

# **VOLUME 4: APPENDICES**

## **APPENDIX F7 – SHADOW HABITAT REGULATIONS ASSESSMENT**



Foreman Homes Ltd

**Romsey Avenue, Portchester**

## **Appendix F7: Shadow Habitats Regulations Assessment**

June 2021

**FPCR Environment and Design Ltd**

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## 1.0 INTRODUCTION

- 1.1 The following Shadow Habitats Regulations Assessment (sHRA) has been provided by FPCR Environment and Design Ltd and commissioned by Foreman Homes Ltd, to guide Natural England and Fareham Borough Council, in the assessment of potential impacts from a proposed development on Land south of Romsey Avenue, Portchester, Hampshire.
- 1.2 The proposed development is described as the following in the planning application refused in September 2020 (P/18/1073/FP); “*Outline Planning Application For Residential Development Of 225 Dwellings, Bird Conservation Area And Area Of Public Open Space With All Matters Reserved Except For Access*”. An appeal has now been submitted by Foreman Homes to contest the refusal.
- 1.3 The application was refused for a number of reasons by Fareham Borough Council, including ecological, based on the following assessments;
- A. *The proposal fails to appropriately mitigate the likely adverse effects on the integrity of European Protected Sites which would arise as a result of the effect of the development on, and loss of part of, a Primary Support Area for Brent geese and waders;*
  - B. *The proposal fails to provide sufficient information to demonstrate that protected and priority species would be protected and enhanced;*
  - C. *In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which, in combination with other developments, would arise due to the impacts of recreational disturbance.*
- 1.4 This document specifically deals with points A and C, whilst point B is not relevant to this sHRA and is dealt with as part of an update Ecological Impact Assessment and Environmental Statement to be submitted as part of the appeals process.
- 1.5 The intention of this sHRA is to provide the LPA, as the “Competent Authority” under the Habitats Regulations, the required information to either a) conduct their own HRA as is their legal obligation, or b) adopt this document as the official HRA.

### Proposals and Site Context

- 1.6 Foreman Homes Ltd submitted an application to construct 225 dwellings and associated infrastructure on 12.6 hectares of land to the south of Romsey Avenue. This application was refused and is now at appeal. The land is an agricultural field, currently use for arable crops and is within 500m of the Portsmouth Harbour Special Protection Area (SPA) and a number of other statutory protected sites are present within 10 kilometres. The field has been identified as a Primary Support Area for dark-bellied brent geese (*Branta bernicla bernicla*) under the criteria of the Solent Waders and Brent Goose Strategy<sup>1</sup> (2020) and is labelled as parcel F21 (F relating to the Fareham area of strategy sites).
- 1.7 The planning application is accompanied by ecological survey work and impact assessment over a number of years from commercial consultants and the Solent Waders and Brent Goose Strategy group. The results of latest survey work detailed within Ecology Survey Update 2021 – ES Volume 4, Appendix F1 (FPCR, 2021) and referred to here.

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<sup>1</sup> Whitfield, D (2020) *Solent Waders and Brent Goose Strategy*, Hampshire and Isle of Wight Wildlife Trust. Curdridge.

## Consultation

1.8 Natural England have been consulted through their Discretionary Advice Service (DAS) on three separate occasions. Initially by the client in 2019, and twice by Lindsay Carrington Ecological Services, who proposed a brent goose mitigation reserve design and provided further information to address Natural England's concerns.

1.9 In the initial response to Foreman Homes DAS request, Natural England recommended that the development design was based around a bespoke bird reserve, with habitat recommendations for brent geese included. The recommendations of this process were as follows.

*"We consider it may be possible to incorporate a BCA and some development on the site, however it will be critical for you as developer to be able to demonstrate that the function of the site's ability to support 300+ Brent geese (based on previous records) is maintained and can be secured and delivered in perpetuity.*

*It is advised a suitably experienced ecologist with ornithological expertise is brought in to help design an appropriate bird reserve on site, which should then be used to inform the rest of the development. The design of the BCA should consider:*

***Appropriate quantum and shape of land*** – *Brent geese prefer large wide open spaces with clear sight-lines. The reserve should be large enough to be able to accommodate at least 300 geese and provide appropriate sightline distances required by the birds – therefore a square reserve with equal sightline distances from all sides would be more appropriate than a long but narrow area. More information of appropriate sightline distances for Brent geese can be found in the Solent Wader and Brent Goose Strategy 2010 report and Natural England's designated sites view.*

***Prevention of informal access*** – *measures should be included such as suitable fencing and ditch system. Consideration should also be given to signage and interpretation opportunities, such as viewing platforms, bird hides etc.*

***Screening*** - *consideration to be given to screen the site from the adjacent development using appropriate landscaping/planting to minimise lighting and visual disturbance.*

***Management*** – *Brent geese prefer short lush grassland for grazing. Details of appropriate management and wardens and how this will be secured and delivered in perpetuity as advised previously. Consideration should also be given to long term monitoring and how any adaptive measures will be secured."*

1.10 This advice was passed onto Lindsay Carrington Ecological Services (LCES), who designed a bespoke brent goose mitigation area, with appropriate measure for long term management and maintenance for brent geese. This document was submitted to Natural England through a second DAS request in August 2020<sup>2</sup>.

1.11 Natural England formally objected to these proposals and objected to the development as a consultee in the planning process in August 2020<sup>3</sup>. Their response was as follows;

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<sup>2</sup> Lindsay Carrington Ecological Services (2020) *Bird mitigation reserve proposals for, land off Romsey Avenue, Portchester*. LCES, Rempstone Hall, Rempstone, Wareham, Dorset.

<sup>3</sup> Natural England (2020) Summary of Natural England's Advice (Ref 324982) In relation to application P/18/1073/FP.

## **“Objection**

***The application is likely to have a significant effect on the Portsmouth Harbour SPA and SSSI and the Council is advised to undertake an Appropriate Assessment under The Conservation of Habitat and Species Regulations 2017.***

***The proposal will result in a loss of supporting habitat. There is uncertainty as to whether the mitigation measures proposed are likely to protect the integrity of the designated sites.***

1. *Whilst the development site is located on the urban fringe, it forms part of a wider countryside gap of around 40 hectares. It forms part of one of the last remaining agricultural areas adjacent to the Portsmouth Harbour SPA. We do not have certainty that the 4.2 hectare bird reserve, of which 3.7 hectares is designed for mitigation for the brent geese will replicate the same function as the existing site within this open gap. Natural England has serious doubts that the site would be used by brent geese (the qualifying features) to the same extent as the current potential.*
2. *It is noted that the bird reserve is of a similar size to other Primary Support Areas identified in the Solent Waders and Brent Goose Strategy and this has been referenced in the planning application documentation. However, there are key differences between the proposed mitigation area and the existing Primary Support Areas referenced, notably the level of openness of the other sites, their location adjacent to or in close proximity to designated sites and limited adjacent urban development.*
3. *It is noted that the development will include some public open space and there is an existing area of open space adjacent to the development site. However, there is significant existing recreational pressure in the area, which will be further added to by the development proposal. As such, it has been necessary for the design to include a high security fence to prevent access to the bird reserve given the close proximity of the new houses and existing pressure in the locality. The appropriate assessment will need to assess whether this will retain its effectiveness for the lifetime of the development. There is also a wider planning policy consideration from a design and landscape perspective*
4. *Without alternative provision on adjacent land, it is likely that the majority of the proposed development site would be needed to create an appropriately sized bird reserve with agreed management as well as adequate recreational space for residents. Further discussion and agreement with an appropriate management organisation is also required as this is a key prerequisite to ensuring the bird reserve will be effective for the lifetime of the development. Limited housing on the northern boundary may be possible in that case. However, we advise that consideration is given to a strategic approach for this area that can bring forward some development, an appropriately sized bird reserve and further public open space for existing and new residents.”*

1.12 A final objection response was prepared and submitted by LCES via DAS in November 2020<sup>4</sup>, that considered each of the objection points individually. This included site visits to assess comparable

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<sup>4</sup> Lindsay Carrington Ecological Services (2020). *Response to Natural England objection of bird mitigation reserve proposals for, land off Romsey Avenue, Portchester*. LCES, Rempstone Hall, Rempstone, Wareham, Dorset.

Solent Wader and Brent Goose Strategy sites within the Fareham and Portchester area for similar characteristics to the F21 parcel and presented these in an update strategy.

1.13 Natural England again responded by objecting to the proposals in February 2021 (DAS/8898/335731) citing the following reasons;

1. *“Given the available data, it is advised that the suitability of the mitigation proposal at this site should continue to be assessed in line with the recommendations for Primary Support Areas.*
2. *The abovementioned challenges highlight the uncertainties in determining whether the proposed mitigation area is sufficient to support (as a minimum) the same contribution and function of the existing site for brent geese. Therefore, it is my advice that there remains some scientific uncertainty that the proposal will avoid an adverse effect on the integrity of the Portsmouth Harbour SPA and Ramsar. In accordance with the Conservation of Habitats and Species Regulations 2017 (as amended), a deciding authority must, prior to granting any permission, assess whether the proposal would result in an adverse effect on site integrity. In undertaking this assessment, the deciding authority must apply the precautionary principle and take into account any uncertainty.”*

1.14 The assessment process in this sHRA document is based on all of the listed Natural England responses and attempts to address those through the standard HRA format.

#### **Natura 2000 Sites Considered**

1.15 Eight Natura 2000 sites fall within either the standard 10km buffer applied during the Ecological Impact Assessment, or separately defined Zone of Influence (ZOI):

**Table 1: Natura 2000 sites within 10 kilometres of the Romsey Avenue site boundary**

<b>Site Name</b>	<b>Site Reference</b>	<b>Proximity to Site (approximate closest point)</b>
Portsmouth Harbour SPA and Ramsar	UK11055	185 metres south west
Solent and Southampton Water SPA and Ramsar	UK11063	5.14 kilometres south west
Chichester and Langstone Harbours SPA and Ramsar	UK11013	6.80 kilometres east
Solent and Isle of Wight Lagoons SAC	UK0017073	7.43 kilometres south
Solent Maritime SAC	UK0030059	6.79 kilometres east

## The HRA process

- 1.16 The HRA process has developed into a four-stage process summarised as follows:
- Stage One: Screening - also known as the Test of Likely Significant Effect (TOLSE). If the Competent Authority cannot screen out a *likely significant effect*, an Appropriate Assessment is required.
  - Stage Two: Appropriate Assessment - the Competent Authority will only agree to plans or projects that will not affect the *integrity* of a European site also known as the “Integrity Test”.
  - Stage Three: Alternative Solutions - assesses any alternative solutions of a potentially damaging plan or project that failed the Integrity Test, and if it is determined there are no alternative solutions, the project cannot be agreed to and it will either need to be changed or refused.
  - Stage Four: The final stage may allow a plan or project to proceed if after failing stage three if it is for Imperative Reasons of Overriding Public Interest, and only if suitable compensatory measures are secured.
- 1.17 A note on the people Over Wind Judgement in relation to the HRA process is provided in Appendix A Section 1.17 to 1.20.
- 1.18 This report identifies and considers ecological pathways between the Site and the Natura 2000 sites within the zone of influence selected. Each was screened with a TOLSE for alone effects, and then the effect in-combination with other plans or projects was considered. Where there are any ecological pathways that could not be screened without mitigation alone or in-combination, a stage 2 Appropriate Assessment was conducted and included in this HRA.

