

Addendum submission to “Plans for Places...after Blueprint”

Curbridge Preservation Society

**Proposed South Hampshire Urban Areas North of Whiteley MDA
and its Impact on The Solent and Southampton Water SPA, the SAC and
Ramsar Site its component SSSI of Upper Hamble Estuary and Woods, and the
Designated Species for the SPA.**

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Summary of Findings: -

We find this proposed development both

unsound (PPS1, PPS3, PPS4 (EC6.1), PPS9, PPS12, PPS25, PUSH Green Infrastructure Strategy Adopted June 2010 (Objective 5), Solent Waders and Brent Goose Strategy 2010, Solent Disturbance and Mitigation Project (phases (I) and (II), WCC draft policy SS2 (2009))

and

unlawful (Directive 2009/147 EC (wild birds) Article 4(1), (2) and (4); Habitats Directive Article 6(2), (3) and (4); Natural Environment and Rural Communities (NERC) Act 2006; Wildlife and Countryside Act 1981 (schedule 5); Conservation (Natural Habitats etc.) (Amendment) Regulations 2007 (5(13) and 7); The Conservation of Habitats and Species Regulations 2010 as amended by Conservation of Habitats and Species (Amendment) Regulations 2011 (regulation 4); Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (regulation 12); and ODPM Circular 06/2005 (para 20))

Introduction

We have previously looked more generically at the SPA and the Annex I birds there – this paper specifically looks at the designated species that give the SPA its designation and the risks from disturbance and development that give cause for a significant correlation to the Thames Basins Heaths Assessment and Recommendations by the Planning Inspectorate, and thus the requirement for similar recommendations to be applied in this case.

Our reasons for stating that this proposed development is both unsound and unlawful are as clearly set out below; however part of this is work we would have expected to be undertaken by others long before this point in time; but it appears that it hasn't – this we find extraordinary. In saying that we do acknowledge how the 2010 Solent and Southampton Water SPA research supports the use of the precautionary principle in the protection of this SPA.

The Upper Hamble Estuary and Woods (including Curbridge Nature Reserve) are not a separate SPA; they are designated as an SSSI and a form a constituent part of The Solent and Southampton Water SPA. They are also a Wetland of International Importance (Ramsar site) which is very important in terms of their status and protection.

As recently confirmed by Natural England to us “...*all the component SSSIs comprise and underpin the entire SPA*”; further they have confirmed that “*that sites selected for waterbird species on the basis of their occurrence in the breeding, passage or winter periods also provide legal protection for these species when they occur at other times of the year*”, means that the species under overwintering and assemblage designations have full legal protection at other times of occurrence e.g. if they are also resident in the SPA including during the breeding season. (*Directive 2009/147/EC Article 4(2)*)

The part of the SPA that is represented by this SSSI is therefore not a separate SPA that only has designation for overwintering birds (as was seemingly suggested by the developers' ecologist) it is a protected site for all the designated species (waterbirds) at any time of year under breeding, over wintering and assemblage; therefore by statute it provides full legal protection for those designated migratory/ assemblage species that are also resident in the SPA during the breeding and other seasons.

The 2010 Solent research clearly shows that merely developing the site (i.e. the massive increase in the number of nearby buildings, within 400m – 1,250m) will in itself have a significant negative impact on the objectives of the SPA – even without a single extra recreational footfall in the SPA from future residents, or paw print from their hunting cats. The 2010 Solent Wader and Brent Goose Strategy unequivocally states: “*Statistical correlations show that factors that describe how urban the area surrounding a site is...relative distance of buildings and number of homes...all significantly correlate with Brent Goose and wader site usage.*”

Paragraph 20 of ODPM Circular 06/2005 defines the integrity of the SPA site 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 levels of*

populations of the species for which it was classified” The SPA and its constituent SSSIs must be considered as a whole.

We are therefore convinced that a local (current SO30 2HB postcode area, that includes the whole of the proposed development area and the hamlet of Curbridge) increase of some 3,000 – 3,500 dwellings, from 27, and a resultant population increase of 8,750% with two exit roads within 400m of the curtilage of the SPA can only be considered to have a significant negative impact on the integrity of this part of the SPA/SAC and its ability to meet its objectives.

The LPA must heed and apply the research findings and the Planning Inspectorate’s conclusions in the Thames Basin Heaths Assessment, as the report is recognised as an appropriate authority on the predation effects of domestic cats on ground nesting/roosting birds and the effects of human recreational disturbance on those same birds and that it matters not which designation the species were listed for but their time of occurrence in the SPA.

Therefore by definition we believe that this proposed development would be unlawful. There are no overriding reasons of public health and safety; also there are alternative options for the LPA.

1. The SPA/SAC/Ramsar/SSSI

The area to the east (in parts immediate east) of the proposed development site is a European protected site for waterbirds as a constituent part of a Special Protection Area (SPA), a Special Area of Conservation (SAC) and a Ramsar site (wetland of international importance) as well as being an SSSI.

It should therefore have one of the highest levels of statutory protection for its habitats, beneficiaries and conservation objectives of the whole SPA.

Migratory waterbirds are protected under European legislation, translated into UK law by The Conservation of Habitats and Species Regulations 2010 (commonly known as 'The Habitats Regulations'). The Habitats Regulations ensure that wintering waterbirds, including Brent Geese and waders, are specially protected within the Solent's SPA and Ramsar site.

Most waders are ground nesting/ roosting birds and therefore at the greatest risk of both human disturbance and cat predation risk to their young.

The sustainability assessment (updated 2009) for Area 2 shows absolute constraints for the site in terms of biodiversity (due to the SPA, SSSIs etc) – and yet WCC's only comment is that these improve with both sites being developed – however it is the increasing extent of development that has the greatest impact on human disturbance of protected sites and in particular on the use of designated (and other sites) by the Solent wader population (resident and migratory) and thus on the ability of protected sites to achieve their objectives.

Article 4 of Directive 2009/147 EC (wild birds) states the following:

"Article 4

1. ***The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.***

In this connection, account shall be taken of:

- (a) species in danger of extinction;*
- (b) species vulnerable to specific changes in their habitat;*
- (c) species considered rare because of small populations or restricted local distribution;*
- (d) other species requiring particular attention for reasons of the specific nature of their habitat.*

Trends and variations in population levels shall be taken into account as a background for evaluations.

Member States shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species in the geographical sea and land area where this Directive applies.

2. ***Member States shall take similar measures for regularly occurring migratory species not listed in Annex I, bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and***

staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.

3. *Member States shall send the Commission all relevant information so that it may take appropriate initiatives with a view to the coordination necessary to ensure that the areas provided for in paragraphs 1 and 2 form a coherent whole which meets the protection requirements of these species in the geographical sea and land area where this Directive applies.*
4. **In respect of the protection areas referred to in paragraphs 1 and 2, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.”**

2. How the SSSI Qualifies (as a component part of The Solent and Southampton Water SPA)

Source Joint Nature Conservation Committee (JNCC). The legal basis for the JNCC is the Natural Environment and Rural Communities (NERC) Act 2006. It sets out the composition of the Joint Committee, the purpose of JNCC and the functions of national and international significance that it is responsible for. They are therefore a competent authority. (<http://jncc.defra.gov.uk/default.aspx?page=2037>) [n.b. Directive (79/409/EEC has been replaced by Directive 2009/147/EC)]

“SPA description (information as published 2001) Solent and Southampton Water



Country	England
Unitary Authority	Isle of Wight, Southampton, Hampshire
SPA status	Classified 01/10/1998
Latitude	50 44 25N
Longitude	01 31 33 W
SPA EU code	UK9011061
Area (ha)	5505.86
Component SSSI/ASSIs	Brading Marshes to St. Helen's Ledges Eling and Bury Marshes Hurst Castle and Lyminster River Estuary

Hythe to Calshot Marshes
King's Quay Shore
Lee-on-The-Solent to Itchen Estuary
Lincegrove and Hackett's Marshes
Lower Test Valley
Lymington River Reedbeds
Medina Estuary
Newtown Harbour
North Solent
Ryde Sands and Wootton Creek
Sowley Pond
Thorness Bay
Titchfield Haven
Upper Hamble Estuary and Woods
Whitecliff Bay and Bembridge Ledges
Yar Estuary

The Solent and Southampton Water are located on the south English coast. The area covered extends from Hurst Spit to Hill Head along the south coast of Hampshire and from Yarmouth to Whitecliff Bay along the north coast of the Isle of Wight. The site comprises a series of estuaries and harbours with extensive mud-flats and saltmarshes together with adjacent coastal habitats including saline lagoons, shingle beaches, reedbeds, damp woodland and grazing marsh. The mud-flats support beds of *Enteromorpha* spp. and *Zostera* spp. and have a rich invertebrate fauna that forms the food resource for the estuarine birds. In summer, the site is of importance for breeding seabirds, including gulls and four species of terns. In winter, the SPA holds a large and diverse assemblage of waterbirds, including geese, ducks and waders. Dark-bellied Brent Goose *Branta b. bernicla* also feed in surrounding areas of agricultural land outside the SPA.

