivered without some adverse effects on the Portsmouth Harbour Special Protection Area (**'SPA'**)/Ramsar site. That is because a marine employment hub requires deep water access which necessitates some dredging and permanent loss of inter-tidal habitat within the SPA/Ramsar site.
3. Under regulation 107(1) of the Conservation of Habitats and Species Regulations 2017 (as amended) (**'the 2017 Regulations'**), a plan-making authority may only give effect to a plan that has negative implications for a European site if it is satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest (**'IROPI'**). Having considered and discounted potential alternative solutions, PCC considers – exceptionally – that there are imperative reasons of overriding public interest which justify the adverse effects on the SPA/Ramsar site in this case.
4. Under regulation 107(3) of the 2017 Regulations, a plan-making authority may request the Secretary of State's opinion as to whether the reasons relied on constitute IROPI. On 4 May 2023, PCC wrote to you as the plan-making authority to request the Secretary of State's opinion as to whether the reasons relied on by PCC to progress its (then) draft Policy PLP5 allocating Tipner West and Horsea Island East, notwithstanding the adverse effect on the SPA/Ramsar site, were IROPI. On 22 September 2023, you replied that a decision on the request would be premature. You said:

“The stage at which it should be possible to make an assessment would be when there is a finalised alternatives assessment, a completed assessment of the implications of the plan for the integrity of the sites concerned, and a proposed compensation strategy.”

5. Since your letter of 22 September 2023, PCC has progressed the preparation of the Local Plan to the Regulation 19 consultation stage. Draft Policy PLP5 has become draft Policy PLP3. The Pre-Submission Local Plan has also been subjected to a Habitats Regulations Assessment ('HRA') which is attached to this letter as **Appendix 2**. Furthermore, there is a new national Government, and the new Secretary of State made clear in her speech on changes to national planning policy to the House of Commons on 30 July that *"delivering economic growth is our number one mission."*
6. Chapter 8 of the HRA assesses draft Policy PLP3 against the three statutory derogation tests to consider whether the Local Plan can be adopted with draft Policy PLP3 as written. The HRA includes PCC's finalised alternatives assessment, a completed assessment of the implications of the Plan for the integrity of the sites concerned, the rationale for PCC's conclusion that there are IROPI, and the rationale for PCC's conclusion that there is sufficient suitable compensatory habitat available to enable it to conclude with a high degree of confidence that an adequate compensation scheme can be delivered.
7. PCC therefore considers that the Secretary of State as the "appropriate authority" now has all the information required to provide an opinion under regulation 107(3) of the 2017 Regulations. We therefore invite the Secretary of State to re-engage with our May 2023 request and provide an opinion on whether the reasons relied on by PCC for progressing draft Policy PLP3, notwithstanding its implications for a European site, are considered to be IROPI. We hope it will be possible for such opinion to be given before the end of October 2024 to ensure it is received prior to the submission of the Local Plan for Examination-in-Public in line with our Local Development Scheme and paragraph 226c of the draft National Planning Policy Framework.
8. In support of this request, the Secretary of State is asked to have regard to the PCC Statement of Case dated April 2023, as previously submitted to the Secretary of State in May 2023. The PCC Statement of Case continues broadly to reflect PCC's position. However, as more than a year has passed since that document was finalised, the Secretary of State is also invited to refer to:
  - a. The Pre-Submission Portsmouth Local Plan dated July 2024 (**Appendix 1**);
  - b. The Habitats Regulations Assessment of the Portsmouth Local Plan dated April 2024 (**Appendix 2**);

- c. The regulation 19 consultation responses from key stakeholders, including Natural England, the Environment Agency, RSPB and Hampshire and Isle of Wight Wildlife Trust ('**HIWWT**') (**Appendix 3**) and PCC's summary responses to those representations (**Appendix 4**);
  - d. An example of a pro-forma letter generated by RSPB and HIWWT and submitted, with minor amendments, by 6,910 representors during the regulation 19 consultation (**Appendix 5**); and
  - e. An updated summary of evidence in support of PCC's IROPI case based on the need for a marine employment hub in the Solent region (**Appendix 6**).
9. We set out below a summary of PCC's case as it has progressed in light of the up-to-date text of (now) draft Policy PLP3 and the up-to-date HRA completed in April 2024.

