

Ecology Solutions Limited  
Farncombe House  
Farncombe Estate  
Broadway  
Worcestershire  
WR12 7LJ

+44(0)1451 870767  
info@ecologysolutions.co.uk  
www.ecologysolutions.co.uk



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## **Joint Statement between Fareham Borough Council and the Appellants**

### **Habitats Sites**

#### **Land South of Funtley Road, Funtley**

PI Refs: APP/A1720/W/21/3283643  
APP/A1720/W/21/3284532

App Refs: P/20/1168/OA  
P/20/1166/CU

13<sup>th</sup> May 2022

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### **Introduction**

1. Both the Appellants and Fareham Borough Council (FBC) are in receipt of email correspondence from Natural England, dated 28<sup>th</sup> April 2022. That email was sent to the Planning Inspectorate in response to questions raised by the Inspector following the closing of the Inquiry.
2. Natural England's email raises several points associated with the detail of the Shadow Habitats Regulations Assessment (sHRA) and the Inspector has requested that the Appellants and FBC produce a joint statement to address those points.
3. This note, produced jointly by Ecology Solutions Ltd (on behalf of the Appellants) and FBC fully addresses the issues raised by Natural England, such that Inspector / SoS can be certain that all necessary / relevant information is available when applying the tests of the Habitats Regulations in determining the Appeal.
4. It should be noted up front that some of the points raised by Natural England stem from a very recent (post closing of the Inquiry) change to Natural England's guidance regarding nutrient nitrogen. Whilst the timing of that change in guidance is unfortunate and Natural England do not have a definitive position of whether the new guidance must now be applied, the Appellants have sought to address the matter swiftly and robustly such that the Inspector / SoS, acting as Competent Authority under the Habitats Regulations can be fully satisfied as to the nature of

predicted effects and the adequacy of the mitigation package, when viewed in the context of this recent change in guidance.

5. The points raised by Natural England in relation to the sHRA can be broadly distilled into the following three topic headings:
  1. Omission of consideration of Solent and Dorset Coast SPA;
  2. Deterioration of the water environment (Nitrates issues); and
  3. Recreational impacts on the New Forest SAC, SPA and Ramsar.
6. Each of these matters are discussed below.

#### Solent and Dorset Coast SPA

7. With regard to the Inspectors question "A" concerning screening for relevant Habitats Sites, Natural England states in its email (of 28<sup>th</sup> April 2022):

*"We concur with this list, although note that the Solent and Dorset Coast SPA has not been included. In line with the precautionary principle your authority may wish to consider this site. However, given the distance between this site and the proposed development, and the nature of this designated site, the inclusion of this additional site is unlikely to materially alter the HRA assessment conclusions."*

8. Ecology Solutions and FBC agree with Natural England and conclude that the inclusion of this additional site does not alter the HRA assessment conclusions. For the Inspectors benefit further detail is provided below.
9. Insofar as assessing the potential implications of the Appeal Proposals on Habitats Sites, it is considered that all relevant sites are discussed in detail within the sHRA. The Inspector will be aware from the Habitats Statement of Common Ground [CDD.3] that it is common ground between the parties that the relevant Habitats Sites to consider are:
  - Portsmouth Harbour Special Protection Area (SPA), (approximately 2.8km south of Appeal Sites);
  - Portsmouth Harbour Ramsar site (approximately 2.8km km south of Appeal Sites);
  - Solent and Southampton Water SPA (approximately 3.6km south of the Appeal Sites);
  - Solent and Southampton Water Ramsar site (approximately 3.6km south of the Appeal Sites);
  - Solent Maritime SAC (approximately 3.6km south of the Appeal Sites);
  - New Forest SPA (approximately 13.1km west of the Appeal Sites);
  - New Forest SAC (approximately 13.1km west of the Appeal Sites);
  - and
  - New Forest Ramsar site (approximately 13.1 km west of the Appeal Sites).
10. Further, within its consultation responses (helpfully appended to the email of 28<sup>th</sup> April 2022) Natural England do not specifically cite the Solent and Dorset Coast SPA. There is however, specific reference to Solent and Southampton Water SPA and "Solent SPA sites" in the context of FBCs agreed strategic approach to

mitigation in line with Bird Aware Solent / Solent Recreation Mitigation Partnership (SRMP).

11. For the Inspector's benefit, the Solent and Dorset Coast SPA is a marine SPA which was classified on 16<sup>th</sup> January 2020. It qualifies on the basis of its importance in supporting three species of Tern which utilise the area of sea for foraging, these being Sandwich Tern, Common Tern and Little Tern. The Tern populations concerned, derive from breeding colonies at the Poole Harbour SPA, Solent and Southampton Water SPA and Chichester & Langstone Harbours SPA.
12. Mitigation is already proposed, and would be fully secured, in relation to protecting against any increase in recreational disturbance of qualifying bird interest features (e.g. during the breeding season) associated with Habitats Sites. This includes the Solent and Southampton Water SPA which supports breeding Common Tern and Little Tern. The relevant 'breeding colonies' are therefore protected through the agreed mitigation approach.
13. The Inspector will note that 'nutrient neutrality' within the Solent Habitats Sites is also to be achieved through secured mitigation. Thus, even if a very precautionary stance were taken and potential significant effects screened into the assessment regarding water quality issues (e.g. effects on prey resources) for this SPA, the relevant mitigation would already be defined / secured.
14. For completeness, it is concluded that in discharging his duties under the Habitats Regulations, the Inspector should consider the implications for the Solent and Dorset Coast SPA, but that he can be satisfied that no additional effects arise beyond those considered in the sHRA and that the mitigation / avoidance strategies and overall conclusions of the sHRA remain valid.