## 2.0 STAGE 1: TEST OF LIKELY SIGNIFICANT EFFECT (SCREENING)

### *Solent and Isle of Wight Lagoons SAC*

- 2.1 The Site is 7.43 km east of Solent and Wildlife Lagoons SAC. The SAC is designated for the **Annex I habitat coastal lagoons**, which includes populations of rare species including the nationally rare foxtail stonewort *Lamprothamnium papulosum*, the nationally scarce lagoon sand shrimp *Gammarus insensibilis*, and the nationally scarce starlet sea anemone *Nematostella vectensis*. This SAC has been screened out from all ecological pathways due to distance and a lack of public access to the qualifying features. There will be No Likely Significant Effect on this SAC as a result of the proposed development, and it will no longer be discussed.

### *Solent Maritime SAC*

- 2.2 The Site is 6.79 km east of the closest area of the Solent Maritime SAC on the River Hamble. The SAC is designated a large number of **Annex I habitats, primarily estuaries; Spartina swards; and Atlantic salt meadows**. Qualifying Annex I habitats also include Sandbanks which are slightly covered by sea water all the time; Mudflats and sandflats not covered by seawater at low tide; Coastal lagoons; Annual vegetation of drift lines; Perennial vegetation of stony banks; Salicornia and other annuals colonizing mud and sand; and "Shifting dunes along the shoreline with *Ammophila arenaria* ("white dunes")". The **Annex II Desmoulin's whorl snail** *Vertigo moulinsiana* is also a qualifying feature. This SAC has been screened out from all ecological pathways due to distance and a lack of public access to the qualifying features. The proposed development is outside of the Impact Risk Zone for the SSSI units that the SAC area encompasses. There will be No Likely Significant Effect on this SAC as a result of the proposed development, and it will no longer be discussed.

### *Solent and Southampton Water SPA and Ramsar*

- 2.3 The Site is 5.14 km west of the nearest section of the Solent and Southampton Water SPA. The SPA/Ramsar comprises of estuaries and adjacent coastal habitats including intertidal flats, saline lagoons, shingle beaches, saltmarsh, reedbeds, damp woodland, and grazing marsh. The diversity of habitats supports internationally important numbers of wintering waterfowl, important breeding gull and tern populations and an important assemblage of rare invertebrates and plants.

### *Chichester and Langstone Harbours SPA and Ramsar*

- 2.4 The Site is 6.83 km east of Chichester and Langstone Harbours are large, sheltered estuarine basins comprising extensive mud and sand flats exposed at low tide. The SPA is of particular significance for over-wintering wildfowl and waders and also a wide range of coastal and transitional habitats supporting important plant and animal communities. The SPA qualifies under Article 4.1 of the Birds Directive for nationally important breeding bird species, and under Article 4.2 for internationally and nationally important populations of wintering bird species, and under Article 4.2 for the presence of an internationally important wintering bird assemblage.

### *Portsmouth Harbour SPA and Ramsar*

- 2.5 The Site is located 0.2 km north of Portsmouth Harbour SPA/Ramsar. Portsmouth Harbour is a large industrialised estuary and includes one of the four largest expanses of mudflats and tidal creeks on the south coast of Britain. The mudflats support large beds of narrow-leaved and dwarf eelgrass, extensive green alga and sea lettuce. The harbour has only a narrow connection to the sea via the Solent, and receives comparatively little freshwater, thus giving it an unusual hydrology.

The SPA qualifies under Article 4.2 of the Birds Directive for supporting internationally important numbers of wintering dark-bellied brent geese and nationally important numbers of grey plover, dunlin and black-tailed godwit. It is not possible to rule out significant impacts out at this stage and therefore, detailed screening is required.

- 2.6 Because the Solent SPA sites are considered as one contiguous area of important bird sites along the south coast, and all three sites concerned are covered by the same Site Improvement Plan (Solent Area SIP<sup>5</sup>), the following screening assessment considers the three sites at the same time. The following screening is divided into two sections. Section 1: outlines the qualifying features, conservation objectives and summarises SAC's main threats and pressures, and Section 2: assesses each ecological pathway and concludes the Stage 1 Test of Likely Significant Effect

### **Section 1: Qualifying Features, Conservation Objectives and Threats & Pressures.**

#### **Qualifying Features**

##### *Solent and Southampton Water SPA and Ramsar*

- 2.7 The SPA qualifies under Article 4.1 of the Birds Directive for nationally important breeding bird species, and under Article 4.2 for internationally and nationally important populations of wintering bird species, and under Article 4.2 for the presence of an internationally important wintering bird assemblage. The site is designated for the following bird species and assemblages.

- Black-tailed godwit *Limosa limosa islandica*, Non-breeding
- Common tern *Sterna hirund*, Breeding
- Dark-bellied brent goose *Branta bernicla bernicla*, Non-breeding
- Little tern *Sternula albifrons*, Breeding
- Mediterranean gull *Ichthyaetus melanocephalus*, Breeding
- Ringed plover *Charadrius hiaticula*, Non-breeding
- Roseate tern *Sterna dougallii*, Breeding
- Sandwich tern *Thalasseus sandvicensis*, Breeding
- Teal *Anas crecca*, Non-breeding
- Waterbird assemblage, Non-breeding

##### *Chichester and Langstone Harbours SPA and Ramsar*

- 2.8 The SPA qualifies under Article 4.1 of the Birds Directive for nationally important breeding bird species, and under Article 4.2 for internationally and nationally important populations of wintering bird species, and under Article 4.2 for the presence of an internationally important wintering bird assemblage. The site is designated for the following bird species and assemblages.

- Bar-tailed godwit *Limosa lapponica*, Non-breeding
- Common tern, Breeding

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<sup>5</sup> Natural England (2014) *Improvement Programme for England's Natura 2000 Sites (IPENS) Site Improvement Plan Solent*.

- Curlew *Numenius arquata*, Non-breeding
- Dark-bellied brent goose, Non-breeding
- Dunlin *Calidris alpina alpina*, Non-breeding
- Grey plover *Pluvialis squatarola*, Non-breeding
- Little tern, Breeding
- Pintail *Anas acuta*, Non-breeding
- Red-breasted merganser *Mergus serrator*, Non-breeding
- Redshank *Tringa totanus*, Non-breeding
- Ringed plover, Non-breeding
- Sanderling *Calidris alba*, Non-breeding
- Sandwich tern, Breeding
- Shelduck *Tadorna tadorna*, Non-breeding
- Shoveler *Spatula clypeata*, Non-breeding
- Teal, Non-breeding
- Turnstone *Arenaria interpres*, Non-breeding
- **Waterbird assemblage**, Non-breeding
- Wigeon *Mareca penelope*, Non-breeding

*Portsmouth Harbour SPA and Ramsar*

2.9 The SPA qualifies under Article 4.2 of the Birds Directive for supporting internationally important numbers of wintering birds. The site is designated for the following bird species and assemblages.

- Black-tailed godwit, Non-breeding
- Dark-bellied brent goose, Non-breeding
- Dunlin, Non-breeding
- Red-breasted merganser, Non-breeding

**Conservation Objectives**

2.10 The conservation objectives for each of the three Solent SPA sites are identical and listed below.

*The objectives are to ensure that, subject to natural change, the integrity of the site is maintained or restored as appropriate, and that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring:*

- *the extent and distribution of the habitats of the qualifying features*
- *the structure and function of the habitats of the qualifying features*
- *the supporting processes on which the habitats of the qualifying features rely*
- *the populations of each of the qualifying features*
- *the distribution of qualifying features within the site*

## Threats and pressures

- 2.11 Site Improvement Plans (SIPs) were developed for each Natura 2000 site in England as part of the Improvement Programme for England's Natura 2000 sites (IPENS). *Table 1* below shows the threats and pressures identified in the Solent Site Improvement Plan 2015<sup>6</sup>, which covers all three Solent SPA area considered in this assessment. Relevant threats and pressure to the proposed development are in bold.

**Table 2: Threats and pressures: Cotswolds Beechwoods SAC Site Improvement Plan 2015**

Priority & Issue	Measure
Public access/disturbance	Reduce disturbance through access management, awareness raising and wardening
Coastal squeeze	Investigate options to create alternative habitat
Fisheries: Commercial marine and estuarine	Introduce appropriate management measures where required and ensure compliance
Water Pollution	Implement actions in the Diffuse Water Pollution Plan, and investigate further pollution
Changes in species distributions	Investigate the causes of change
Climate change	Investigate the effects of climate change
Change to site conditions	Investigate the reasons for change
Invasive species	Implement the management options to control invasive non-native species (INNS)
Direct land take from development	Option appraisal for private coastal defences
Biological resource use	Appropriate egg collection licensing
Change in land management	Ensure appropriate ditch management, and assess the effects of tidal sluice operation
Inappropriate pest control	Increase control of foxes

<sup>6</sup> Natural England (2014) Improvement Programme for England's Natura 2000 Sites (IPENS) Site Improvement Plan Solent

Priority & Issue	Measure
Air Pollution: impact of Pressure Not yet determined atmospheric nitrogen deposition	Reduce the impacts of air pollution
Hydrological changes	Review abstraction licenses
Direct impact from 3rd Threat party	Assess the activities and their effects

### SPA Qualifying Features Condition Assessment

- 2.12 Natural England have not published condition assessments for the three Solent SPA sites, however species-specific information is available on the Supplementary Advice pages for each site, which were update in September 2019. These are summarised in the tables below.

**Table 3: Summary of condition for Solent and Southampton Water SPA designation features**

Qualifying feature	Condition assessment
Black-tailed godwit, Non-breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.
Common tern, Breeding	There is evidence from survey or monitoring that shows the attribute to be in a <b>poor</b> condition and/or is currently impacted by anthropogenic activities.
Dark-bellied brent goose, Non-breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.
Little tern, Breeding	There is evidence from survey or monitoring that shows the attribute to be in a <b>poor</b> condition and/or is currently impacted by anthropogenic activities.
Mediterranean gull, Breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.
Ringed plover, Non-breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.

Qualifying feature	Condition assessment
Roseate tern, Breeding	A restore conservation objective has been set for this attribute following assessment of the anecdotal information from relevant Nature Reserves managers. In line with Common Standards Monitoring Guidance, a restore conservation objective has been set for this feature in this site because the breeding population size has <b>decreased</b> since classification.
Sandwich tern, Breeding	There is evidence from survey or monitoring that shows the attribute to be in a <b>poor</b> condition and/or is currently impacted by anthropogenic activities.
Teal, Non-breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.
Waterbird assemblage, Non-breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.

2.13 Table 3 shows that four out of ten condition features are in poor condition and/or are currently impacted by anthropogenic activities. The remaining six features are in good condition and not impacted.