## SUMMARY OF CASE

### The site

- 10. The Site is identified in Figure 4.2 at p. 33 of the Local Plan. It comprises Tipner West and Horsea Island East. It is a peninsula located immediately adjacent to the M275 motorway at the northwest part of Portsea Island and is bounded on three sides by Tipner Lake, which is part of Portsmouth Harbour. Portsmouth Harbour is a designated SPA and Ramsar Site, valued for the habitat it provides in particular to Brent Geese and wading birds. The Site also falls within the Solent and Dorset Coast SPA which aims to provide protection for breeding Tern species.
- 11. In 2013, the Site was identified as a key element of the Portsmouth and Southampton City Deal ('**the City Deal**') (**Appendix A2 to the Statement of Case April 2023**). The City Deal (an agreement between central government, local government and local businesses) aims to maximise the economic strength of Portsmouth, Southampton and the wider Solent area, by supporting further growth in the area's maritime, marine and advanced manufacturing sectors. It included a central Government grant of £48.75m to PCC to help deliver the following:
  - a. Maximising the economic impact of marine and maritime assets in the area;
  - b. Unlocking critical employment sites to enable the marine, maritime and advanced manufacturing sectors of the region's economy to expand;
  - c. Providing new housing to support the growing workforce;

- d. Ensuring people have the right skills to access employment in those growing sectors;
  - e. Providing effective support to small and medium enterprises to enable them to grow, including marine and maritime small and medium enterprises.
12. A key part of the City Deal was the transfer of land at the Site from the Ministry of Defence to PCC. The objective of that land transfer was to enable the delivery of approximately 2,370 new homes on the Site and nearby (at Tipner East and Port Solent) and 58,000sqm of employment floorspace for the growth of marine and advanced manufacturing sectors in the Solent sub-region.
13. Since 2013, PCC has explored options for delivering on the City Deal at the Site:
- a. In 2019, PCC ran a public consultation as part of its emerging Local Plan on the Tipner Strategic Development Area as a potential strategic location to help meet the City's current and long term housing and employment needs. A so-called 'Super Peninsula' at Tipner West was proposed as an option, involving substantial land reclamation (in excess of 22ha) from the Portsmouth Harbour SPA/Ramsar site.
  - b. In 2021, as part of its Regulation 18 Local Plan consultation, PCC consulted on three options for Tipner West and Horsea Island East:
    - i. Option 1: Innovative Sustainable Community. A community of up to 4,200 new homes and a marine employment hub (providing approx. 59,000 sqm of employment floorspace) involving substantial land reclamation from the Portsmouth Harbour SPA/Ramsar site.
    - ii. Option 2: Regeneration of Existing Area. Carrying forward the extant Core Strategy proposal for a development of 1,500 homes, 25,000 sqm of employment space and community facilities.
    - iii. Option 3: No development at Tipner West.
  - c. During and as a result of the consultation, a number of other options were considered, including a variation of Option 2 for redevelopment of the existing landmass in line with the City Deal requirements (58,000sqm marine employment and 1,250 homes).
  - d. In October 2022, PCC ruled out both Option 1 for a Super Peninsula (because of its environmental impact) and the Option 3 do-nothing scenario (because of the costs of maintaining the existing Site in the absence of any growth-

related public benefit) and agreed a set of principles to bring forward an alternative option based on the variation of Option 2 (set out in (c) above). Those principles included satisfying the terms of the City Deal and maximising job creation, while minimising land reclamation, prioritising the protection of the terrestrial SPA/Ramsar, and satisfying the regulatory requirements of Natural England and the Environment Agency.

e. Those Guiding Principles have since been updated and now state:

“(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 Bird (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.”