The Solent and Southampton Water SPA Description as published 2001: -

“This site qualifies under Article 4.1 of the Directive (79/409/EEC) by supporting populations of European importance of the following species listed on Annex I of the Directive:

During the breeding season;

Common Tern *Sterna hirundo*, 267 pairs representing at least 2.2% of the breeding population in Great Britain (5 year peak mean, 1993-1997)

Little Tern *Sterna albifrons*, 49 pairs representing at least 2.0% of the breeding population in Great Britain (5 year peak mean, 1993-1997)

Mediterranean Gull *Larus melanocephalus*, 2 pairs representing at least 20.0% of the breeding population in Great Britain (5 year peak mean, 1994-1998)

Roseate Tern *Sterna dougallii*, 2 pairs representing at least 3.3% of the breeding population in Great Britain (5 year peak mean, 1993-1997)

Sandwich Tern *Sterna sandvicensis*, 231 pairs representing at least 1.7% of the breeding population in Great Britain (5 year peak mean, 1993-1997)

This site also qualifies under Article 4.2 of the Directive (79/409/EEC) by supporting populations of European importance of the following migratory species:

Over winter;

Black-tailed Godwit *Limosa limosa islandica*, 1,125 individuals representing at least 1.6% of the wintering Iceland - breeding population (5 year peak mean, 1992/3-1996/7)

Dark-bellied Brent Goose *Branta bernicla bernicla*, 7,506 individuals representing at least 2.5% of the wintering Western Siberia/Western Europe population (5 year peak mean, 1992/3-1996/7)

Ringed Plover *Charadrius hiaticula*, 552 individuals representing at least 1.1% of the wintering Europe/Northern Africa - wintering population (5 year peak mean, 1992/3-1996/7)

Teal *Anas crecca*, 4,400 individuals representing at least 1.1% of the wintering Northwestern Europe population (5 year peak mean, 1992/3-1996/7)

Assemblage qualification: A wetland of international importance.

The area qualifies under Article 4.2 of the Directive (79/409/EEC) by regularly supporting at least 20,000 waterfowl

Over winter, the area regularly supports 53,948 individual waterfowl, 5 year peak mean 1991/2 - 1995/6 including:

Gadwall *Anas strepera*,
Teal *Anas crecca*,
Ringed Plover *Charadrius hiaticula*,
Black-tailed Godwit *Limosa limosa islandica*,
Little Grebe *Tachybaptus ruficollis*,
Great Crested Grebe *Podiceps cristatus*,
Cormorant *Phalacrocorax carbo*,
Dark-bellied Brent Goose *Branta bernicla bernicla*,
Wigeon *Anas penelope*,
Redshank *Tringa totanus*,
Pintail *Anas acuta*,
Shoveler *Anas clypeata*,
Red-breasted Merganser *Mergus serrator*,
Grey Plover *Pluvialis squatarola*,
Lapwing *Vanellus vanellus*,
Dunlin *Calidris alpina alpina*,
Curlew *Numenius arquata*,
Shelduck *Tadorna tadorna*.

Note that sites selected for waterbird species on the basis of their occurrence in the breeding, passage or winter periods also provide legal protection for these species when they occur at other times of the year."

(The SPA designations are attached in appendices folder)

A Senior Advisor (International Site Designation) from Natural England has confirmed to us that: - 1) the specific designation of the SPA under Directive 2009/147 EC (replacing the earlier 79/409/EEC) applies equally to all its constituent SSSIs and that they do not have separate designations as they are part of the overall SPA, and that all the component SSSIs comprise and underpin the entire SPA; and

2) the comment at the bottom of the page on the SPA description "*Note that sites selected for waterbird species on the basis of their occurrence in the breeding, passage or winter periods also provide legal protection for these species when they occur at other times of the year.*" means that the species under overwintering and assemblage designations have full legal protection at other times of occurrence i.e. breeding season.

These are mainly ground-nesting/ground-roosting birds and therefore at risk of cat predation and human recreational disturbance. Therefore mitigation/exclusion zones similar to the Thames Basin Heaths Assessment should be applied to the SPA and to this constituent part of it.

3. Habitats Directive & Planning Policy Statements

Habitats Directive

- *Article 6(2) of the Habitats Directive which requires member states to take appropriate steps to avoid the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of the Directive;*
- *Article 6(3) of the Habitats Directive which states that any plan or project not directly connected with or necessary to the management of the site but likely to have 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 light of the conclusions of the assessment of the implications for the site the competent authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site;*
- *Article 6(4) of the Habitats Directive 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 the overall coherence of Natura 2000 is protected."*

Section 40, Part 3 of the NERC Act states: "Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity."

Planning Policy Statements

PPS1 makes it clear that all development plans, *“should ensure that sustainable development is pursued in an integrated manner, in line with the principles for sustainable development set out in the UK strategy. Regional planning bodies and local planning authorities should ensure that development plans promote outcomes in which environmental, economic and social objectives are achieved together over time”*

PPS3, states the Government’s commitment to sustainable development, and prescribes that, in selecting locations for new housing; *“the contribution to be made to cutting carbon emissions from focusing new development in locations with good public transport accessibility and/or by means other than the private car”* should be taken into account. The proposed North of Whiteley MDA is remote from good public transport networks, located as it is, (with no credible public transport connections and a highly congested motorway). Furthermore PPS3 calls for land to be used efficiently and effectively.

The PUSH Sub-region is about economic development - Planning Policy Statement 4 (**PPS4** 2009): POLICY EC6: Planning for Economic Development in Rural Areas: specifically point EC6.1 *“Local planning authorities should ensure that the countryside is protected for the sake of its intrinsic character and beauty, the diversity of its landscapes, heritage and wildlife, the wealth of its natural resources and to ensure it may be enjoyed by all.”*

(Source Solent Waders and Brent Goose Strategy 2010 – Hampshire and Isle of Wight Wildlife Trusts, page 22)

“In addition to the site protection regime required under the Habitats Regulations, Planning Policy Statement 9 (**PPS9**) states that Local Development Frameworks should:

“identify any areas or sites for restoration or creation of new priority habitats which contribute to regional targets, and support this restoration or creation through appropriate policies.”⁴

Furthermore **PPS9** advises that:

“Local authorities should aim to maintain, and enhance, restore or add to biodiversity interests⁵and to maintain networks by avoiding or repairing the fragmentation and isolation of natural habitats through policies in plans. Such networks should be protected from development, and, where possible, strengthened by or integrated within it⁶”

This approach of establishing networks of natural habitats is a key principle of **PPS9** where it states that sites of biodiversity importance can be linked to provide routes or *“stepping stones”* for the migration, dispersal and genetic exchange of species in the wider environment. This will become increasingly important in facilitating “species creep” in response to climate change.