**Table 4: Summary of condition for Chichester and Langstone Harbours SPA designation features**

Qualifying feature	Condition assessment
Bar-tailed godwit, Non-breeding	There is evidence from survey or monitoring that indicates this feature is currently in <b>poor</b> condition and/or impacted by anthropogenic activities
Common tern, Breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.
Curlew Non-breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.

Qualifying feature	Condition assessment
Dark-bellied brent goose, Non-breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.
Dunlin, Non-breeding	There is evidence from survey or monitoring that indicates this feature is currently in <b>poor</b> condition and/or impacted by anthropogenic activities
Grey plover Non-breeding	There is evidence from survey or monitoring that indicates this feature is currently in <b>poor</b> condition and/or impacted by anthropogenic activities
Little tern, Breeding	There is evidence from survey or monitoring that indicates this feature is currently in <b>poor</b> condition and/or impacted by anthropogenic activities
Pintail, Non-breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.
Red-breasted merganser, Non-breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.
Redshank, Non-breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.
Ringed plover, Non-breeding	There is evidence from survey or monitoring that indicates this feature is currently in <b>poor</b> condition and/or impacted by anthropogenic activities
Sanderling, Non-breeding	There is evidence from survey or monitoring that indicates this feature is currently in <b>poor</b> condition and/or impacted by anthropogenic activities
Sandwich tern, Breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.

Qualifying feature	Condition assessment
Shelduck, Non-breeding	There is evidence from survey or monitoring that indicates this feature is currently in <b>poor</b> condition and/or impacted by anthropogenic activities
Shoveler, Non-breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.
Teal, Non-breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.
Turnstone, Non-breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.
Waterbird assemblage, Non-breeding	There is evidence from survey or monitoring that indicates this feature is currently in <b>poor</b> condition and/or impacted by anthropogenic activities
Wigeon, non-breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.

2.14 Table 4 shows that eight out of nineteen condition features are in poor condition and/or are currently impacted by anthropogenic activities. The remaining eleven features are in good condition and not impacted.

**Table 5: Summary of condition for Portsmouth SPA designation features**

Qualifying feature	Condition assessment
Black-tailed godwit, Non-breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.
Dark-bellied brent goose, Non-breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.
Dunlin, Non-breeding	There is evidence from survey or monitoring that shows the feature to be in a <b>poor</b> condition and/or currently impacted by anthropogenic activities.
Red-breasted merganser, Non-breeding	There is evidence from survey or monitoring that indicates this attribute of the feature is currently in <b>good</b> condition and/or un-impacted by anthropogenic activities.

- 2.15 Table 5 shows that one out of four condition features are in poor condition and/or are currently impacted by anthropogenic activities. The remaining three features are in good condition and not impacted.
- 2.16 For all three Solent sites, the supplementary advice also provides a summary of the current effects of human disturbance. It was concluded for each that there is evidence from survey or monitoring that shows disturbance levels are having a likely significant effect on the features of the Solent SPAs.
- 2.17 The supplementary advice concludes for every species that is a qualifying feature of the Solent SPA's, that a significant effect from new housing within 5.6 kilometres of these site cannot be ruled out.

*“The Solent Disturbance and Mitigation Project found that a significant effect on the SPA arising from new housing development around the Solent could not be ruled out (Stillman et al., 2009<sup>7</sup>), (Liley et al., 2010<sup>8</sup>) and (Stillman et al., 2012<sup>9</sup>). Therefore, avoidance and mitigation measures are required for all residential development within 5.6 km of the Solent SPAs to ensure there is no adverse effect on the integrity of the SPAs from the in-combination effects of new housing development. Avoidance and mitigation measures can be put in place individually in response to*

<sup>7</sup> Stillman, R. A., Cox, J., Liley, D., Ravenscroft, N., Sharp, J. and Wells, M. (2009). *Solent disturbance and mitigation project: Phase 1 report*. Report to the Solent Forum.

<sup>8</sup> Liley, D., Stillman, R. and Fearnley, H. (2010). *The Solent Disturbance and Mitigation Project Phase II: Results of Bird Disturbance Fieldwork 2009/10*: Footprint Ecology.

<sup>9</sup> Stillman, R. A., West, A. D., Clarke, R. T. and Liley, D. (2012). *Solent Disturbance and Mitigation Project Phase II: Predicting the impact of human disturbance on overwintering birds in the Solent*.: Footprint Ecology.

each single development or, alternatively, a contribution can be made to the strategic solution provided by the Solent Recreation Mitigation Partnership, or Bird Aware Solent as it is now known.”

## Section 2: Ecological Pathways and Screening Conclusion

- 2.18 Ecological pathways for each Solent SPA have been identified based on those typically associated with residential developments sites of this nature (Table 4). Some ecological pathways are more readily addressed than others but nonetheless have been included for completion.

**Table 6: Ecological Pathways and HRA Screening Conclusions for Solent and Southampton Water SPA**

Ecological Pathway	Assessment applied	Likely Significant Effect
Habitat Loss	<p>Any loss, damage or fragmentation of habitat actually within the SPA itself.</p> <p>No habitat will be lost. Site 5.14 km for the SPA.</p>	<b>Screened out alone or in combination</b>
Air Pollution	<p>Nitrogen deposition from traffic only likely pathway. Natural England 4 step Guidance on traffic emissions applied as follows:</p> <p>Step 1: Does the proposal give rise to emissions which are likely to reach a European site? <b>No.</b></p> <p>Step 2: Are the qualifying features of sites within 200m of a road sensitive to air pollution? <b>Yes. B3334 at Stubbington adjacent to SPA.</b></p> <p>Step 3: Could the sensitive qualifying features of the site be exposed to emissions? <b>No, this is not a route likely to be used by traffic arising from the development.</b></p> <p>Step 4: Application of screening thresholds. Use of the 1000 Annual Average Daily Traffic. <b>The project’s transport consultants, EnSafe, screened this location out as being unlikely to carry any regular daily traffic from the proposed development.</b></p> <p>The potential in-combination effects of the proposed development relating to Air Quality were resolved in 2020 in the Fareham Borough Local Plan. The following were the conclusions in table 7.8 of the Appropriate Assessment:</p> <p><i>None of the habitats of qualifying features will be adversely affected by predicted airborne pollutants or deposition resulting from traffic associated with the Local Plan. Their extent and distribution will therefore be unaffected by the Local Plan.</i></p>	<p><b>Alone</b></p> <p>Screened out as below the threshold.</p> <p><b>In combination</b></p> <p>Screened out as per 2020 Local Plan HRA.</p>

Noise and light	<p>Precautionary assumption that the effects of noise, vibration and light are most likely to be significant within a distance of 500 metres.</p> <p>Site 5.14 km from the SPA</p>	<p><b>Screened out alone or in combination.</b></p>
Water Quality and Quantity	<p>Is the Site hydrologically linked to the SPA and is the SPA sensitive/ qualifying features sensitive to water quality?</p> <p>The Site is not hydrologically linked with the SPA.</p>	<p><b>Screened out alone or in combination</b></p>
Recreational pressure	<p>Natural England Interim advice is a 5.6km zone-of-influence to be applied for consideration of alone or in combination impacts as a result of recreational pressure on the SPA.</p>	<p><b>Uncertain effects alone</b></p> <p><b>Uncertain effects in-combination.</b></p> <p>Appropriate Assessment Required</p>

**Table 7: Ecological Pathways and HRA Screening Conclusions for Chichester and Langstone Harbours SPA**

Ecological Pathway	Assessment applied	Likely Significant Effect
Habitat Loss	<p>Any loss, damage or fragmentation of habitat actually within the SPA itself.</p> <p>No habitat will be lost. Site 6.83 km for the SPA.</p>	<b>Screened out alone or in combination</b>
Air Pollution	<p>Nitrogen deposition from traffic only likely pathway. Natural England 4 step Guidance on traffic emissions applied as follows:</p> <p>Step 1: Does the proposal give rise to emissions which are likely to reach a European site? <b>No.</b></p> <p>Step 2: Are the qualifying features of sites within 200m of a road sensitive to air pollution? <b>Yes. A27 and A2030 at Farlington adjacent to SPA.</b></p> <p>Step 3: Could the sensitive qualifying features of the site be exposed to emissions? <b>Yes</b></p> <p>Step 4: Application of screening thresholds. Use of the 1000 Annual Average Daily Traffic. <b>The project's transport consultants, EnSafe, calculated the changes in the AADT for these two locations, alone and in combination. The A2030 saw a 14AADT increase and the A27 67 AADT. Both figures are significantly below the threshold alone and in combination.</b></p> <p>The potential in-combination effects of the proposed development relating to Air Quality were resolved in 2020 in the Fareham Borough Local Plan. The following were the conclusions in table 7.8 of the Appropriate Assessment:</p> <p><i>None of the habitats of qualifying features will be adversely affected by predicted airborne pollutants or deposition resulting from traffic associated with the Local Plan. Their extent and distribution will therefore be unaffected by the Local Plan.</i></p>	<p><b>Alone</b></p> <p>Screened out as below the threshold.</p> <p><b>In combination</b></p> <p>Screened out as per 2020 Local Plan HRA.</p>
Noise and light	<p>Precautionary assumption that the effects of noise, vibration and light are most likely to be significant within a distance of 500 metres.</p> <p>Site 6.83 km from the SPA</p>	<b>Screened out alone or in combination.</b>
Water Quality and Quantity	<p>Is the Site hydrologically linked to the SAC and is the SAC sensitive/ qualifying features sensitive to water quality?</p>	<b>Screened out alone or in combination</b>

	The Site is not hydrologically linked with the SPA.	
Recreational pressure	Natural England Interim advice is a 5.6km zone-of-influence to be applied for consideration of alone or in combination impacts as a result of recreational pressure on the SPA.	<b>Screened out alone or in combination following Natural England Interim advice</b>

**Table 8: Ecological Pathways and HRA Screening Conclusions for Portsmouth Harbour SPA**

<b>Ecological Pathway</b>	<b>Assessment applied</b>	<b>Likely Significant Effect</b>
Habitat Loss	<p>Any loss, damage or fragmentation of habitat actually within the SPA itself.</p> <p>No direct habitat loss as SPA 185m away, however the 12.6ha of the SW&amp;BG F21 parcel is considered supporting habitat</p>	<p><b>Uncertain.</b></p> <p><b>Appropriate Assessment required.</b></p>
Air Pollution	<p>Nitrogen deposition from traffic only likely pathway. Natural England 4 step Guidance on traffic emissions applied as follows:</p> <p>Step 1: Does the proposal give rise to emissions which are likely to reach a European site? <b>No.</b></p> <p>Step 2: Are the qualifying features of sites within 200m of a road sensitive to air pollution? <b>Yes. There are six locations within 5km where additional traffic from the proposed development will travel within 200m of Portsmouth Harbour SPA.</b></p> <p>Step 3: Could the sensitive qualifying features of the site be exposed to emissions? <b>Yes</b></p> <p>Step 4: Application of screening thresholds. Use of the 1000 Annual Average Daily Traffic. <b>The project's transport consultants, EnSafe, calculated the changes in the AADT for these six locations alone and in combination. Alone the A2030 saw a 14AADT increase and the A27 67 AADT. The highest daily increase is 650AADT, along the A27 just to the north of the site. When considered in combination all six locations exceeded the 1000AADT threshold.</b></p>	<p><b>Alone</b></p> <p>Screened out as below the threshold.</p> <p><b>In combination</b></p> <p>Uncertain, appropriate assessment required.</p>
Noise and light	Precautionary assumption that the effects of noise, vibration and light are most likely to be significant within a distance of 500 metres.	<b>Screened out alone or in combination.</b>