14. In line with those Guiding Principles and the Coastal Concordat for England, PCC has engaged closely with key stakeholders (including Natural England, the Environment Agency, the Marine Management Organisation, Historic England, the RSPB, and Hampshire and Isle of Wight Wildlife Trust) in the development of what has now become draft Policy PLP3 of the Plan. Since early 2021, this engagement has largely been through the Tipner West Regulatory Panel, which is chaired by PCC as the LPA and includes attendees from PCC as the site promoter along with the relevant statutory bodies and both the RSPB and the Wildlife Trust attending as guest contributors to the Panel meetings. For the avoidance of doubt, the engagement of these stakeholders in the development of draft Policy PLP3 does not equate to their endorsement of the Policy.

### Draft Policy PLP3

15. Draft Policy PLP3, and its introductory and supporting text, should be read in full at pp 33 – 43 of the Local Plan. The draft Policy allocates the Site for:
  - a. A marine hub with a working quayside and up to 58,000 m<sup>2</sup> of marine employment floorspace (class E(g) offices, research and development, light industrial, B2 general industrial and B8 storage or distribution);
  - b. A new community with between 814 and 1,250 residential dwellings (class C3);
  - c. A bridge between Tipner West and Horsea Island East for the use of sustainable transport modes only;
  - d. Flood defences along the peninsula edges of Tipner West and Horsea Island East in line with robust climate change scenarios;
  - e. Shops selling essential goods, including food, where the shop's premises do not exceed 280 m<sup>2</sup> (class F2a); and
  - f. Meeting places for the principal use of the local community (class F2b).
16. Draft Policy PLP3 does not prescribe the design, scale, density, massing, or layout of uses across the two parts of the site. Nor does it prescribe the minimum or maximum footprint of the housing or marine hub elements. Those are matters to be addressed at the planning application stage. However, the draft Policy embeds a 'nature positive' presumption. Save for the dredging necessary to ensure deep water access to the marine employment hub, Policy PLP3 requires a proposed development to avoid any further loss of, or damage to, the Portsmouth Harbour SPA/Ramsar site unless it can be demonstrated that such further loss or damage is the minimum necessary to deliver a viable and feasible development.
17. That approach has been adopted in recognition of the fact that the policy allows flexibility in terms of design, scale, density, massing, layout and footprint across the two parts of the Site, and the fact that current evidence suggests project viability is challenging. It may therefore be necessary, to ensure a viable and/or feasible project, to: i) construct the proposed bridge using piers planted in inter-tidal SPA habitat (instead of, for example, constructing a free-span bridge); ii) reclaim a limited area of subtidal SPA/Ramsar habitat for the marine hub (instead of, for example, creating additional space through cantilevered platforms); and/or iii) provide housing on terrestrial SPA/Ramsar habitat within the Site (instead of, for

example, providing built development only on the non-designated areas across Horsea Island East and Tipner West). However, as these matters are not currently established beyond doubt, the Policy requires them to be addressed at the planning application stage under:

- a. criterion (2)(g) of PLP3, which requires an applicant for planning permission to prove that any loss of habitat beyond the inevitable dredging is necessary to deliver a viable or feasible development; and
  - b. criterion 6 of PLP3, which requires submission of a project-level HRA which addresses the three derogation tests, including the requirement to demonstrate the absence of alternative solutions, as set out in regulations 64 and 68 of the 2017 Regulations.
18. Consideration of alternative designs, scale, density, massing, development footprint and layout of the project within the Site (including as between the Tipner West and Horsea Island East parts of the Site) is therefore a matter for the project-level HRA, not the plan-level HRA.