Planning Policy Statement 12 – creating strong safe and prosperous communities through Local Spatial Planning (**PPS12**), further emphasises the importance of spatial planning in protecting environmental assets, stating that:

“Spatial planning provides a means of safeguarding the area’s environmental assets, both for their intrinsic value and for their contribution to social and economic well being by:

- *protection and enhancing designated sites, landscapes, habitats and protected species; and*

- *creating a positive framework for environmental enhancement more generally.*⁷

⁴ Paragraph 5(ii) Planning Policy Statement 9 - Biodiversity and Geological Conservation.

⁵ Paragraph 1(ii) Planning Policy Statement 9 - Biodiversity and Geological Conservation.

⁶ Paragraph 12 Planning Policy Statement 9 - Biodiversity and Geological Conservation.

⁷ Paragraph 2.6 Planning Policy Statement 12 - creating strong, safe and prosperous communities through Local Spatial Planning. “

The **Habitats Regulations Assessment / Appropriate Assessment** was unable to conclude that the Draft South East Plan would not have a significant impact on the integrity of sites of national / international biodiversity importance due to likely changes in water levels, water quality, recreational and other forms of disturbance. They concluded that areas likely to be significantly affected as a result of the draft South East Plan included: *“the Solent SPA / Ramsar, due to wastewater from South Hampshire authorities affecting water quality* and that it was also unable to conclude *no adverse effect* on the Solent and Southampton Water SPA specifically in respect of recreational disturbance”.

PUSH GI Strategy adopted 2010

Objective 5: *“Contribute to the mitigation of the impacts of growth on European sites using buffer zones, providing alternative recreation destinations and reducing the effects of coastal squeeze by providing new habitat sites.”*

PPS25 we have already mentioned our concerns with regard to compliance with this Planning Policy Statement at length so will not repeat them here.

4. WeBS Data: Bird Count Information on SPA Assemblage Species

All the data below was provided by WeBS Data and forms the part of the statutory returns for the European Commission for protected sites (pdf in appendices). The boundary of the count area represents only half of the Upper Hamble Estuary and Woods SSSI area that is wholly within the SPA boundary

[http://bx1.bto.org/websonline/public/gpub-boundary.jsp?loclabel=17416_Upper%20Hamble%20Estuary%20\(Southampton%20Water\)~SU503109](http://bx1.bto.org/websonline/public/gpub-boundary.jsp?loclabel=17416_Upper%20Hamble%20Estuary%20(Southampton%20Water)~SU503109)

This therefore gives no scientific proof that any of the designated species are not nesting/breeding in the site – albeit in quieter areas that have not historically been counted. We have provided BTO/WeBS with an accurate site designation map so that future counts can hopefully include the whole of the SPA.

Years of Data Counts

Year	Peak Monthly Total	Autumn Peak	Winter Peak	Spring Peak
05/06	157 (MAR)	192	217	59
06/07	146 (NOV)	174	222	114
07/08	429 (OCT)	559	436	283
08/09	470 (OCT)	536	486	244
09/10	444 (DEC)	353	565	255
MEAN		363	385	191

Table3: Five-year peak monthly counts of each species.

Species	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Shelduck	1	0	0	0	0	1	1	3	5	7	6	0
Wigeon	0	0	0	0	0	0	1	0	0	0	0	0
Gadwall	0	0	0	0	0	0	16	2	0	0	0	0
Teal	0	0	0	3	0	0	20	20	14	3	0	0
Shoveler	0	0	0	0	2	0	0	0	0	0	0	0
Little Grebe	0	2	0	3	4	4	6	8	4	2	0	0
Cormorant	4	3	4	6	9	4	4	2	2	1	2	1
Grey Plover	0	0	0	0	0	0	0	0	1	0	0	0
Lapwing	30	46	7	15	49	25	26	41	25	1	3	14
Black-tailed Godwit	2	13	23	4	1	1	1	0	21	81	0	0
Curlew	13	14	14	42	37	55	59	46	32	21	1	5
Redshank	3	1	2	12	15	19	24	18	27	14	0	0
Sandwich Tern	0	0	0	0	0	0	0	0	0	0		1
Common Tern	0	1	1	0	0	0	0	0	0	0		2

“Table2: Five-year average monthly counts of each species.

(Figure in parentheses give number of complete and incomplete counts upon which the average is based. Incomplete counts are excluded from calculation where, if included, they would depress the mean.)

Species	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Shelduck	0(.,5)	0(.,5)	0(.,2)	0(.,5)	0(.,5)	0(.,5)	0(.,5)	1(1,4)	3(.,5)	3(.,5)	3(.,4)	0(.,4)
Wigeon	0(5,.)	0(5,.)	0(.,2)	0(.,5)	0(.,5)	0(.,5)	0(.,5)	0(1,4)	0(.,5)	0(.,5)	0(4,.)	0(4,.)
Gadwall	0(5,.)	0(5,.)	0(.,2)	0(.,5)	0(.,5)	0(.,5)	5(.,5)	2(1,4)	0(.,5)	0(.,5)	0(4,.)	0(4,.)
Teal	0(5,.)	0(.,5)	0(.,2)	1(.,5)	0(.,5)	0(.,5)	8(.,5)	20(1,4)	6(.,5)	1(.,5)	0(.,4)	0(4,.)
Shoveler	0(5,.)	0(5,.)	0(.,2)	0(.,5)	0(.,5)	0(.,5)	0(.,5)	0(1,4)	0(.,5)	0(.,5)	0(.,4)	0(4,.)
Little Grebe	0(.,5)	0(.,5)	0(.,2)	1(.,5)	1(.,5)	3(.,5)	2(.,5)	4(1,4)	2(.,5)	0(.,5)	0(.,4)	0(4,.)
Cormorant	2(.,5)	2(.,5)	4(.,2)	5(.,5)	3(.,5)	3(.,5)	2(.,5)	0(1,4)	1(.,5)	0(.,5)	1(.,4)	1(.,4)
Little Ringed Plover	0(5,.)	0(.,5)	1(.,2)	0(.,5)	0(5,.)	0(5,.)	0(5,.)	0(5,.)	0(5,.)	0(5,.)	0(4,.)	0(4,.)
Grey Plover	0(5,.)	0(5,.)	0(2,.)	0(.,5)	0(.,5)	0(.,5)	0(.,5)	0(1,4)	0(.,5)	0(.,5)	0(4,.)	0(4,.)
Lapwing	19(.,5)	16(.,5)	4(.,2)	7(.,5)	25(.,5)	5(.,5)	7(.,5)	22(1,4)	5(.,5)	0(.,5)	2(.,4)	4(.,4)
Black-tailed Godwit	1(.,5)	3(.,5)	12(.,2)	1(.,5)	0(.,5)	0(.,5)	0(.,5)	0(1,4)	5(.,5)	19(.,5)	0(.,4)	0(.,4)
Curlew	7(.,5)	8(.,5)	11(.,2)	22(.,5)	30(.,5)	39(.,5)	48(.,5)	38(1,4)	27(.,5)	8(.,5)	0(.,4)	2(.,4)
Redshank	1(.,5)	0(.,5)	2(.,2)	6(.,5)	11(.,5)	13(.,5)	15(.,5)	15(1,4)	19(.,5)	8(.,5)	0(.,4)	0(.,4)
Sandwich Tern	0(.,2)	0(2,.)	0(2,.)	0(2,.)	0(2,.)	0(2,.)	0(1,.)	0(1,.)	0(1,.)	0(.,1)		1(.,2)
Common Tern	0(.,2)	1(.,2)	1(1,1)	0(.,2)	0(2,.)	0(2,.)	0(1,.)	0(1,.)	0(1,.)	0(.,1)		1(.,2)

The data unequivocally demonstrates some designated species being within this SSSI constituent part of the SPA all year round for a 5 year count period. It has already been demonstrated that the legal protection for these designated

species extends to any period of their occurrence in the site. Therefore the site has full legal protection all year and in particular this constituent part of the SPA is a sensitive part year round.