	Site 0.2 km from the SPA	
Water Quality and Quantity	<p>Is the Site hydrologically linked to the SPA and is the SPA sensitive/ qualifying features sensitive to water quality?</p> <p>The Site is probably hydrologically linked with the SPA due to it's close proximity. All waste water arising from the development will be treated at Peel Common WWTWs and the development is nitrogen neutral.</p>	<p><b>Screened out alone or in combination.</b></p>
Recreational pressure	<p>Natural England Interim advice is a 15km zone-of-influence to be applied for consideration of alone or in combination impacts as a result of recreational pressure on the SPA.</p>	<p><b>Uncertain effects alone</b></p> <p><b>Uncertain effects in-combination.</b></p> <p>Appropriate Assessment Required</p>

### 3.0 STAGE 2: APPROPRIATE ASSESSMENT

#### Potential and Identified Impacts

- 3.1 The screening process for the Solent SPA sites identified the following uncertain effects.
- Recreational pressure impacts from the proposals alone or in combination on Solent and Southampton Water SPA and Portsmouth Harbour SPA.
  - Potential air quality impacts on Portsmouth Harbour SPA.
  - Potential Impacts of construction noise disturbance on Portsmouth Harbour SPA.
  - Supporting habitat loss impacts on Portsmouth SPA.

#### Recreational Pressure

##### Assessment

- 3.2 The screening process identified recreational pressure from the proposals alone or in-combination to have an uncertain effect on the Solent and Southampton Water SPA and Portsmouth Harbour SPA.
- 3.3 The SIP produced for the Solent SPAs by Natural England summarises the strategy for dealing with the potential impacts of recreational disturbance. This is a 19-action point plan, which lists the action points, a strategy for dealing with them, funding mechanism and the body responsible for each action. Strategies include employing wardens for each strategic location, increasing awareness through education programmes and signage and funding research on why species are declining and the impacts of disturbance.
- 3.4 When initially consulted on the proposals, Natural England provide the response below in relation to disturbance on the Solent SPA's.

##### **“Recreational disturbance - Solent Special Protected Areas (SPAs)**

*This application is within 5.6km of Portsmouth Harbour SPA and will lead to a net increase in residential accommodation. Natural England is aware that Fareham Borough Council have adopted planning policy to mitigate against adverse effects from recreational disturbance on the Solent SPA sites, as agreed by the Solent Recreation Mitigation Partnership (SRMP), also known as Bird Aware Solent. Provided that the applicant is complying with the policy and the Bird Aware Definitive Strategy, Natural England are satisfied that the applicant has mitigated against the potential adverse effects of the development on the integrity of the European site(s), and has no objection to this aspect of the application. Please note, your authority's appropriate assessment should reflect the current developer contribution rates, which are updated every April in line with the Retail Price Index”.*

- 3.5 Further to Natural England's consultation assessment regarding recreational pressure, the Fareham Borough Local Plan HRA (as mentioned above) details the mechanism for mitigating the potential impacts of increased recreational disturbance from new development. Policy NE3, Recreational Disturbance on the Solent Special Protection Areas (SPAs), states the following.

*“Planning permission for proposals resulting in a net increase in residential units may be permitted where ‘in-combination’ effects of recreation on the Special Protection Areas are demonstrated to*

*be satisfactorily mitigated through the provision of a financial contribution towards the Solent Recreation Mitigation Strategy.*

*In the absence of a financial contribution towards the Solent Recreation Mitigation Strategy, proposals will need to demonstrate that any ‘in combination’ negative effects from recreation can either be avoided or satisfactorily mitigated through a developer-provided package of measures for the lifetime of the development.”*

- 3.6 This mechanism was then applied in the same document at the Appropriate Assessment stage for each of the Solent sites. In summary, the Appropriate Assessment concludes for both Portsmouth Harbour and Solent and Southampton Water SPA’s that;

*“The plan (Fareham Borough Local Plan) has the potential to alter the structure and function of the habitats of the Portsmouth Harbour SPA/Ramsar overwintering Brent goose, dunlin, black-tailed godwit or red-breasted merganser populations. The impact could be indirect and permanent or reversible as a result of increased footfall within the site, leading to trampling of vegetation, soil compaction and erosion; or be direct, intermittent and reversible due to increased human/dog activity leading to displacement of the birds from otherwise suitable feeding or roosting habitats. The impact is very likely act in combination with 149 HRA for the Fareham Local Plan 2037: Screening & Appropriate Assessment Report for the Publication Plan September 2020 UE0192 HRA- Fareham Publication Plan\_3\_200921 Assessment of impacts on the Portsmouth Harbour SPA/Ramsar conservation objectives other plans and projects. The magnitude of the potential impact is uncertain but potentially large (a minimum of 8,389 dwellings within 5.6km of the SPA/Ramsar), especially in combination, and is likely to continue year-round. The risk of adverse effects on integrity is high. However, counteracting measures were devised in cooperation with Natural England and other local planning authority members of the Solent Recreation Mitigation Partnership, and have been incorporated into the plan via proposed policy NE3, and are considered likely to effectively avoid and mitigate the impact.”*

- 3.7 Both the Local Plan and Natural England’s condition assessment conclude that, in the absence of mitigation, any new residential development within 5.6 kilometres of the Solent SPA sites is likely to lead to a significant effect on the condition features of the sites through additional recreational disturbance either alone or in-combination. This, therefore, applies to the proposed Romsey Avenue development as it falls within this distance threshold.

### **Mitigation**

- 3.8 Policy NE3 of the Fareham Borough Local Plan provides a financial mechanism through which the impacts of recreational disturbance from new residential developments can be mitigated. Policy NE3 is implemented through the Solent Bird Aware Solent Recreation Mitigation Strategy<sup>10</sup>. This document details the mitigation measures implemented to minimise the impacts of increased recreational disturbance. These measures require funding to operate effectively and this funding is provided by developers when new residential schemes are created.
- 3.9 A developer contribution needs to be paid for every net additional dwelling. The Bird Aware Solent Strategy was endorsed in December 2017 and introduced a sliding scale of developer contributions based upon bedroom size. The contributions from 1st April 2021 are as follows:

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<sup>10</sup> Solent Bird Aware (2017) Solent Recreation Mitigation Strategy.

- 1 bedroom property £361
  - 2 bedroom property £522
  - 3 bedroom property £681
  - 4 bedroom property £801
  - 5 bedroom property £940
  - Flat Rate £604
- 3.10 Based on the Solent Bird Aware payment schedule, the 225 dwelling Romsey Avenue development will need to contribute **£145,027** to adequately mitigate the effects of increased recreational disturbance on the Solent SPA's.
- 3.11 In addition to the required financial contributions, the residential development will also include 1.4 hectares of Public Open Space POS, with footpaths and play areas. This has been included to provide on-site recreational opportunities and take some daily disturbance away from the Portsmouth Harbour SPA.

#### **Integrity Test Conclusion**

- 3.12 With the Solent Bird Aware mitigation payments applied and the on-site POS provided through planning conditions, there will be no effect on the conservation objectives and the integrity of the Solent SPAs will be maintained.

#### **Air Quality Assessment**

- 3.13 Natural England provide a four-step guidance system for assessment of the potential impacts of changes in air quality on protected sites. This is applied as follows for the Solent SPA sites.

*Step 1: Does the proposal give rise to emissions which are likely to reach a European site? **No, the proposal is residential.***

*Step 2: Are the qualifying features of sites within 200m of a road sensitive to air pollution? **Yes. There are nine pinch point locations within 5km where additional traffic from the proposed development will travel within 200m of the Solent SPA sites.***

*Step 3: Could the sensitive qualifying features of the site be exposed to emissions? **Yes***

*Step 4: Application of screening thresholds. Use of the 1000 Annual Average Daily Traffic. **The project's transport consultants, EnSafe, calculated the changes in the AADT for these nine locations. Whilst all locations were under the threshold AADT for the development alone, seven of the locations exceeded the 1000 AADT when assessed cumulatively with other proposed developments.***

- 3.14 The site does not pass the four-stage guidance for screening out and therefore Appropriate Assessment of the potential air quality impacts is required.

#### **Assessment**

- 3.15 Alongside calculation of changes in AADT for the nine pinch point locations identified in the assessment, EnSafe also calculated changes in key pollutants emitted by road traffic that are known to have negative impacts on the natural environment. These included nitrous oxide (NOx)

and ammonia (NH<sub>3</sub>). The annual mean levels for each of these at the nine pinch points are shown in the tables below, with the locations for these measurements shown in Figure F7.1.

**Table 9: Predicted Annual Mean NO<sub>x</sub> Concentration (µg/m<sup>3</sup>) for alone and in-combination**

Receptor	Development Only	Development + Cumulative
	Predicted Annual Mean NO <sub>x</sub> Concentration (µg/m <sup>3</sup> )	Predicted Annual Mean NO <sub>x</sub> Concentration (µg/m <sup>3</sup> )
	PEC	PEC
ER1	27.24	28.07
ER2	27.24	28.02
ER3	20.20	20.41
ER4	29.98	31.75
ER5	25.25	27.44
ER6	24.76	25.05
ER7	25.09	25.33
ER8	21.92	22.06
ER9	29.89	31.33

**Table 10: Predicted Annual Mean NH<sub>3</sub> Concentration (µg/m<sup>3</sup>) for alone and in-combination**

Receptor	Development Only	Development + Cumulative
	Predicted Annual Mean NH <sub>3</sub> Concentration (µg/m <sup>3</sup> )	Predicted Annual Mean NH <sub>3</sub> Concentration (µg/m <sup>3</sup> )
	PEC	PEC
ER1	1.68	1.73
ER2	1.68	1.72
ER3	1.54	1.55
ER4	1.56	1.66
ER5	1.55	1.68
ER6	1.35	1.37
ER7	1.54	1.55
ER8	1.54	1.55
ER9	1.55	1.64

- 3.16 The modelled figures show that the critical loads for NH<sub>3</sub> are not exceeded at any of the pinch points in relation to the qualifying feature species that the SPA is designated for (3µg/m<sup>3</sup>). Critical loads for NO<sub>x</sub> were exceeded slightly in relation to the qualifying feature species that the SPA is designated for (30µg/m<sup>3</sup>) at pinch points ER4 and ER9. Both ER4 and ER9 are located on the main roundabout that links the A27 west out of Portchester, with the A27 running north to south from the M27 with Fareham. This is immediately adjacent to the Portsmouth Harbour SPA at the northern tip of Salterns Lake/Fareham Creek.
- 3.17 The habitats within this location of the SPA are largely tidal mudflats. This habitat type is inundated with sea water at least twice every 24 hours. Tidal mudflats are therefore not generally sensitive to increased deposition of airborne pollutants, as they are not able to accumulate.