## **The HRA**

### *Appropriate assessment*

19. The HRA includes an Appropriate Assessment at chapter 6 and its conclusion and recommendations are set out in chapter 7. The Appropriate Assessment concludes that draft Policy PLP3 will have an adverse effect on the integrity of Portsmouth Harbour SPA/Ramsar site on account of the fact that it will:
- a. inevitably cause the loss of 2.1ha of intertidal habitat as a result of the dredging necessary to provide deep water access to the marine employment hub;
  - b. likely cause the loss of 0.3ha of intertidal habitat for the insertion of bridge piers;
  - c. possibly cause:
    - i. the loss of 0.5ha of subtidal habitat as a result of land reclamation for the marine employment hub; and
    - ii. the loss of up to 3.6ha of terrestrial habitat for housing on land south of the firing range.
20. The Appropriate Assessment also records that the requirement in draft Policy PLP3 to improve flood defences within the Site is likely to have an adverse impact on the

Portsmouth Harbour SPA/Ramsar site through a contribution to “coastal squeeze”, but it notes that this impact has already been accounted for in the derogation case for the North Solent Shoreline Management Plan,

*The absence of alternative solutions*

21. The HRA includes an assessment of alternative solutions in Chapter 8 (8.5 – 8.75). The HRA proceeds in line with case law that requires the LPA to consider a wide range of alternatives. However, an alternative is only an alternative solution for the purposes of regulation 107 of the 2017 Regulations if it would deliver the same overall objective as the original proposal, is financially, legally and technically feasible, and is less damaging to the protected site.
22. The overall objective of draft Policy PLP3 includes:
  - a. the Project Objective (paragraph 4.13): *“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.”* The critical infrastructure referred to in the Project Objective includes flood defences along the peninsula edges of Tipner West and Horsea Island East and the bridge between Tipner West and Horsea Island East.
  - b. as supported by “The Vision” (paragraph 4.17): *“In 2040, Tipner West & Horsea Island East will form a new gateway to the City along with Tipner East and will be home to a new healthy and happy community. There will be a thriving new marine business hub that provides both jobs and opportunities for lifelong learning. People will live in good quality homes that are carbon neutral and will enjoy the new open space on Horsea Island. They will make fewer journeys by car and instead will make use of new and improved public transport connections and infrastructure, including a bridge to the mainland. New climate change resilient sea defences will defend the community alongside the existing residents of north Portsea Island. Historic land contamination will have been prevented from leaching into the Harbour. The Harbour's nationally and internationally designated saltmarsh and mudflat supporting populations of Brent Geese and wading birds will be cherished and protected, whilst the site's naval heritage will be positively enhanced in the public interest. The whole Tipner peninsula will be home to a community where residents, workers and visitors co-exist in harmony with nature.”*
  - c. The core elements of Policy PLP3 itself, in particular criteria 1(a) – (d).\_\_



23. The HRA (paragraph 8.5) identifies the following elements that are necessary for the delivery of the overall objective:
- a. Sea defences and site decontamination;
  - b. Marine employment hub;
  - c. Bridge; and
  - d. Enabling development in the form of housing.
24. The HRA adopts a disaggregated approach to the consideration of alternative solutions; that is, it considers whether there are alternative solutions to each element of the overall objective individually. But it acknowledges that this exercise is – to some extent – theoretical because project viability is likely to mean that the elements of the project can only be delivered as a ‘package deal’ on the same site.
25. The HRA concludes that there are no feasible alternative solutions to the delivery of any individual element of the overall objective or to the combined package:
- a. As for sea defences and site decontamination, these are urgent and necessary protective measures. The IROPI case in support of the North Solent Shoreline Management Plan (‘**NSSMP**’) to deliver the sea defences has already been approved by the Secretary of State: see **Appendix A8 to the Statement of Case April 2023**. However, the only available source of funding to deliver the necessary sea defences and site decontamination is the cross subsidy from the delivery of draft Policy PLP3 as a whole, together with the City Deal funding associated with the delivery of draft Policy PLP3.
  - b. As for the marine employment hub, there is a pressing social and economic need for such a hub in the Solent region and there are no alternative sites available that can deliver a marine employment hub that meets the overall objective (see an updated summary of the evidence in support of this case in **Appendix 6**).
  - c. As for the bridge, this has been identified as critical infrastructure in the Portsmouth Infrastructure Delivery Plan (‘**IDP**’), there are no preferable alternative bridge alignments, and the failure to provide a bridge in this location would not deliver on the overall objective of the Policy.