Over the 5 year count period the number of wintering birds has increased (across all species counted) by 260%; the spring count by 430%; and the autumn count has peaked at 559 from 192 in 2006. This is a distinct upward trend and demonstrates an increasing popularity of the site amongst the species counted. One factor that could be influencing this is the isolated nature of the site in comparison to parts of the SPA in more developed areas, also coastal squeeze effects could be contributory; but these are only theories rather than proven.

Where only half of this SSSI part of the SPA site has been historically counted the precautionary principle needs to apply to the areas where there are no scientific records as to whether they provide habitats suitable for nesting for a variety of these waterbirds, and no doubt further numbers of the designated species that should be included in determining the actual species activities and distribution within this part of the SPA.

5. Solent Wader and Brent Goose Strategy Research Basis

From the same (page 9) Solent Wader and Brent Goose Strategy there is a clear correlation demonstrated between increased nearby development and unsuitability for waders to use a designated site – therefore an indication that to develop Areas 1 and 2 in accordance with this proposal would in itself cause significant detriment to SPA and its objectives – as shown in the Wildlife Trust’s Table 3 below

As the Wildlife Trust state on page 16 of the strategy **“Statistical correlations show that factors that describe how urban the area surrounding a site is, e.g. distance to road, area of buildings, relative distance of buildings and number of homes at different travel times, all significantly correlate with Brent Goose and wader site usage. Factors which describe the position and topography of the site, such as linear distance to high water, mean height and range in height (relative to sea level), also all significantly correlate with use.”**

Table 3. Site Factors - significant correlating factors and their effect on the suitability of sites for waders and Brent Geese.

Factor	Waders		Brent Geese	
	More suitable	Less suitable	More suitable	Less suitable
Area (ha)*	Larger	Smaller	Larger	Smaller
Shape - size/perimeter*	Irregular - long and thin	Regular - square	Regular - square	Irregular - long and thin
Area of buildings (m ²) within 50m zone*	No buildings in this zone	Buildings in this zone	Not significant	Not significant
Area of buildings (m ²) within 50-500m zone*	No buildings in this zone	Buildings in this zone	No buildings in this Zone	Buildings in this Zone
Area of buildings	No buildings in	Buildings in this	Not significant	Not significant

(m ²) within 500-2500m zone*	this zone	zone		
Homes within 15 mins*	No homes	Homes within	Not significant	Not significant
Homes within 30 mins*	No homes	Homes within	Not significant	Not significant
Mean height (m)*	Low lying	High ground	Low lying	High ground
Range in height (m)*	Flat	Uneven	Flat	Uneven
Distance to road (km)*	Further away	Closer	Not significant	Not significant
Distance to mean high water (km)*	Closer	Further away	Closer	Further away
Isolation index	More isolated from other sites	Closer to other sites	Close to other Brent sites	Further away from other Brent sites
Habitat*	Coastal and grassland, then agricultural	All other habitats	Coastal and grassland, then agricultural	All other habitats
*interrelated factor				

In Section 5.4 (page 20) of the same report the following statement is made about coastal squeeze and the loss of saltmarsh and the increasing importance of inland sites: -

“Coastal habitats are considered to be under threat from climate change. Predicted changes to existing intertidal habitat across the north Solent, regardless of defences or nature conservation designations, are estimated at an increase of 60 hectares (ha) for mudflat and at a loss of 812 ha for saltmarsh, over the next 100 years (Channel Coastal Observatory, 2008). Intertidal coastal squeeze resulting from maintenance of existing defences across the north Solent over the next 100 years is estimated to be approximately 5 ha of mudflat coastal squeeze and 495-595 ha of saltmarsh coastal squeeze.

These habitats are vital to wintering waterbirds and are key qualifying features of the Solent’s national and international designations. Changes to them will have significant implications on site availability for coastal birds. It is therefore inevitable that inland sites will become even more important in the Solent in the future.”

6. Disturbance of Breeding and Migratory Designated Birds

(Source Solent SPA/SAC/Ramsar Regulation 33 advice by English Nature 2001)

*‘Annex 1 breeding birds SPA designated disturbance: **Significant disturbance attributable to human activities such as trampling of nests and disturbance of adults on and off their nests can result in reduced food intake and/or increased energy expenditure and failure of egg clutches.** Productivity (number of successfully fledged young), together with other measures will also be used to monitor disturbance.*

*Internationally important waterfowl assemblage, including the internationally important regularly occurring migratory species: **Significant disturbance***

attributable to human activities can result in reduced food intake and/or increased energy expenditure.

All the Annex 1 species will roost on intertidal sediment areas. The extent and distribution of this subfeature are important to maintain the populations in favourable condition.

Waders including ringed plover and black-tailed godwit require views greater than 200 m and Brent Geese require views greater than 500 m to allow early detection of predators when feeding and roosting. Saltmarsh provides feeding and roosting areas for a range of overwintering bird species. The extent and distribution of this subfeature are important to maintain the populations in favourable condition. **Intertidal sediments are an important feeding and roosting habitat for overwintering and passage waterfowl. The extent and distribution of this subfeature are important to maintain the populations in favourable condition.**

Most of the waders and waterfowl within the assemblage, including the internationally important regularly occurring migratory birds feed on invertebrates within and on the sediments. Black-tailed godwit for example, feed primarily on bivalve molluscs such as *Macoma*, *Cardium* and annelid worms such as *Nereis* whereas small isopods such as *Gammarus* and *Tubifex* worms are important prey species for ringed plover. Wigeon and Brent Geese however graze on green algae (*Enteromorpha* and *Ulva* spp.), the latter preferring eelgrass (*Zostera* spp.) which grows on the sediment.'

7. Solent Disturbance and Mitigation Project: Visitor Report (Phase II)

<http://www.solentforum.org/resources/pdf/natconsv/Final%20Solent%20Visitor%20Report.pdf>

'(page 30) Transport mode and distance to site

2.36 The methods of transport used to travel to the interview location and the distance of the visitors home postcode was investigated and figure 6 shows the distance between the visitors home postcode and the interview location by the mode of transport. Visitors arriving by boat and train were omitted because of small sample size. Figure 5 shows the median distance between the interview location and home postcodes of visitors least for those visitors who arrived by foot. The distance from the interview location to home postcode of visitors arriving by car or motorcycle was the most far ranging.

2.37 Half of all visitors arriving on foot (referred to as "foot visitors") living within 0.7km, while half of all visitors arriving by car ("car visitors") live more than 4km away (Table 8). Only 9% of foot visitors live more than 2km away compared to 80% of all car visitors.

'(page 36) Relationship between housing density and visitor numbers

2.42 To investigate possible relationships between the number of houses in the Solent region and the number of visitors who lived within different buffer zones around all the surveyed sites were identified (figure 8). A greater number of visitors to survey locations were found in the nearer distance bands to each location, it is likely that this represents the number of visitors that arrive to each location by foot as their spatial distribution will be concentrated in comparison to visitors who arrive by car. Figure 6 shows that 80% of foot visitors live within 1.5km.

‘(page 37) Visitor numbers and housing density within fixed distances of access points

2.45 The total number of visitors at each site was significantly correlated to the number of houses present within 1km of the survey locations (where Spearman’s rank correlation co-efficient = 0.62, P=0.004) when considering the number of visitors to all sites. As the distance from access location increased the strength of the correlation between number of houses and number of visitors decreased not only in strength but also significance. However, beyond 1km additional factors to housing density influence visitor numbers and we may speculate these to be a combination of (and not exclusively restricted to) travel time, car parking spaces, aesthetics of the location and path quality.

2.46 Linear regressions using housing density within different distance bands as a predictor of visitor number were conducted to further explore any possible relationship. The regression analysis excluded the two outlying sites (Emsworth and Ryde) identified by the correlation analysis. There was a significant relationship between the number of houses within 1km, 3km and 5km of a survey location and the number of visitors (Table 10). With the number of houses explaining 53.6%, 43.3% and 40.6% of the variation in visitor numbers. At distances of 10km and over the relationship between housing density and number of visitors is less prominent and not significant. Figure 10 illustrates the link between houses within 1km of a survey location and visitors. It shows that survey locations with higher number of visitors had a higher housing density within the 1km distance band. The two outlier points which received a notably higher number of visitors than the other sampled sites are present on the graph. Figure 11 shows that at 15km there is no significant relationship between the number of houses present around survey locations in the Solent and the total number of visitor recorded.