3.18 The Fareham Borough Local Plan includes screening and Appropriate Assessment for the potential impacts of airborne pollutants from local plan policy projects alone and in combination with other developments. The Portsmouth Harbour SPA assessment concludes that NO<sub>x</sub> emissions for the plan alone are likely to have a significant effect (higher impact in combination) and NH<sub>3</sub> emissions would not have an effect alone but would in combination.

3.19 The Appropriate Assessment for NH<sub>3</sub> in relation to the Portsmouth Harbour HRA is summarised as following.

#### **Airborne ammonia**

*7.7.3 Ricardo (2020) states that the modelled Fareham Borough Local Plan (FBLP) in combination contribution of airborne NH<sub>3</sub> was added to background levels of ammonia across the site (obtained from APIS). The maximum total concentration of NH<sub>3</sub> for the FBLP in combination is 2.30 µg/m<sup>3</sup>, which is 76.7% of the CL of 3 µg/ m<sup>3</sup>. Ricardo (2020) concludes that, on the basis of available evidence, including background ammonia concentrations, there are no adverse effects on this SPA site arising from increased ammonia associated with the FBLP in combination.*

3.20 The AA for NO<sub>x</sub> in relation to the Portsmouth Harbour HRA is summarised as following.

#### **Airborne NO<sub>x</sub>**

*7.7.5 The modelled contribution from the FBLP, in isolation and in combination, is predicted to exceed 0.3 µg/ m<sup>3</sup> (1% of 30 µg/ m<sup>3</sup>) in five main areas: } the area in the west comprises three small zones of exceedance (Fareham Creek): most of this area coincides with intertidal mudflats which would be regularly inundated with tidal water, preventing accumulation of any deposited pollutants. However, a small section in the north-western part of the creek is not intertidal. In this location the total Predicted Environmental Concentration (i.e. FBLP in combination plus background levels) does not exceed the Critical Level (Ricardo, 2020<sup>11</sup>);*

#### **Integrity Test Conclusion**

3.21 The FBLP HRA Appropriate Assessment concludes that- *“The structure and function of the habitats of qualifying features will not be adversely affected by predicted airborne pollutants or deposition resulting from traffic associated with the Local Plan.”*

3.22 It is therefore possible to confidently predict that there will be no significant impact on the qualifying features nor the conservation objectives of the Solent SPA sites through airborne pollution arising from the proposals alone, or in combination with other proposals in the local Plan. There will be no effect on the integrity of the Solent SPAs.

#### **Construction Phase Noise Impacts**

##### **Assessment**

3.23 The proposed development site is just under 200 metres north east from the closest boundary of the Portsmouth Harbour SPA. During the construction phase of the development, noise levels will significantly increase from the baseline, through groundworks, site preparation and the building phase. The FLBP HRA classifies the qualifying features of the SPA (specifically brent geese) as being sensitive to any construction noise within 300 metres of the SPA. Any additional noise created within this zone is likely to disturb or prevent brent geese feeding within the SPA.

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<sup>11</sup> Ricardo (2020): *Air Quality Habitats Regulations Assessment for the Fareham Borough Local Plan 2036*

- 3.24 The Havant Local Plan HRA (2019)<sup>12</sup> includes the following statement regarding noise generated from construction.

*“Common construction activities likely to result in novel disturbance events include excessive vehicle revving, reversing alarms, certain power tools and loud, percussive noises (e.g. via concrete breaking, piling). Research (e.g. Cutts et al. (2008)<sup>13</sup>; Wright et al. (2010))<sup>14</sup> has shown that noise levels approaching 70 decibels (dB) result in the most profound responses from bird species (i.e. site abandonment), whereas general background construction noise below c.55dB is unlikely to result in disturbance. It appears that irregular yet frequent loud noise exceeding 70dB is the most likely to result in effects, and that impacts can be observed for distances up to 300m in some species.”*

- 3.25 Because the proposed brent goose mitigation reserve will be in place prior to development taking place, disturbance on this feature is also considered because it will act as supporting habitat for the SPA.

### **Mitigation**

- 3.26 Mitigation will be required to limit the short-term impacts of noise generated by construction disturbing SPA bird species. All mitigation measure will be conditioned through a Construction and Environmental Management Plan (CEMP) for the site. This will limit what operations can take place on site during the sensitive period for brent geese and other SPA species. General background construction noise is unlikely to directly impact bird using the SPA area

- 3.27 The construction schedule for the site will be configured to restrict disturbance noise level creating operations outside of the sensitive period for SPA birds, between October and February inclusive. This is likely to include any groundworks, piling operations or any construction adjacent to the brent goose mitigation area. Noise level information for specific construction operations should be available prior to construction commencing. This schedule must be strictly adhered to and acoustic monitoring of the construction site should be implemented to ensure noise levels are maintained below 70dB during the sensitive period.

### **Integrity Test Conclusion**

With the appropriate mitigation measure applied through a CEMP, there are unlikely to be significant effects from construction noise on the qualifying feature bird species for the Portsmouth Harbour SPA. There will be no effect on the conservation objectives and the integrity of the Solent SPAs will be maintained.

### **Loss of SPA Supporting Habitat**

- 3.28 The Proposed development will result in the loss of 12.6ha of Solent Wader and Brent Goose Strategy Parcel F21. This site is classified as a Primary Support Area within the strategy.
- 3.29 To mitigate for the loss of this area of the F21 parcel, a mitigation bird reserve was designed and consulted on with Natural England. Agreement was not reached, with Natural England citing a

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<sup>12</sup> Havant Borough Council (2019) *Pre-Submission Plan Habitats Regulations Assessment*.

<sup>13</sup> Cutts, N, Phelps, A, & Burdon, D. (2008). *Construction and Waterfowl: Defining Sensitivity, Response, Impacts and Guidance*. Report to Humber INCA. Institute of Estuarine and Coastal Studies, University of Hull.

<sup>14</sup> Wright, MD, Goodman, P & Cameron, TC. (2010). *Exploring behavioural responses of shorebirds to impulsive noise*. *Wildfowl* 60: pp150-167. Wildfowl and Wetlands Trust.

number of factors up to the final objection in February 2021. This process is discussed in the following section.

### Assessment

- 3.30 This assessment is based on addressing the specific concerns raised by Natural England in assessing the effectiveness of the proposed brent goose mitigation area as part of the Romsey Avenue Bird Mitigation Reserve proposals.
- 3.31 In total F21 will be reduced in size from a total of approximately 18.9 by 8.1 hectares, with 10hectares of the Site remaining, including the 3.7 hectares of brent goose mitigation habitat and retained southern field parcel.
- 3.32 The proposed Bird Mitigation Reserve is 4.5hectares which will include 3.7 hectares of improved grassland specifically managed as a lush sward which is the highest preference forage habitat for brent geese<sup>15</sup>. There will be a central scrape providing a winter source of freshwater. The northern boundary between the development and mitigation area will have a perimeter fence of sufficient height to screen the area from human disturbance. The southern boundary will be retained as is, to maintain permeability between the brent goose reserve and southern field parcel of F21.
- 3.33 This proposal was objected to by Natural England. For the purposes of clarity, each objection factor is discussed individually below.
- 2)“Whilst the development site is located on the urban fringe, it forms part of a wider countryside gap of around 40 hectares. It forms part of one of the last remaining agricultural areas adjacent to the Portsmouth Harbour SPA. We do not have certainty that the 4.5 hectare bird reserve, of which 3.7 hectares is designed for mitigation for the brent geese will replicate the same function as the existing site within this open gap. Natural England has serious doubts that the site would be used by brent geese (the qualifying features) to the same extent as the current potential.”*
- 3.34 The classification in the Solent Wader and Brent Goose Strategy of the site as a Primary Support Area is based on the metric score for the following criteria confirmed by the Hampshire and Isle of Wight Wildlife Trust by email in April 2021; Proportion of SPA population (300 Brent Geese, two counts 2012/13. Site has ≥5% of SPA’s designated population (2,290)), proportion of SPA Assemblage (unknown Value) and Local Value (Site has more than one record higher than the local value for any species).
- 3.35 Either side of the 2012 and 2013 counts of 300 birds on single occasions, from when strategy surveying began prior to 2002 and up to 2020, there is just a single brent goose record of one stray bird for the F21 site in February 2017. The site had no brent geese records until 2012 and prior to the 2017 strategy updates, was classified as a site with no recorded use in both the 2002 and 2010 strategies. The lack of use of the site since winter 2013/14 is linked to the management of the site, which is no longer suitable for brent goose foraging through the winter and therefore, the site is not considered to support the value indicated in the Solent Wader and Brent Goose Strategy and is not a Primary Support Area.
- 3.36 In the Ecosupport EclA submitted as part of the planning application for the proposals, there is an erroneous record presented in Table 11. This states that the two counts of 300 were made in 2017 and the Fareham Borough Council Appeal Statement from May 2021 makes reference to this.

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<sup>15</sup> Riddington, R., Hassall, M. and Lane, S.J. (1996) *The selection of grass swards by brent geese Branta b. bernicla: interactions between food quality and quantity*. Biological Conservation 81 (1997) 153-160.

These records are confirmed to be an error by Hampshire Biodiversity Information Centre's most recent provision of data in November 2020, which clearly shows these records are from 2012 and 2013.

- 3.37 In addition to the brent geese records for the Site, there are two counts of Eurasian curlew and a single count of oystercatcher on the northern parcel of F21. 26 curlew were recorded in December 2013 and 15 were recorded in February 2014. The single oystercatcher was recorded in January 2013.
- 3.38 Curlew and oystercatcher primarily forage on tidal mudflat habitats in winter; however, they will also occasionally utilise arable fields close to core foraging areas at high tide for roosting and foraging. Curlew are a species of Birds of Conservation Concern (BoCC4, 2015<sup>16</sup>) red list species, which are rapidly declining throughout their range. This decline is thought mainly to be caused by pressure on their breeding grounds. Oystercatcher are BoCC4 amber listed, with populations also declining throughout their range, also thought to be caused by poor farming practice and increased predation. The Site does not provide suitable breeding habitat for these species and the very occasional use of the Site makes it unlikely that is important for curlew populations wintering at the Solent Protected Sites.
- 3.39 Winter bird surveys of the site were carried out once monthly from November 2016 to March 2017 by Lindsay Carrington Ecological Services (LCES) and did not record any brent geese. LCES also undertook three monthly surveys of the site for the adjacent Cranleigh Road development in February and March 2014 and from October 2014 to February 2015. No brent geese were recorded during these surveys. These were timed to coincide with peak times for use of the site by brent geese. The site was bare earth in winter 2016/17 as per the regular agricultural management regime of the site, which has been in place since at least winter 2014/15.