- d. As for housing, this is currently the highest value land use for the purposes of enabling development and off-site provision would neither generate sufficient return to support project viability, nor would it deliver on the overall objective.
26. As the primary driver for the location of the development as a whole is the marine employment hub, the absence of feasible alternative sites for that hub dictates that there are no feasible alternative sites for the combined marine employment hub and housing 'package'. Moreover, the use of an alternative site for the marine employment hub and housing package would risk the need to return the £48.7m City Deal grant that is critical to delivering the necessary infrastructure improvements on site, including flood defences and site decontamination.
  27. As above, consideration of alternative designs, scale, density, massing and layout of the project within the Site is a matter for the project-level HRA not the plan-level HRA. Although the HRA refers to two project options currently shortlisted by the promoter team (Options A and B at figs 5 and 6, p.94), it does not treat those options as the only viable options to deliver Policy PLP3 and does not reach any conclusion on whether there are "alternative solutions" to those options (e.g. using the developable area on Horsea Island East). Those are matters that will need to be addressed at the planning application stage in a project-level HRA when viability and feasibility evidence is clearer.

#### *The existence of IROPI*

28. The HRA considers whether there are IROPI at Chapter 8 (8.76-8.128). Consistent with the April 2023 Statement of Case, it identifies the following imperative reasons of public interest:
  - a. **Flooding risk to human health and safety.** The HRA notes that current flood defences at Tipner West and Horsea Island East are in critical need of repair and/or replacement. Should they fail, flood waters would pass through Tipner East and Stamshaw, putting more than 200 existing homes, and many more planned homes at Tipner East, at risk. All of Portsmouth's coastline including the Tipner peninsula is designated as 'hold the line' in the NSSMP. The IROPI case in support of the NSSMP has already been approved by the Secretary of State: see **Appendix A8 to the Statement of Case April 2023**. The IROPI case for PLP3 is that the only way to deliver the sea defences for which IROPI has already been established is through cross-subsidy through the implementation of Policy PLP3, including through the use of City Deal funding tied to the delivery of Policy PLP3.

- b. **Contaminant leachate risk to the integrity of the SPA/Ramsar site.** The HRA notes that Tipner West is currently contaminated with both inorganic and organic contaminants. It records the risk, in the absence of mitigation measures, of contaminant leachate affecting the integrity of the SPA/Ramsar habitat. Draft Policy PLP3 constitutes part of the Council's strategy to meet its legal obligation to take steps to protect the national site network from pollution.
  - c. **The creation of a marine employment hub in the Solent.** There is a clear and pressing need for a marine employment hub in the Solent region. The delivery of a marine employment hub, in line with the City Deal, will drive much needed economic growth in the region, building on natural advantages to provide jobs and improve lives. The characteristics of the Site make it uniquely suitable for this hub. See a summary of updated evidence in support of this case in **Appendix 6**.
- 29. The HRA also notes that the housing element of the allocation is enabling development necessary to cross-subsidise other elements of the project to support financial viability. It also records that the housing delivered will help to meet a high level of unmet housing need in the area. The allocation will also deliver improvements in transport connectivity, and public access to open space and heritage assets.
- 30. The HRA then considers whether the imperative reasons of public interest override the adverse impact on the SPA/Ramsar site. In conducting this exercise, the HRA proceeds on the reasonable worst-case (but not inevitable) scenario that Policy PLP3 will result in: 2.1ha of intertidal habitat from dredging for the marine hub; 0.3ha of intertidal habitat for the bridge piers; 0.5ha of subtidal habitat from land reclamation for the marine hub; and 3.6ha of terrestrial habitat from development on land south of the firing range.
- 31. Having regard to this reasonable worst-case scenario, the HRA notes that the scale and nature of the loss of SPA/Ramsar habitat would be small compared to the total designated habitat in the SPA/Ramsar site; it does not perform a unique ecosystem function, is not irreplaceable, and is capable of compensation. In those circumstances, the HRA concludes that the imperative reasons of public interest set out above clearly override the adverse effects on SPA/Ramsar integrity.