‘(page 41) Visitor rates in relation to distance

Foot visitor rates

2.49 Figure 13 shows the overall average rate of visiting a survey location on foot in relation to the distance from home postcode to the survey location. All of the residents and all of the visitors were grouped into distance bands from the survey location, using bands of 0.5km, 1km or 2km as appropriate for the frequency of visits. For any particular distance band k , the foot visitor rate PkF was calculated as: Sum across all locations of the number of foot visitors living within distance band k divided by Sum across all locations of the number of residents living within distance band k of the location.

2.50 This measures the average number of visits made on foot from home per resident per 16 daylight hours and is given in 0.5km distance intervals in Table 12.

(page 42) 2.51 For residents living within the 500m of the survey location, the estimated average rate of visiting a site (per 16 hrs) on foot (0.069970) is more than ten times the estimated rate of visiting by car (0.006144), as might be expected for all except less mobile residents. However, for residents in the 1.5-2.0km band, the foot visitor rate has declined by 98% rate to only 0.001633 (per resident per 16 daylight hours), roughly equal to the car visitor rate (0.001743) for residents in that distance band. When 5km away, the estimated frequency of walking to a Solent coastal location is on average only 4 visits per 100,000 residents per 16 daylight hours, whereas the equivalent rate for car visits is roughly 19 per 100,000 residents.

‘(page 50) Discussion

3.3 A number of clear patterns have emerged from the on-site visitor surveys:

- 94% of people visiting the surveyed sites were local residents
- The most popular days to make a visit to the coast were weekends (with the number of visitors on a weekend day typically being around a third as much again as counted on a week day).
- The most popular time of day to visit was between 09:00 and 12:00.
- Walking was the most popular activity (44% of interviewees) and dog walking the second most popular (42% of interviewees). Dog walkers in particular tended to be regular visitors, with a quarter stating that they visit 'most days'.
- Visitor's motivation to visit a specific site varied depending on the interview location. The most popular response was 'close to home' where as one in five of interviewee responses commented on the attractive scenery and views.
- Visitors were also asked what features would be necessary to make another site attractive for use as an alternative to the site where they were interviewed and 34% of visitors indicated that nothing would deflect their use while 17% would be deflected by attractive scenery, 11% if the site were dog friendly and 11% if it were close to home.
- The split between how visitors arrived at the coast was quite well balanced with just over half of visitors (51%) arriving by car and 46% of visitors by foot. Half of all car visitors lived within 4.0km and 75% of car visitors lived within 9.1km of their interview location. Half of all foot visitors lived with 0.7km and 75% of foot visitors lived with 1.2km of their interview location. These distances did vary between site.
- The number of visitors to sampled stretches of coast was related to the number of houses around each access point.
- Models of car visitor rates using formal car parking provisions should also consider on road parking capacities within 500m of the access point.

(page 51) 3.6 The visitor monitoring has helped us identify where visitors come from to visit the coast, what activities they undertake, their motivation for visiting, how frequently they visit and what underlies people's choice of where they go. This understanding of visitation patterns is fundamental to underpin access management and green infrastructure provision in the future around the Solent. Such measures are important in order to ensure any impacts from recreation to the relevant European sites around the Solent are avoided or effectively mitigated. European sites are protected through the provisions of the Conservation of Natural Habitats and Species Regulations 2010 (SI no. 490), which transpose both the Habitats Directive (Council Directive 92/43/EEC) and the Wild Birds Directive (Council Directive 79/409/EEC) into UK law.

3.7 With respect to the impacts of access on relevant sites, Regulation 61 ensures that competent authorities can only agree to a plan/project which is likely to have a significant effect (alone or in-combination) after having determined that it will not adversely affect the integrity of any European site (subject to imperative reasons of (page 52) over-riding public interest and consideration of alternative solutions). Impacts associated with recreational activities that can be linked to plans or projects should therefore be avoided through the correct application of Regulation 61 by competent authorities. Regulation 61 applies to all European sites and therefore covers both SACs and SPAs (listed Ramsar features are also protected as a matter of government policy). New development and strategic development plans must therefore address any impacts of increased recreation to European sites.

3.8 Also relevant is Article 6(2) of the Habitats Directive, which requires Member States to take appropriate steps to avoid, in the SACs and SPAs, the deterioration of

natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated. Article 6(2) states that “member states shall take appropriate steps to avoid..... deterioration of natural habitats.... as well as disturbance of the species...”; the wording therefore puts a responsibility on the member state to address such issues where they arise.

3.10 It is not simply a matter of how far away visitors are drawn from on a regular basis; it is important to understand how access levels relate to disturbance, what proportion of residents (at a given distance) undertake visits which result in disturbance and to what extent that disturbance results in population impacts for the birds....

3.14 We have broken the coast up into a series of sections, and the household survey will generate a visitor rate to each of these sections. Many sections are quite broad and contain multiple access points. Our on-site work, for practical reasons, has focused very specifically on a sample of individual locations and access points, which hopefully will be representative of the use in the section as a whole. We envisage that the bird results will highlight the types of activity that need to be drawn out within the visitor analysis.

With the results of the household survey it should be possible to relate housing (at different distance bands from each section) to the number of visitors. The on-site work results will then allow us to determine how these visitors spread out within each section and how many people go out onto the intertidal (where potentially there is the most likelihood of disturbance to birds occurring). The household survey will also ask people why they visit particular sites and whether they go onto the beach or mudflat or into/onto the water at each of those sites; this will provide further information on frequency of potential bird disturbance events.'

8. The Upper Reaches of the Hamble/Curbridge Creek as an SSSI

(Source English Nature SSSI notification under Section 28 of the Wildlife and Countryside Act 1981 Dated:1987-88)

'Upper Hamble Estuary and Woods Site of Special Scientific Interest comprises the uppermost section of the estuary of the River Hamble and its flanking zones of saltmarsh, reedswamp and ancient semi-natural woodland...

*...A few small areas of unimproved neutral grassland occur along the river. Red fescue *Festuca rubra*, Yorkshire fog *Holcus lanatus*, tufted hair-grass *Deschampsia cespitosa* and *Agrostis* species dominate the swards. The rich flora includes dyer's greenweed *Genista tinctoria*, devil's-bit scabious *Succisa pratensis*, meadow thistle *Cirsium dissectum* and other species indicative of long established permanent pastures. The rare corky-fruited water dropwort *Oenanthe pimpinelloides* occurs.*

*The gradation from ancient semi-natural woodland to estuarine saltmarsh is a nationally rare feature. On the Hamble the upper saltmarsh is dominated by sea couch-grass *Elymus pycnanthus*. This grades into a mixed saltmarsh community containing common salt-marsh grass *Puccinellia maritima*, sea club-rush *Scirpus maritimus*, saltmarsh *Juncus gerardii*, thrift *Armeria maritima*, sea arrow-grass *Triglochin maritima*, sea purslane *Halimione portulacoides* and common cord-grass *Spartina anglica*. The saltmarsh supports the rare marshland beetle *Mecinus collaris* and the moth *Bactra robustana*.*

*Swamp and fen vegetation includes stands of reed sweet-grass *Glyceria maxima*, reedmace *Typha latifolia*, grey club-rush *Schoenoplectus tabernaemontani* and common reed *Phragmites australis*. The reedbeds support breeding populations of reed and sedge warblers whilst great crested grebes frequent the reed-invaded sheltered bays.*

At low water there is a narrow zone of mudflats, more or less concave in profile, between the terminal cliffs of the saltmarsh and the river channel. The muds are rich in fine particulate matter and organic detritus and in common with similar muds elsewhere in south-east England, support large populations of marine worms, crustaceans and molluscs. Hence they provide a feeding ground for several species of shorebirds including a variety of waders, ducks and the grey heron'.