**Table 11: Brent goose counts for F21 since 2002. Data from HBIC records search November 2020**

SWBGS Parcel	Date	Time	Species	Count
F21	19/11/2012	11:48	Brent Goose (dark-bellied)	300
F21	19/11/2013	11:35	Brent Goose (dark-bellied)	300
F21	10/02/2017	09:46	Brent Goose (dark-bellied)	1

- 3.40 The tenant farmer Jeff Hamblean was consulted in February 2021 to ascertain the historic management regime of the site and it was confirmed that the field is currently sown with a spring crop of barley, oats or beans/peas on a three-year annual rotation, which based on farm records, has been the practice since 2015. The field is weed treated in early autumn to kill off any weeds present and then ploughed in early November. The field is bare earth until the summer crop is sown in March, and it takes at least one month for plants to appear in April. This means that for the last six years the site has been bare earth from November to April and is therefore unsuitable for foraging brent geese, of low value and unlikely to be used during that period. The management since 2011 is shown in table 12 below.

<sup>16</sup> Eaton MA, Aebischer NJ, Brown AF, Hearn RD, Lock L, Musgrove AJ, Noble DG, Stroud DA and Gregory RD (2015) *Birds of Conservation Concern 4: the population status of birds in the United Kingdom, Channel Islands and Isle of Man*. British Birds 108, 708–746

**Table 12: Winter management of the Romsey Avenue F21 area 2011-2021.**

Year	Winter field management
2011	Oil seed rape
2012	Winter wheat
2013	Winter oats
2014	Winter wheat
2015	Spring barley
2016	Spring barley
2017	Spring barley
2018	Spring barley
2019	Spring barley
2020	Spring barley

- 3.41 The additional management data provided by the farmer, included data for the years when the peak counts of 300 brent geese were recorded. In these winters the farmer had sown winter wheat and oats, which would be suitable for brent geese foraging over the winter period. This likely explains why brent geese flocks were recorded on those occasions, but not since or previously.
- 3.42 The management regime of the field was changed in winter 2013/14 because sowing a winter crop had become financially unviable, due to the devastation caused by geese foraging on the crop throughout the winter. This caused the entire crop to be lost. The regime of winter cereals has therefore been permanently stopped by the farmer to maintain the profitability of the farming business on the land.
- 3.43 The landowner has become increasingly frustrated by the use of the site by the public for dog walking and as an access route to the nearby foreshore area. In addition, a number of houses have removed their back fences and allow their dogs and children open access into the field. The field is regularly used as a thoroughfare to access the foreshore area to the south.
- 3.44 The use of the site by brent geese in its current management regime is likely to be opportunistic and very rare. The low brent goose presence recorded from 2002-2020 and arable management since 2014, suggest that the site has been given too much significance within the network of sites and should not be classified as a Primary Support Area. In both the 2010 and 2002 Strategies, the site had no recorded use by brent geese or waders.
- 3.45 With all records for the site between 2014 and 2021 applied to the Solent Wader and Brent Goose Strategy 2020 metric, the site scores zero in all categories. There is uncertainty with the sites score for assessments 5 and 7, however these are likely to score zero due to the low numbers of brent goose (max count 1, 2017), curlew (max count 26, 2014) and oystercatcher (max count 1, 2015) recorded. There has been no recorded use of the site by waders or brent geese since 2017 during Strategy surveys or through incidental records. Canada geese have been reported by residents using the site, however, this species is not a designated feature for the SPA sites and is not protected.
- 3.46 With the metric scores applied, the Site classifies as a low use site (sites which have records of birds but in low numbers (score 0), when considering the brent geese records and wader records in combination, under the current management regime.
- 3.47 By contrast the proposed creation and permanent management of 3.7 hectares of a nitrogen rich clover and grass sward in the bird reserve design, will provide additional habitat of high value to

brent geese in perpetuity. The continued sub-optimal management of land will maintain 12.6 hectares of habitat with negligible value to brent geese. Creating the brent goose mitigation area as part of the proposals would provide approximately 3.7 hectares more highly suitable brent goose habitat than currently exists within the site boundary. This is a net gain in suitable brent goose habitat to support the SPA sites.

- 3.48 To maintain the financial viability of the land, the farmer will continue to actively manage the land to discourage geese in winter and it will continue to have significantly reduced suitability. The proposed brent goose habitat within the bird reserve, will provide 3.7 hectares of highly suitable brent goose foraging habitat in perpetuity, within the existing 12.6 hectares of very low suitability habitat.

*2)It is noted that the bird reserve is of a similar size to other Primary Support Areas identified in the Solent Waders and Brent Goose Strategy and this has been referenced in the planning application documentation. However, there are key differences between the proposed mitigation area and the existing Primary Support Areas referenced, notably the level of openness of the other sites, their location adjacent to or in close proximity to designated sites and limited adjacent urban development.*

- 3.49 During October 2020, visits to nearby support areas with similar characteristics to the proposed brent goose mitigation area were made. These included sites of a similar size and were all either primary or core support sites with brent geese records from either Hampshire Ornithological Society or the Solent Brent Goose and Wader Strategy survey data. These examples are all grassland/amenity sites with adjacent urban populations and within proximity of the designated sites. Sightlines from the site edges to central areas are all similar to the proposed brent goose mitigation area

**Table 13: Core and primary support areas with similar characteristics to the proposed mitigation area for F21. These counts are taken from HBIC records and individual records and WeBS counts published through the Hampshire Ornithological Society Website. *\*This count was the same geese as on G10, which were recorded moving to G44 later the same day.***

Site reference	Classification	Size (hectares)	High count per year	Fenced?
G01	Core	3.54	2016- 500	Yes
G30C	Primary	2.92	2015- 9	Yes
G47	Core	3.26	Dec 2019- 430 Feb 2018- 540 Jan 2018- 900 Dec 2017- 770 Feb 2017-231 Nov 2016- 1000 (monthly counts ranging between 100-1200 birds annually between 2012 and 2015)	Yes
G03	Core	3.91	2016- 500 2018- 290	Yes
G10	Core	5.6 (Included as similar sightline distances present)	Dec 2018- 450* (present for two days) Dec 2016- 820	Yes
G44	Primary	3.62	2012- 750 Jan 2016- 1200 Feb 2016- 600 Dec 2016- 490 Dec 2018- 450*	Yes

## **G01**

- 3.50 G01 (Monckton Sports Ground) is a core support area 3.54 hectares in size and is another area of military sports pitches that form the Monckton Sports Ground, also used for public sports events. The pitches are used almost daily under normal circumstances. The site is surrounded by a chain link fence, that is planted out with a hedgerow on three sides. The site is surrounded by houses on three sides and a road and golf course to the south.



**Photograph 1- Monckton sports ground core support area with chain link fence.**



**Photograph 2- Southern boundary of G01 showing fence and tall hedgerow**

### **G30C**

- 3.51 G30C is a primary support area 2.92 hectares in size. The actual area of suitable habitat for brent geese is much smaller and is a small park with managed amenity grassland. This is fenced on three sides, with woodland on the other. The site is adjacent to Portsmouth Harbour and has had a peak count of 9 brent geese. The site is heavily used by dog walkers, with large urban areas nearby.



**Photograph 3- Amenity grassland park forms the G30C primary support area.**

#### **G47**

- 3.52 G47 (St Vincent Playing Fields) is a core support area 3.26 hectares in size. The site is managed as amenity grassland for school playing fields and is entirely fenced. The site is surrounded by urban development on all sides and is used every day under normal circumstances.



**Photograph 4- G47 viewed from the main road.**

#### **G03**

- 3.53 G03 (Arden Park) is a core support area 3.91 hectares in size. The site is managed as amenity grassland for public sports pitches. G03 is fenced on all four sides with tall mature trees surrounding the boundary, with large gaps in between them. The site is surrounded by urban development and used on a daily basis by local residents.



**Photograph 5- G03 viewed from the northern boundary.**

### **G10**

- 3.54 G10 (HMS Sultan Middle Field) is a core support area 5.6 hectares in size. Whilst this area is approximately 2 hectares larger than the proposed mitigation area, its maximum sightline from north to south matches the mitigation area. G10 is managed as amenity grassland for sports pitches as part of HMS Sultan and used daily. The site is fenced on four sides and surrounded by urban development on three sides.



**Photograph 6- G10 viewed from the western boundary fence.**

## G44

- 3.55 G44 (HMS Sultan small field) is a primary support area 3.66 hectares in size and is located just to the north east of G10. The site is again managed as amenity grassland for sports pitches by the MOD and fenced on all four sides.



Picture 7- Aerial image of G44. Ground pictures were not possible for security reasons.

- 3.56 The above examples have all been included because they share similar features with the proposed brent goose mitigation area. Overall size, sightline distances from the edges, the presence of a border fence surrounding the site and urban development surrounding sites or nearby. All the sites have supported similar or higher numbers of brent geese than the F21. The majority of these sites are also core support areas and therefore are of higher value than F21 to brent geese populations in the Solent area.

- 3.57 The key differences between these support areas and the proposed mitigation area are as follows:

- All of the examples support areas are amenity grassland
- All of the examples support areas are regularly disturbed, likely on a daily basis

The sites are not managed specifically for brent geese and the sward is not always suitable throughout the winter, depending on use by people and the geese themselves

- 3.58 The evidence gathered from these sites provides confirmation that a site with a fence and surrounding urban disturbance can still have value to brent geese populations and in fact can support a population of core value to the Solent SPA. Furthermore, the proposed mitigation area provides enhanced suitability by preventing disturbance and ensuring the habitat within the site is suitable throughout the winter period. It is difficult to understand the objection from Natural England relating to the design of the mitigation area when the brent goose strategy clearly identifies areas

with similar (arguably less suitable) features in the local area as core or primary support areas. The objection does not seem to reflect the reality of use of sites in the local area by brent geese as identified in the strategy.

3.59 In relation to sightlines it is important to note that whilst the northern field parcel area suitable for brent geese will be reduced, existing visual sightlines to the southern parcel of F21 will be maintained. No visual obstructions are proposed along the southern boundary of the brent goose mitigation area and therefore, permeability between the areas is retained.

3.) *It is noted that the development will include some public open space and there is an existing area of open space adjacent to the development site. However, there is significant existing recreational pressure in the area, which will be further added to by the development proposal. As such, it has been necessary for the design to include a high security fence to prevent access to the bird reserve given the close proximity of the new houses and existing pressure in the locality. The appropriate assessment will need to assess whether this will retain its effectiveness for the lifetime of the development. There is also a wider planning policy consideration from a design and landscape perspective.*

3.60 The specification for the proposed fence will be both long lasting, easily maintainable and will be specified to provide a very low visual impact. In reference to the fence's height, this will only be sufficient to act in combination with the new native hedgerow to screen the reserve from human visual impacts. The effectiveness of this feature is further enhanced by the inclusion of a ditch on the bird reserve side of the fence.

3.61 It has been shown that brent geese are not put off by the presence of a fence or densely vegetated and fenced boundaries at nearby sites and therefore, the proposed fence line is very unlikely to put off brent geese from using the reserve once they start to use the site. The eastern, northern and south western boundaries of the site already have tall hedgerows, trees or built infrastructure, which has not discouraged geese in the past.