## *Compensation*

32. While the adequacy of compensation provision is not a matter for the Secretary of State when providing an opinion under regulation 107(3) of the 2017 Regulations, the HRA concludes (8.129 – 8.139) that there can be a high degree of confidence – at the strategic planning stage – that an applicant for planning permission will be able to secure the necessary compensation once the quantum and nature of the required compensatory habitat is known. The promoter has identified compensatory sites that provide, or could provide, suitable habitat that far exceeds the quantum that is likely to be required at the planning application stage. The LPA's expert ecologist agrees that the sites identified are, or could be made to be, suitable for compensation, and the LPA's planning lead is satisfied that the quantum of compensatory land identified is such that it is very unlikely that – by the time of a planning application – it will be exhausted through use for other purposes.
33. As noted at 8.136 of the HRA, PCC's LPA team are currently working with the Site promoter to ensure that further information can be made public about the availability and suitability of the potential compensation sites. We expect to publish a Supplement to the HRA by 11 October 2024 and will forward this for your consideration as soon as it is available.

## **REGULATION 19 CONSULTATION RESPONSES**

34. The regulation 19 responses from Natural England, the Environment Agency, the RSPB and the Hampshire & Isle of Wight Wildlife Trust are set out in **Appendix 3** with the LPA's summary responses at **Appendix 4**. The pro-forma letter generated by RSPB and HIWWT and submitted by 6,910 consultees, with minor amendments, is at **Appendix 5**.

## **TIMING OF THIS REQUEST**

35. This request for an opinion under regulation 107(3) of the 2017 Regulations is made prior to the submission of the Portsmouth Local Plan for Examination in Public. It is hoped that the opinion will be given before the end of October 2024 in order to inform the decision of the plan-making authority to submit for Examination. In this regard we continue to liaise with PINS and the Planning Advisory Service.
36. RSPB and HIWWT have objected to this timing because (amongst other things) they say that it will deprive the Examination of the opportunity to consider the range of matters relevant to IROPI and/or may require the Secretary of State to reconsider her opinion in light of new information arising at the Examination.

37. The objections are without merit. Regulation 107(3) exists precisely to enable a plan-making authority to seek an early opinion from the Secretary of State on IROPI in order to inform the progression of a land-use plan. To defer the consideration of a regulation 107(3) opinion until after the conclusion of the Examination would therefore defeat the statutory purpose and represent a failure of fiscal probity by the Council.
38. An Inspector in the proposed Examination would, in the absence of genuinely new information, be bound by the Secretary of State's opinion. But the Inspector would be entitled to have regard to genuinely new information relevant to IROPI when deciding whether the Plan is sound and legally compliant. The Secretary of State, in turn, would be entitled to have regard to genuinely new information when deciding whether to exercise her discretion under regulation 107(6) of the 2017 Regulations.
39. Accordingly, the timing of this request is consistent with the statutory purpose and does not cause any prejudice to public stakeholders.

## CONCLUSION

40. There are no alternative solutions to deliver the overall objective of draft Policy PLP3 and there are clearly IROPI justifying the limited harm to the Portsmouth Harbour SPA/Ramsar site as assessed in the reasonable worst-case scenario.
41. Having regard to PCCs Statement of Case (April 2023), and in light of the new documents referred to above, PCC invites the Secretary of State to re-engage with our May 2023 request under regulation 107(3) of the 2017 Regulations and provide an opinion, if possible, before the end of October 2024.
42. Please do get in touch if you have any questions.

Kind regards,

*Lucy Howard*

Lucy Howard

Head of Planning Policy

Portsmouth City Council