9. The Thames Basin Heaths (TBH) Assessment's Relevance to Upper Hamble Estuary and Woods SSSI (part of the SPA)

The importance of the TBH Assessment was not, in law, just about the 3 Annex 1, ground nesting, species of the Dartford Warbler, the Nightjar and the Woodlark; nor was it actually specific to their habitat of the Heaths.

What it was primarily about was setting/clarifying guidelines for: -

- **the lawful protection of Designated Species in the SPA that are ground nesting/roosting birds;**
- **lawfully protecting the integrity of the designated Special Protection Areas that they inhabit;**
- **lawfully protecting those birds from increased detrimental impacts from:**
 - o **known predators, and**
 - o **the human disturbance of nests by the increased recreational pursuits of extra people from new housing development using those protected sites.**

10. Protection and the 'Precautionary Principle'

There are five general principles on the application of the precautionary principle with particular regard to SPAs and other European protected sites, as accepted by the Principle Planning Inspector Peter Burley in his Report on the Thames Basin Heaths SPA in 2007; which we believe have been ignored so far in the progressing of this proposed development.

These are:

<ul style="list-style-type: none"> • Proportionality 	<p>measures must not be disproportionate to the desired level of protection and must not aim at zero risk;</p>
<ul style="list-style-type: none"> • Non-discrimination 	<p><u>comparable situations should not be treated differently</u> and, different situations should not be treated in the same way,</p>

	unless there are objective grounds for doing so;
<ul style="list-style-type: none"> • Consistency 	<p><u>Measures should be consistent with the measures already adopted in similar circumstances or using similar approaches.</u> If the absence of certain scientific data makes it impossible to characterise the risk, the measures should be comparable in nature and scope with measures already taken in equivalent areas;</p>
<ul style="list-style-type: none"> • Examination of the benefits and costs of action or lack of action 	<p><u>a comparison must be made between the most likely positive or negative consequences of the envisaged action</u> and those of inaction in terms of the overall cost in the long and short term.</p>
<ul style="list-style-type: none"> • Examination of scientific developments 	<p><u>the measures should be maintained for as long as the scientific data are inadequate, imprecise or inconclusive and as long as the risk is considered too high to be imposed on society.</u> Scientific research should be carried out with a view to obtaining a more advanced or more complete scientific assessment.</p>

Lack of Consistency and Discrimination of Application

There is no consistency in the development of ‘North of Whiteley’ MDA with parts of the site which are within 20 meters of the SPA and the findings of the Planning Inspectorate Assessor from the report for the Thames Basin Heaths DDP for a 400m exclusion zone.

There is also no consistency with the Planning Inspectorate’s recommendations about significant or major developments (over 50 houses) and the 5km minimum travel distance from the curtilage of that development and an SPA.

The TBH Assessor’s report (4.1.5 – 4.1.7) states that *“The aims of the European legislation are transposed into UK law in the Habitats Regulations. In particular, Regulation 48(1) makes clear that if a plan or project is likely to have a significant effect on a European site in Great Britain (either alone or in combination with other plans or projects), and it is not directly connected with or necessary to the management of the site, the competent authority shall undertake an appropriate assessment of the implications for the site in view of its conservation objectives...*

“Regulation 49 transposes the requirement of Article 6(4) of the Habitats Directive requiring imperative reasons of overriding public interest for agreeing to a plan or project where there is a negative assessment and no alternative solutions. Regulations 50 and 51 cover the review of existing decisions and consents and Regulation 55 allows for conditions or limitations to be imposed on planning

permissions where this is necessary to avoid any adverse effects of the plan or project on the integrity of the European site...

“Again these regulations do not define what is meant by “the integrity of the site”. However, paragraph 20 of ODPM Circular 06/2005 defines the integrity of the site 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 levels of populations of the species for which it was classified.”

On the question of zones the Assessor stated the following:

“Conclusions (4.7.19) I conclude that the boundaries of the zones should be defined by travel distance rather than by linear distance. I find the 400 metre boundary for Zone A is robust and does not need to be modified, except to take into account any permanent barrier to the movement of cats. In contrast, the definition of Zone B is not justified and I consider it should be reduced to 1 kilometre. The definition of Zone C is reasonable but larger residential developments in between 5-7 kilometres from the SPA should also be individually assessed to ascertain whether or not they would have an adverse impact on the SPA.”

11. Whiteley Extension Consultation Issues

WCC appear to have been putting the ‘cart before the horse’ not just by putting 32% of its overall housing requirements into a single proposed development – but also by having *already* granted planning permission for a, disproportionately sized *new - proper* ‘Town Centre’ for the existing ‘village’, of Whiteley – we wonder how, to prevent another Whiteley ‘*White Elephant*’, ensuring its sustainability appears to have already predetermined planning expectations/decisions.

In the 2005 “Where Shall We Live?” PUSH consultation, under the emerging S.E. Plan that was responded to by only 1.5% of Hampshire residents, there was the following about a Whiteley Extension:

“Urban Extensions

4.49 *Respondents were asked: “Around 12,500 new homes are proposed on greenfields elsewhere in South Hampshire. There are three Options for locating this housebuilding. Which do you support?”*

4.50 Option A: *5,000 in Winchester District (mainly as extensions to the west of Waterlooville and to the north of Whiteley);*

Option B: *7,000 in Winchester District (mainly as a larger extension to the west of Waterlooville and an extension to the north of Whiteley);*

Option C: *8,200 in Winchester District (mainly as extensions to the west of Waterlooville and to the north of Whiteley);”*

There were only 3 options and they all included Whiteley and specifically ‘North of Whiteley’ as well as West of Waterlooville – a *fait accompli*.

Residents of Curbridge (apart from the landowners wanting to develop their farmland) were unaware of the 2008/9 Preferred Option consultations – and only discovered this proposal because of a leaflet being put up in the local pub in March 2010 announcing the Development Forum’s first meeting.

It appears that there has been predetermination in the provision of housing at Whiteley. This had not been revisited as a result of the Blueprint consultation it was

specifically excluded from it, as minuted at the WCC Cabinet LDF meeting despite the announcement of the revocation of the S.E. Plan and the new Localism Bill. Cabinet paper CAB2040 for 22 July 2010 stated in recommendations and resolved in the minutes of that meeting (Minute/LDF/100722) : -

- (iv) *to continue the development strategy for the PUSH part of the District proposed in the Core Strategy Preferred Option, of meeting large-scale housing requirements through strategic allocations in the 'South Hampshire Urban Areas' spatial area (including at West of Waterlooville and Whiteley);*
- (v) *to undertake research and consultation to determine the local housing needs and requirements for the 'Winchester Town' and 'Market Towns and Rural Area' parts of the District (including that part within PUSH);*

Therefore any attempt at localism (looking past the demising SE Plan and looking to future legislation) in the planning process was ignored, in the much vaunted Blueprint consultation, for 32% of the expressed housing need for the next 20 years.

Interestingly.... CPRE reported in their letter to Fareham BC in response to that Borough's Core Strategy/SDA...

"The Localism Bill was placed before Parliament on 13th December 2010, the Government expects the Bill to complete the Parliamentary procedures and become enacted before the end of 2011. It contains the provisions to enable the abolition of the Regional Strategies.

Accompanying the Bill is a Government Document called the 'Decentralisation and the Localism Bill: an essential guide' (CD/9.9). This reiterates the pre-election pledge 'to empower communities to do things their way', by radically reforming the planning system 'to give local people new rights to shape the development of the communities in which they live'.

In response to any suggestion that the localism agenda will merely be a means by which communities can hold back development the guide comments that 'The only way forward is to embrace decentralised development that is not merely accepted but actually led by local communities – because local people get to share in the benefits.' It also states the Government's belief that 'the freedom of local communities to run their own affairs in their own way should be seen as a right to be claimed, not a privilege to be earned.'