3.62 To ensure long term maintenance of the fence, a commuted sum could be agreed with the adoptee that would cover annual maintenance and full replacement at the end of its effective lifetime. It is common practice for developers to provide commuted sums to ensure facilities in Suitable Alternative Natural Green Spaces (SANGS) are maintained throughout the lifetime of a development and this is acceptable to Natural England. The approach proposed here to the maintenance of the fence is not fundamentally different to that adopted for SANGS.

3.63 Whilst the site itself will not be publicly accessible, the inclusion of viewing screens and engagement boards within the proposals will provide an additional recreational resource for nearby populations. As part of the engagement process, funds could be included for additional information boards adjacent to the SPA that highlight safe behaviours for recreational activities including dog walking in the area.

4.) *Without alternative provision on adjacent land, it is likely that the majority of the proposed development site would be needed to create an appropriately sized bird reserve with agreed management as well as adequate recreational space for residents. Further discussion and agreement with an appropriate management organisation is also required as this is a key prerequisite to ensuring the bird reserve will be effective for the lifetime of the development. Limited housing on the northern boundary may be possible in that case. However, we advise that consideration is given to a strategic approach for this area that can bring forward some development, an appropriately sized bird reserve and further public open space for existing and new residents.*

- 3.64 This statement appears to be a hangover from the DAS response in summer 2020. The proposed bird reserve design was based on that response and aims to make the best use of land between the development and the remaining area of F21 to the south. As discussed previously for point 2, the mitigation reserve is similar to other nearby core and primary support areas in both size and relevant boundary features and therefore, should be considered to be appropriate.
- 3.65 As previously discussed for point three of Natural England’s DAS response, it is common practice and agreeable to Natural England, for long term management to be secured through various financial packages including commuted sums. There will be no constraints to an appropriate local organisation taking over the management of the reserve after the initial period.
- 3.66 The proposed reserve design and location ensures that suitable brent goose habitat will be present between the urban area and the SPA in perpetuity. There is a small buffer between the northern boundary of the reserve and housing area, however this is likely to be irrelevant considering the use of other nearby core and primary sites that are directly adjacent to urban development including housing, industrial and roads.
- 3.67 In terms of strategic development, the Solent Local Enterprise Partnership targeted building 24,000 new homes by 2020, a target that has been missed by almost 18,000 homes. The proposed development provides new housing on allocated land, in a very low flood risk area and will achieve a net gain in brent goose habitat to support the Solent SPA. The proposed development is also fully in accordance with the ecology criteria e), f) and g), of Policy HA5 in the Fareham Local Plan 2036.

#### **Mitigation and enhancement**

- 3.68 F21 has not been suitable supporting habitat for the SPA since the winter management regime for the fields changed in winter 2013/14, to a cropping regime not suitable for brent geese.
- 3.69 Whilst suitable brent goose habitat is not present within the F21 area, and therefore mitigation is not required, there remains uncertainty regarding whether an effect would be caused by the loss of land that could support the integrity of some Solent Protected Sites Network features, including curlew.
- 3.70 The counts of wader species recorded for the site, which include curlew and oystercatcher, are not significant and scored through the assessment metric for the Solent Wader and Brent Goose Strategy, would qualify the site as Low Use. Paragraphs 35-37 of the Solent Waders and Brent Goose Strategy Guidance on Mitigation and Off-setting Requirements (SW&BGS, 2018<sup>17</sup>) provides the following guidance for mitigating for the loss of low use sites:

*“35. All Low Use sites have the potential to be used by waders or brent geese. These sites have the potential to support the existing network and provide alternative options and resilience for the future network. The in-combination loss of these sites would impact on the continued ecological function of the wader and brent goose network. In all cases proportionate mitigation, off-setting and/or enhancement measures will be required.*

*36. In the first instance, consideration should be given to on-site mitigation, off-setting and/or enhancement. Where this has been demonstrated to not be practical or feasible and impacts*

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<sup>17</sup> SWBGS Steering Group, (2018). *Solent Waders and Brent Goose Strategy, Guidance on Mitigation and Off-setting Requirements*

*cannot be avoided or adequately mitigated on-site, off-site options and / or compensation funding should be considered. Compensation funding may include payment towards the management and enhancement of the wider waders and brent geese ecological network.*

*37. The cost of compensating for the loss of a Low Use site is £35,610 per hectare (see Table 1). This figure is equivalent to the costs of the Secondary Support Areas without Defra offsetting multipliers (see Appendix 2). The lower rate is applied to reflect that while Low Use sites have records of birds the numbers involved are low enough to ensure there is only a negligible risk of not successfully offsetting the loss of a Low Use site through enhancements of the wider network. Nevertheless, all Low Use sites have the potential to be used by waders and brent geese and the unmitigated loss of these sites would in combination negatively affect the long term resilience of the network.”*

- 3.71 To mitigate for the loss of 8.1 hectares of the F21 parcel, on Site mitigation will be provided. The aim of the Bird Mitigation Reserve proposals is to ensure that a proportionate area of the F21 parcel is retained, and enhanced for brent geese and waders.
- 3.72 A Brent Goose and Bird Management and Monitoring Plan will be created and submitted at reserved matters, based on the current recommendations of 3.7 hectares of improved lush grazing meadow for brent geese. This will detail the exact specifications for establishment, fencing, management and monitoring of the site in perpetuity. This will include the relevant payment schemes for which a commuted sum from the developer will be agreed with the appropriate consultees including the Solent Wader and Brent Goose Partnership, Natural England and Fareham Borough Council.
- 3.73 The Bird Mitigation Reserve proposed through the Romsey Avenue development will secure suitable brent goose and wader habitat linked to the remainder of F21 in perpetuity and overall provide an enhancement from baseline conditions. This is sufficient to not require any additional mitigation through financial contributions to the Strategy.

#### **On Integrity Test Conclusion**

- 3.74 The F21 site does not act as supporting habitat to Portsmouth Harbour SPA and its loss would not impact on the condition of the qualifying feature, dark-bellied brent geese or other wader species in relation to the Solent Protected Sites Network. The proposed mitigation and enhancement through a Bird Mitigation Reserve, would create suitable winter foraging habitat for brent geese and waders in perpetuity and therefore, would be likely to enhance the status of this feature in relation to the SPA. There will be no effect on the conservation objectives and the integrity of the Solent SPAs will be maintained.
- 3.75 As a result of this report, the competent authority can conclude favourably, that the integrity of the network of Solent Statutory Protected sites will be maintained.

## **APPENDIX A: THE HABITATS REGULATIONS ASSESSMENT PROCESS AND LEGISLATION**

### **Legislative Background**

A1.1. The Conservation of Habitats and Species Regulations 2017 consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose Council Directive (the Habitats Directive) 92/43/EEC, and EC Directive on Wild Birds (the Birds Directive) (Council Directive) 2009/147/EEC, into national UK law. The Regulations require the compilation and maintenance of a register of European sites that includes Special Areas of Conservation, as well as Special Protection Areas designated for birds and sites designated as internationally important wetlands under the Ramsar Convention known as “Ramsar Sites”. These three designations form a collective Europe wide network of internationally protected sites known as Natura 2000.

### **The Habitats Directive**

A1.2. Article 6(3) of the Habitats Directive requires an Appropriate Assessment of any plans that could affect a Natura 2000 site:

*“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of Paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.”*

A1.3. Article 6(4) of the Habitats Directive discusses alternative solutions, the test of “imperative reasons of overriding public interest” (IROPI) and compensatory measures (transposed to Regulation 60):

*“If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.”*

A1.4. A “likely significant effect” is defined as: “any effect that may reasonably be predicted...that may affect the conservation objectives of the features for which the site was designated, but excluding trivial or inconsequential effects.”

A1.5. The “integrity of a site” is defined as: “the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and / or the level of populations of the species for which it was classified.”

## The Habitats Regulations

A1.6. In relation to undertaking and consenting plans or projects, the due consideration of Natura 2000 sites is outlined in regulation 61 of the Habitats Regulations, which has led to the HRA process, as follows.

*“61. 1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which - (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives.*

*(2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable them to determine whether an appropriate assessment is required.*

*(3) The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specify.*

*(4) They must also, if they consider it appropriate, take the opinion of the general public, and if they do so, they must take such steps for that purpose as they consider appropriate.*

*(5) In the light of the conclusions of the assessment, and subject to regulation 62 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).*

*(6) In considering whether a plan or project will adversely affect the integrity of the site, the authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given.”*

## Habitats Regulations Assessment Process

A1.7. The HRA process has developed into a four-stage process as follows:

- Stage One: Screening - also known as the Test of Likely Significant Effect (TOLSE). If the Competent Authority cannot screen out a *likely significant effect*, an Appropriate Assessment is required.
- Stage Two: Appropriate Assessment - the Competent Authority will only agree to plans or projects that will not affect the *integrity* of a European site also known as the “Integrity Test”.
- Stage Three: Alternative Solutions - assesses any alternative solutions of a potentially damaging plan or project that failed the Integrity Test, and if it is determined there are no alternative solutions, the project cannot be agreed to and it will either need to be changed or refused.

- Stage Four: The final stage may allow a plan or project to proceed if after failing stage three if it is for Imperative Reasons of Overriding Public Interest, and only if suitable compensatory measures are secured.

### **Key Case law in relation to Test of Likely Significant Effect**

A1.8. The following are some relevant case law judgement quotes in relation to “likely Significant Effect” which are of relevance for a Stage 1 screening.

A1.9. EC Case C-127/02 - Waddenvereniging and Vogelsbeschermingvereniging – the “Waddenzee Judgement” (paras 45, 47 and 48) – 7<sup>th</sup> September 2004:

*“...any plan or project ... is to be subject to an appropriate assessment ... if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects.”*

*“Where plan or project has an effect on that site but is not likely to undermine its conservation objectives, it cannot be considered likely to have a significant effect on that site.”*

*“In assessing the potential effects of a plan or project, the significance must be established in the light, inter alia, of the characteristics and specific environmental conditions of the site concerned by that plan or project”*

A1.10. R (Hart District Council) v Secretary of State for the Communities and Local Government [2008] EWHC 1204 (Para 55 and 76) – 1<sup>st</sup> May 2008:

*“If the competent authority does not agree with the proponents' view as to the likely efficacy of the proposed mitigation measures, or is left in some doubt as to the efficacy, then it will require an appropriate assessment because it will not have been able to exclude the risk of a significant effect on the basis of objective information ...”*

*“The competent authority is not considering the likely effect of some hypothetical project in the abstract. The exercise is a practical one which requires the competent authority to consider the likely effect of the particular project for which permission is being sought. If certain features ...have been incorporated into that project, there is no sensible reason why those features should be ignored at the initial, screening, stage merely because they have been incorporated into the project in order to avoid, or mitigate, any likely effect....”*

A1.11. Boggis v Natural England [2009] EWCA Civ 1061 20<sup>th</sup> October 2009 (para 36 and 37)

*“Notwithstanding the word “likely” ...is not that significant effects are probable, a risk is sufficient.”*

*“...a claimant who alleges that there was a risk which should have been considered by the authorising authority so that it could decide whether that risk could be “excluded on the basis of objective information”, must produce credible evidence that there was a real, rather than a hypothetical, risk which should have been considered.”*