#### Deterioration of the water environment (Nitrates issues)

15. The sHRA included detailed calculations regarding the nitrogen budget associated with the Appeal Proposals, derived using published Advice on Achieving Nutrient Neutrality for New Development in the Solent Region (Version 5 – June 2020) [CDH.6].
16. Since the closing of the Inquiry, Natural England has published further advice in relation to such matters. An updated nutrient budget calculator for the Solent was made available on 20<sup>th</sup> April 2022 and Natural England has advised that the Competent Authority should consider how the updated Nutrient Neutrality Methodology relates to the nutrient budget provided (in the sHRA), and any proposed mitigation.
17. In the light of this development, the Appellant has undertaken a review of the nitrogen budget and completed the calculation using the latest version of the tool (20<sup>th</sup> April 2022). The result is an increase in the nitrogen budget.
18. Previously the Appeal Proposals generated a need to mitigate against a surplus of **68.8** kg/N/year. 3.72ha of mitigation land within the proposed community park was to be used to assist in mitigating the effect of the Appeal Proposals and the balance of **39.04** kg/N/yr was to be mitigated through the purchasing of credits from the Warnford Estate nitrate mitigation scheme.
19. The revised nitrogen budget is **115.39** kg/N/year. The additional mitigation requirement is to be addressed through an increase in credits secured against the

Warnford Estate nitrate mitigation scheme. It should be noted that in completing the new calculator, at stage 3 (which deals with new land types associated with the development) the LEAP and associated buffer zone (together totalling 1000m<sup>2</sup>), has been included as “open urban land”. Semi-natural open space (which will in part have an ecological mitigation / biodiversity net gain function) is included as “greenspace”, and the remaining land is included as “residential urban land”. This is considered to be an appropriately precautionary approach and is in line with the guidance.

20. A copy of the revised nitrogen budget calculation is appended to this statement along with a revised Nitrogen Statement and a revised agreement with the Warnford Estate.
21. The Inspector, as Competent Authority can therefore be confident that sufficient certainty exists in relation to the identification of likely effects and the ability of the Appeal Proposals to fully mitigate the identified effects, such that no adverse effect on Integrity arises.

#### Recreational impacts on the New Forest SAC, SPA and Ramsar

22. The Appellant proposes to provide a financial contribution towards FBC’s Adopted Interim Disturbance Mitigation Strategy, a strategy which has been devised in consultation with Natural England.
23. Within its email (28<sup>th</sup> April 2022), Natural England refers to the fact that FBC have agreed the approach to addressing residual impacts (at the New Forest itself) with the New Forest National Park Authority. Natural England recommends that to inform the Appropriate Assessment of the Appeal Proposals, confirmation should be provided in relation to the measures that such funds will deliver.
24. For the Inspector’s benefit, FBC’s Adopted Interim Disturbance Mitigation Strategy is included at CDH.19. The strategy specifically includes [para 29] provision of £6,000 per year to be provided to the New Forest National Park Authority in order to fund projects within the New Forest itself.
25. Turning to the strategy adopted by the New Forest National Park Authority; a Habitat Mitigation Scheme was adopted in 2012 to support the implementation of planning policy in the National Park, with applicants able to make a financial contribution to secure the necessary mitigation measures. These measures ensured that there would be no adverse impacts on the integrity of the (New Forest) designated sites.
26. A Revised Mitigation Scheme has since been produced, with a Draft prepared as part of the evidence base for the (New Forest National Park) Local Plan Examination in 2018/19. The adopted Revised Mitigation Scheme is set out within a Supplementary Planning Document dated July 2020. This confirms that developer contributions are collected in order to fund:
  - Access management within the designated sites;
  - Alternative recreational greenspace sites and routes outside the designated sites;
  - Education, awareness and promotion;
  - Monitoring and research;
  - In perpetuity mitigation and funding.

27. FBC contributions would assist in funding elements of the strategy, a strategy which is current / adopted, being delivered and is subject to monitoring and refinement where necessary.
28. In view of this further detail, it is considered that Natural England's concern is addressed and that the Inspector can be fully satisfied that the proposed mitigation is suitably precautionary and can be appropriately secured and delivered in perpetuity.

Signed: 

Karl Goodbun (Director)

Of: Ecology Solutions Ltd (on behalf of the Appellants)

On: 13<sup>th</sup> May 2022

Signed: 

Richard Wright (Principal Planner)

Of: Fareham Borough Council

On: 13<sup>th</sup> May 2022