Winchester City Council has interpreted the Localism Bill in the following manner:

*"The 'Blueprint' community engagement process recently undertaken by the Council reflects the Government's localism agenda. **It is the first stage in identifying community aspirations and priorities** and will be backed by further up-dated evidence studies to determine local housing requirements after further consultation with the local communities.*

*The Secretary of State indicated that authorities may make decisions 'without the framework of regional targets'. This is to fulfil the election pledges of the coalition Government **to allow local communities to take a more positive role in shaping the neighbourhoods in which they live rather than having development imposed upon them.***

The outcomes of a community engagement process, which is clearly what the current Government seeks to encourage in its Localism Bill, should not be predetermined.... To do so would thwart the stated intentions of the elected Government, and the express wishes of the local community. It would be a glaring example of a top down development being imposed on a local community, at a time when Parliament is legislating to stop this happening.” ’

It was only in the “Plans for Places....after *Blueprint*” consultation on WCC’s statement of direction that any question over the ‘South Hampshire Urban Areas’ was allowed to be raised in Question 5: -

“Do you agree that our strategy to deliver the majority of the development requirement for the Winchester District portion of the PUSH area should be to focus on large urban extensions at West of Waterlooville and Whiteley? If not, what alternative do you suggest and why?”

It seems absurd that the residents are being asked to redesign or suggest options for 5,500 homes (2,500 of which have already got planning consent) and the LDF some mere three months before the aimed for, final, pre-submission consultation in November 2011.

Surprisingly Mr Tilbury (WCC Corporate Director Operations) publicly stated at the North of Whiteley Development Forum of 18 July 2011 that:

“the new town centre [shopping] for Whiteley was granted planning consent in anticipation of this MDA being developed.”

So WCC has already predetermined all normal planning conclusions over the ‘proposed’ MDA.

12. Housing, Options and Alternatives

Housing need/provision analysis

Needed district-wide development (excluding Winchester Town – 4,000) is 7,000 dwellings...

West of Waterlooville MDA (WoW)	2,500
‘North of Whiteley’ Proposed MDA*	<u>3,000 – 3,500</u>
Sub total	5,500 – 6,000
Plus PUSH MTRA policy	<u>1,150 – 1,800</u>
Subtotal	6,650 – 7,800

* North of Whiteley anomaly – potential development up to 3,500 according to WCC

Add	
Non-PUSH MTRA	<u>550 – 700</u>
Total	7,200 – 8,500
Total ‘over-supply’ (excl levels 3 and 4 provision)	200 – 1,500

If the SDNP requirement is removed from WCC’s provision as the National Park will have its own LDF

Over-supply of new dwellings is increased to 1,300 – 2,600!

PUSH region need (from Housing Tech Report)	3,350
less 2,500 at WoW	<u>-2,500</u>
leaves	850!

MDA/PUSH ‘over-supply’ to its needs of 3,350 (6,650 – 7,800) 3,300 – 4,450

Spatial distribution of current housing population related need (excluding level 3 and 4)

	No. Houses	%age of Need
SDNP (40% area of District)	0	= 0% of 1,100
Non-PUSH MTRA	550 – 700	= 22 - 28% of 2,500
Winchester Town	4,000	= 100% of 4,000
PUSH Area (25% area of District)	6.65 – 7.8K	= 198 – 232% of 3,350

So this development is not required in terms of need of housing provision, it is purely political.

Options

Whilst there might be issues of settlement gaps for Whiteley, Area 3 towards Funtley amongst others, we believe that this option was too readily discounted considering the, known about, biodiversity issues of ‘North of Whiteley’ and the nearby Upper Hamble Estuary/Curbridge Creek part of the SPA; which is the only one in the Winchester District and has two other levels of European legal protection as well as national protection as an SSSI.

We also believe with the moves for a 1FE primary and 4FE Academy being progressed, independently, that the schools issue for Whiteley has a potential resolution. The LPA should be actively engaging in positive communications and support of this option.

There is no overriding need for 3,000 – 3,500 houses within 1.2km of the SPA and having 1 or 2 road exits within 400m of the SPA.

Therefore there are alternative options for the LPA.

We also have concerns as the Horse and Jockey, as a charming riverside pub located at the main local access point to the SPA, will naturally draw in new residents of the MDA to the detriment of the SPA and with regards to designated species of waterbirds, occurring at other times of the year and some remaining resident, and their ability to successfully rear young or benefit the migratory birds due to human and pet disturbance of these ground nesting/roosting birds.

A significant increase in estuary fishing, which requires no rod licence (about 3 million people go fresh/salt-water fishing a year), would also be expected from an increase in local housing provision and the Hamble includes Bass, Grey Mullet, Thick Lipped Mullet, Sea Trout etc which all provide hard fighting fish when hooked, will put added pressure on the SPA. As the water is tidal this would also include night fishing which would potentially significantly increase accidental nest trampling and other disturbance in the dark.

We have made our Parish Council for Curdrige and Curbridge very well aware of our research with regards to all the issues that this SPA brings up and shared our

grave concerns with them over the lawfulness of a massive building project so close to this very sensitive part of the Solent and Southampton Water SPA. We most strenuously suggest that the City Council should undertake a serious review of the status of this proposed development in the light of the information provided to them, before it is too late; and they conclude that it is not lawful to continue with this project.

13. Conclusions

This proposed MDA should be recognised by WCC for what it is – unlawful.

The important designation is that of assemblage under the specific issue (Directive 2009/147/EC Article 4(2) of being a “Wetland Site of International Importance” and the JNCC validated designation of waterbird species that contribute to the 50,000+ birds assembling in the SPA (designated species attached in appendices).

Especially in the light of the Solent Wader and Brent Goose Strategy (2010), the findings of the ongoing Solent Disturbance and Mitigation Project, the Thames Basin Heaths Planning Inspectorate Assessment and the over-riding similarities in terms of nesting/roosting habits, the impact of human recreational use of the SPA and also considering the effects of cat predation.

Any of these issues, jointly or severally, or the combination of all of these issues would cause significant negative impacts to the SPA being able to fulfil its objectives.

Also WCC’s own Housing Technical Paper shows a potential District wide over-supply of some 2,600 dwellings when only the MDAs, and Level 1&2 MTRA provision is analysed – this MDA is not required.

- I. The specific designation of the SPA under Directive 2009/147 EC (replacing the earlier 79/409/EEC) applies equally to all its constituent SSSIs and that they do not have separate designations as they are part of the overall SPA, and that all the component SSSIs comprise and underpin the entire SPA; this has been confirmed by a Senior Advisor from Natural England.
- II. The comment at the bottom of the JNCC page on the SPA description “*Note that sites selected for waterbird species on the basis of their occurrence in the breeding, passage or winter periods also provide legal protection for these species when they occur at other times of the year*” means that the species under overwintering and assemblage designations have full legal protection at other times of occurrence i.e. breeding season; this has also been confirmed July/August 2011 by Natural England (*Senior Advisor – International Site Designations*) and therefore ground nest disturbance and predation of young by domestic cats would be a concern, and legally protected against for the whole SPA including this constituent SSSI. As a result similar exclusion zones to TBH have to be legally provided.
- III. Article 4 (2) of the 2009 Directive states: “*Member States shall take similar measures for regularly occurring migratory species not listed in Annex I... To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance*”. Article 4 (4) states: “*In respect of the protection areas referred to in paragraphs 1 and 2, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or*

deterioration of habitats.” This Wetland of International Importance is being ignored, by definition, in this proposed development.