A1.12. Ec Case C-258-11 Reference for a preliminary Ruling, Opinion of Advocate General Sharpston ‘Sweetman’ (Para 48) – 22<sup>nd</sup> November 2012:

*“The requirement that the effect in question be “significant” lays down a de minimis threshold. Plans or projects that have no appreciable effect on the site are thereby excluded. If all plans or projects capable of having any effect whatsoever on the site were to be caught by article 6(1), activities on or near the site would risk being impossible by reason of legislative overkill.”*

A1.13. Bagmoor Wind Ltd v Scottish Ministers [2012] CSIH 93 7<sup>th</sup> December 2012 (para 45):

*“The requirement for objective information at the preliminary examination is not to be equated with a need for scientific knowledge. The Court only refers to “the best scientific knowledge” in the context of the appropriate assessment (para [61]). “Objective”, in this context, means information based on clear verifiable fact rather than subjective opinion.”*

A1.14. R (on application of An Taisce) v SoS [2014] EWCA Civ 1111 1<sup>st</sup> August 2014 (paras 38 and 39)

*“The word “likely” ...implies at least some degree of flexibility. There comes a point when the probability...of a significant effect is so remote that it ceases to be “likely”, however broad the concept of likelihood.”*

*“The competent authority does not have to be satisfied that there is no risk, however remote...”*

### **Note of Functional Linkage**

A1.15. “Functional linkage” is a term that refers to the potential for habitat away from the designation boundaries of a Natura 2000 site, that is considered to have a “role” or “function” for a qualifying feature “beyond the boundary”. This is covered in the Guidance document on the strict protection of animal species of Community interest under Habitats Directive 92/43/EEC 2007. Paragraph 7 states:

*“Assessing and evaluating the conservation status of habitats and species within the Natura 2000 network is therefore not always enough, especially when the occurrences of habitats or species are only partly covered by the network, maybe even in some cases only to a relatively small extent.”*

A1.16. A case law example of where the concept of Functionally Linked Land (FLL) has been applied was RSPB and others v SoS and London Ashford Airport Ltd [2014] EWHC 1523 16<sup>th</sup> May 2014 (para 27):

*“There is no authority on the significance of the non-statutory status of the FLL. However, the fact that the FLL was not within a protected site does not mean that the effect which a deterioration in its quality or function could have on a protected site is to be ignored. The indirect effect was still protected. Although the question of its legal status was mooted, I am satisfied, as was the case at the Inquiry, that while no particular legal status attaches to FLL, the fact that land is functionally linked to protected land means that the indirectly adverse effects on a protected site, produced by effects on FLL, are scrutinised in the same legal framework just as are the direct effects of acts carried out on the protected site itself. That is the only sensible and purposive approach where a species or effect is not confined by a line on a map or boundary fence. This is particularly important where the boundaries of designated sites are drawn tightly as may be the UK practice.”*

3.76 Paragraph 40 of The Holohan and others versus An Bord Pleanála C-461/17 [7<sup>th</sup> November 2018] judgement states “an ‘appropriate assessment’ must, on the one hand, catalogue the entirety of habitat types and species for which a site is protected, and, on the other, identify and examine both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found **outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site.**” i.e. the boundary for the AA may extend beyond the Natura 2000 site boundary.

## **Note on the Sweetman ruling “People over Wind” and definition of “mitigation”**

A1.17. The *People Over Wind* judgement (Peter Sweetman v Coillte Teoranta (C-323/17)), in April 2018, changed the way mitigation is viewed during the HRA Stage One screening i.e. the Test of Likely Significant Effect. The ruling was based on the view that allowing mitigation measures to be considered at the screening stage allows projects to avoid an Appropriate Assessment (Stage Two). The ruling stated:

“Taking account of such measures at the screening stage would be liable to compromise the practical effect of the Habitats Directive in general, and the assessment stage in particular, as the latter stage would be deprived of its purpose and there would be a risk of circumvention of that stage, which constitutes, however, an essential safeguard provided for by the directive.” (paragraph 37 of the judgment)”

A1.18. This has made what constitutes “mitigation” directly in relation to the European site, and what is considered “integrated” into the scheme for other reasons, a question that carries some uncertainty. The PINS Note 05/2018 *Consideration of avoidance and reduction measures in Habitats Regulations Assessment: People over Wind, Peter Sweetman v Coillte Teoranta* provides some clarification as follows:

*“The implication of the CJEU judgment is that competent authorities cannot take account of any integrated or additional avoidance or reduction measures when considering at the HRA screening stage whether the plan or project is likely to have an adverse effect on a European Site.*

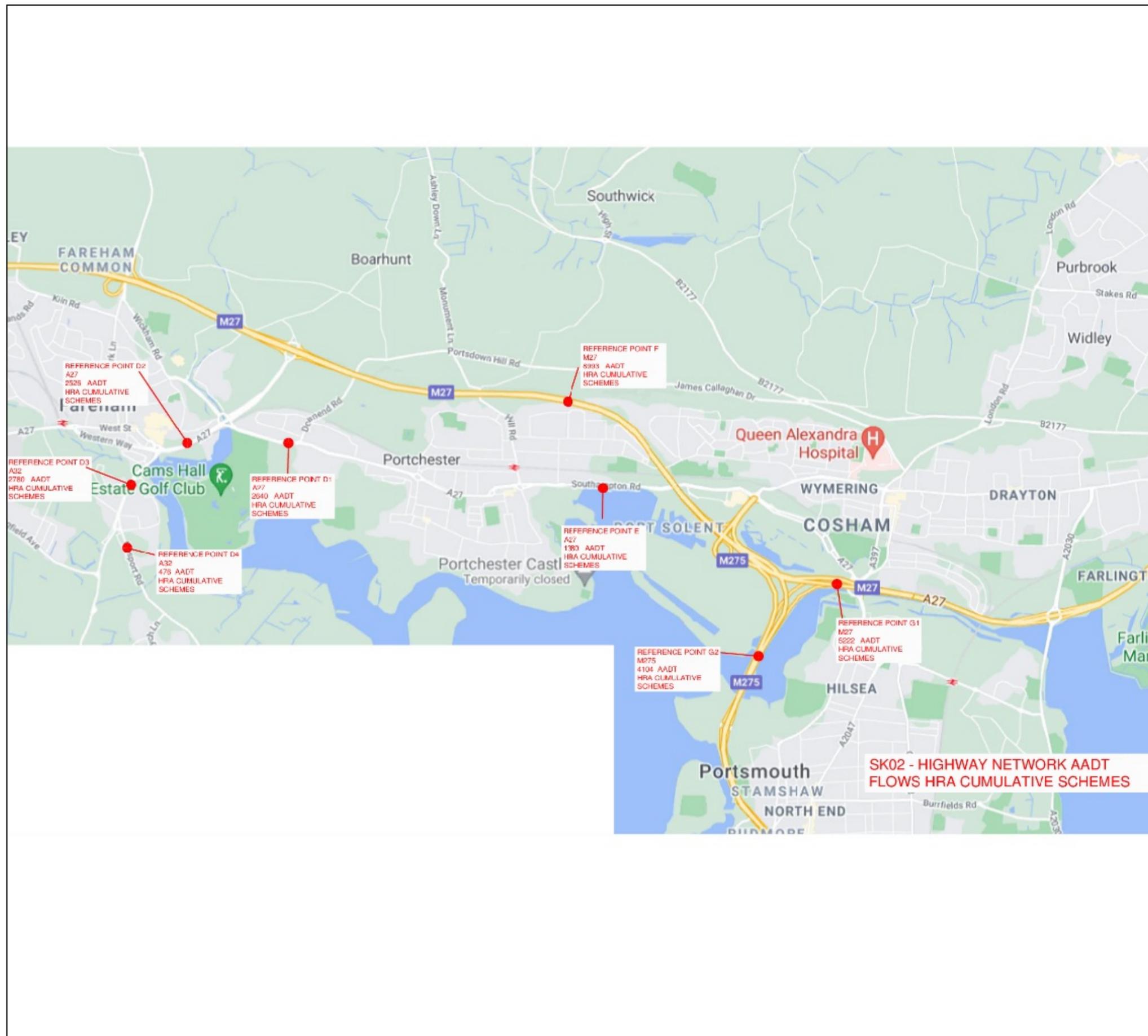
*The screening stage must be undertaken on a precautionary basis without regard to any proposed integrated or additional avoidance or reduction measures. Where the likelihood of significant effects cannot be excluded, on the basis of objective information the competent authority must proceed to carry out an AA to establish whether the plan or project will affect the integrity of the European site, which can include at that stage consideration of the effectiveness of the proposed avoidance or reduction measures.”*

A1.19. PINS Note 05/2018 goes on to further explain:

*“It should be noted that there is no authoritative definition of what constitutes an integrated or additional avoidance or reduction measure and this should be considered on a case by case basis. If a measure is being introduced to avoid or reduce an effect on a European site then it can be viewed as mitigation. It may be helpful to consider whether a proposal could be considered integral to a plan or whether it is a measure to avoid harm. For instance, the HRA report could identify European sites whose designated features are vulnerable to disturbance caused by people visiting the site. If evidence presented in the HRA report and during the examination demonstrates that the housing allocation is too far from the European site to lead to increased visitor numbers then it could be concluded that there is no pathway for likely significant effects to occur. However if the HRA report determines that the housing allocation would be likely to increase visitor use of the European site and relies on measures which reduce visitor pressure (such as securing land to provide a buffer to the European site or ensuring footpaths and car parks are located away from the site) to avoid or reduce likely significant effects an AA will be required to assess whether the plan will affect the integrity of the European site.”*

A1.20. The interpretation of the above being taken by legal professionals appears to be that if it can be argued that mitigation, whether integrated or additional, is an “avoidance or reduction” measure directly due to an ecological pathway to a Natura 2000 site, then an Appropriate Assessment is

required. If it is truly integrated into the proposals for other reasons, for example green space due to an unrelated protected species mitigation licence, as was the case with UK High Court ruling in August 2018 (R (on the application of Langton) v Secretary of State for Environment, Food and Rural Affairs, Natural England [2018] EWHC 2190 Admin) in relation to mitigation within a badger cull licence, then the mitigation is fully integrated and would not automatically trigger the requirement for an Appropriate Assessment. However, in many cases, such a judgement would carry the risk of conflicting views within the planning process, and often it may be simpler to take a precautionary approach by progressing to Appropriate Assessment where there is room for doubt.





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-  F21 Primary Support Area- 18.9ha
-  Bird Mitigation Reserve- 4.5ha
-  Brent Goose and Wader Habitat- 3.7ha
-  Development Area- 6.7ha
-  Public Open Space- 1.4ha

Client: Foreman Homes Ltd.  
 Project: Land South of Romsey Avenue, Portchester  
 Drawing Title: Post Development Sizes of the Romsey Avenue Proposals and F21 Primary Support Area  
 Scale: 1:3000 | Drawn: KD / APD | Issue: 11/5/2021  
 Drawing / Revision Number: **Figure 7.2** | **J10108-E-7.2**