- IV. In addition to this the scientific evidence, gained from the BTO ‘WeBS’ official bird counts, demonstrates through 5 year mean and peak that a wide variety of the designated waterbird species are resident including during the breeding period; therefore the site has year round legal protection for all those designated species on occurrence. As this includes the breeding season and they are a ground nesting designated species then TBH Assessment criteria should apply. It is not a site that only has ‘over-wintering protection’ as claimed by the developers.
- V. In terms of the bird count and therefore scientific data for the site – this is incomplete, for instance Black-tailed Godwits are seen in the count area every month other than May and June – the threshold for breeding SPA designation, *Limosa limosa limosa* and *L. l. islandica* is 1 pair, with a UK breeding population of maybe 50 (34 according to JNCC data sheet) pairs the count area of this part of the SPA shows (5 year Peak) 81 in April, 2 in July, and 13 in August; however 1/3 of the waterway constituent SSSI within the SPA has not been counted and therefore there is no scientific evidence to suggest whether they are in other areas of this constituent part of the SPA and whether they are breeding or not; considering breeding birds nest from mid April. Species information gives the following: - *“Departures from breeding grounds begin late June, with major exodus in July, and principal passage through Europe mid-July to September. Return movement begins February. In north-west Europe, numbers increase during February and March, and breeding sites reoccupied mid-March to mid-April; April to early May in north-east.”* (http://www.avibirds.com/euhtml/Black-Tailed_Godwit.html). The current scientific data is unsound and therefore the precautionary principle must apply.
- VI. Paragraph 20 of ODPM Circular 06/2005 defines the integrity of the SPA site 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 levels of populations of the species for which it was classified”*. The SPA and its constituent SSSIs must be considered as a whole.
- VII. Under the consistency test the SPA site, including Curbridge Nature Reserve/Upper Hamble Estuary and Woods, should have similar zonal protection from development as applied to the TBH as per the Inspectorate’s Assessment.
- VIII. Under the non-discriminatory test similar zonal protection should also apply.
- IX. Under PUSH GI Strategy adopted 2010 *Objective 5: “Contribute to the mitigation of the impacts of growth on European sites using buffer zones, providing alternative recreation destinations and reducing the effects of coastal squeeze by providing new habitat sites.”* As explicitly mentioned in this adopted strategy zonal protection should apply (the PUSH strategy also specifically mentions TBH elsewhere in relation to this SPA).
- X. We are aware that the most recent National Trust Biological Evaluation (2004) reports that the land on the southern side of the River (which is accessed by footpaths and by the car park at the Horse and Jockey Pub) is already heavily used and that The National Trust as the land owners and site managers feel that it has no real capacity for any increased footfall; which would cause a significant detriment to the integrity of the site (both SPA and SAC designations). To allow this development would be against Article 4 (4) of the Directive 2009/147 EC in terms of *“...Member States shall take appropriate steps to avoid pollution or deterioration of habitats...”*
- XI. The Solent Waders and Brent Goose Strategy (2010) draws a statistically valid correlation between the significant development of land near an SPA (500m – 2,500m) and the reduction of suitability of that site for use, including

- feeding/roosting, by waders. Therefore a similar zonal approach for major development should be used, as per TBH, to ensure the suitability of this site for designated assemblage wading birds – resident and migratory; otherwise the ability of the SPA to achieve its objectives will suffer significant detriment.
- XII.** This 3000 - 3500 new dwelling development represents (at an average of 1.5 ppd, WCC's figures) an 8,750% increase in the local population (current SO30 2HB postcode area). A proportionate increase in visitor footfalls to local population as determined by the Solent Disturbance and Mitigation Project (2010) would be highly detrimental to this site's integrity.
- XIII.** The Solent Disturbance and Mitigation Project (2010) also confirms a clear link, as found in the Thames Basin Heaths and other heaths studies, between increased recreational use of an SPA and the proximity of residential development. i.e. that 94% of people visiting the surveyed sites were local residents; at a travel distance of 1.5km or more the footfall rate dropped by 98%; and that 50% of the of car using visitors lived within 4km, 75% within 9.1km. The whole of the built development will be within 1.2km (as the crow flies) of the SPA. The curtilage of the proposed development will be within 400m. This again supports the need for a similar zonal approach based on TBH for significant developments distance to minimise the risk of disturbance by these potential extra visitors.
- XIV.** Until the final results of the Solent Disturbance and Mitigation Project are known and/or qualified the scientific basis for an assessment of 'no negative impact' on this part of the SPA would be unsound and the precautionary principle should be used. This is especially in consideration to the historic lack of data from a relatively significant area of this contributory SSSI to the SPA.
- XV.** The 'in combination' effects of a potential further 2400 homes being proposed just north of Botley (within 5km travel distance of the SPA) needs to also be considered in the assessment of impacts on this protected site.
- XVI.** The two new exits will also create an exit for the existing 3000 homes of Whiteley within 2km distance travelled of the SPA. As a result of this project this 'in combination' effect further supports the need for a TBH based zonal approach for significant developments of 5-7km distance from the curtilage to minimise the risk of these potential extra visitors.
- XVII.** Natural England Development Framework for the TBH SPA stating the following: - *"4.5 Within 400m of the SPA (measured as the crow flies from the SPA perimeter to the point of access on the curtilage of the dwellings) the impact of net new residential development on the SPA is likely to be such that it is not possible to conclude no adverse effect on the SPA. This must be heeded.*
- XVIII.** The conclusions of the Assessor's Report were: - *"8.2... I consider that the provision of a significant scale of additional housing within 5km of the SPA would be likely to have a significant effect in combination due to the potential for increased recreational pressure on the SPA. Consequently, I conclude that it is necessary to have an interim strategic avoidance and mitigation strategy for the SPA. 8.3 However, this only needs to cover larger developments of more than 10 houses within 5 kilometres of the SPA or smaller developments of less than 10 houses within 1 kilometre of sensitive areas of the SPA. Zone B should therefore be reduced to 1km. Developments of over 50 houses within 5-7 kilometres of the SPA should be individually assessed..."* Similar zonal approaches to this part of the SPA have to be given significant consideration and then implementation.
- XIX.** Because the WeBS count data only covered 2/3s of this constituent SSSI of the SPA the scientific data is incomplete and no satisfactory assessment of impact to the SPA and its designated species can be determined including as to what are not sensitive areas; although it is confirmed that it does have protected species year round, accessible within 400m of the development site's Area 1.

- XX. With the predicted loss of saltmarsh elsewhere in the Solent area [812 ha over the next 100 years, Channel Coastal Observatory, 2008], the Upper Hamble Estuary's saltmarsh is going to become an even more important habitat for the designated species.
- XXI. **Finally, and in law, as waterbirds all the designated species of this SPA, at any time of their occurrence, no matter what designation they originally came under, whether Annex I, over-wintering or assemblage, are fully protected within this site, including their protection from disturbance and if breeding.**

WeBS Data: Data were supplied by the Wetland Bird Survey (WeBS), a partnership between the British Trust for Ornithology, the Royal Society for the Protection of Birds and the Joint Nature Conservation Committee (the latter on behalf of the Council for Nature Conservation and the Countryside, the Countryside Council for Wales, Natural England and Scottish Natural Heritage) in association with the Wildfowl and Wetlands Trust.

Appendices (Attached Folder):

SPA Species Designations (pdf) from JNCC's website

Common Tern *Sterna hirundo*,
Little Tern *Sterna albifrons*,
Mediterranean Gull *Larus melanocephalus*,
Roseate Tern *Sterna dougallii*,
Sandwich Tern *Sterna sandvicensis*,
Dark-bellied Brent Goose *Branta bernicla bernicla*,
Gadwall *Anas strepera*,
Teal *Anas crecca*,
Ringed Plover *Charadrius hiaticula*,
Black-tailed Godwit *Limosa limosa islandica*,
Little Grebe *Tachybaptus ruficollis*,
Great Crested Grebe *Podiceps cristatus*,
Cormorant *Phalacrocorax carbo*,
Dark-bellied Brent Goose *Branta bernicla bernicla*,
Wigeon *Anas penelope*,
Redshank *Tringa totanus*,
Pintail *Anas acuta*,
Shoveler *Anas clypeata*,
Red-breasted Merganser *Mergus serrator*,
Grey Plover *Pluvialis squatarola*,
Lapwing *Vanellus vanellus*,
Dunlin *Calidris alpina alpina*,
Curlew *Numenius arquata*,
Shelduck *Tadorna tadorna*

Upper Hamble Estuary and Woods SSSI designation;
Emails JNCC/Natural England Emails re protection of SPA Species and Time of Occurrence;
JNCC/NE SPA designation as published 2001;
Solent and Southampton SPA/SAC objectives.