

Thank you for the opportunity to respond to the material changes and content of the WCC Submission Document to the Planning Inspectorate.

Despite these changes we still find the Local Plan Part 1 unlawful on environmental grounds with regard to both European and UK law as itemised in our detailed response to the Pre-Submission Consultation.

There are a few brief comments we would take this opportunity to make with particular reference to Policy SH3 North of Whiteley:

1. In “Local Plans and the National Planning Policy Framework Compatibility Self- Assessment Checklist

Part 11. Conserving and enhancing the natural environment (paras 109-125)”

WCC State: *“Policies reflect the Hampshire Biodiversity Action Plan and the Green Infrastructure policy CP15 has been developed in association with adjoining authorities in the PUSH area...”*

However there is no recognition given to the necessary impacts of **NPPF para 119: “The presumption in favour of sustainable development (paragraph 14) does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined.”**

We would also reiterate the UK government policy (following the 2001 SPA Review) for **waterbirds** is that SPA designated features are protected at any time of their occurrence, not just at the time of their designation so full SPA protection applies to the habitat at all times of the year protecting all relevant phases of the lifecycle. This has been presented to, and accepted by, the European Commission as confirmed by DEFRA.

This is further supported by the JNCC UK SPA SCIENTIFIC WORKING GROUP 2001-2002 ANNUAL REPORT minutes which state in point 3.9.3. “Defra circulated a letter outlining its opinion that the provisions of Articles 6(3) and 6(4) of the Habitats Directive apply to an SPA all year round, despite whether the qualifying birds are present or not.”

We would also draw attention to the fact that SPA designated features do use the whole of the area of this part of the SPA, despite the developer consortium’s public assertions to the contrary, as on Tuesday 3 July 2012 three (3) Black-Tailed Godwits were seen feeding in the intertidal mudflat by the bridge at Curbridge by one of the Curdrige Parish Councillors.

European case law as described in the **NATURE AND BIODIVERSITY CASES RULING OF THE EUROPEAN COURT OF JUSTICE: -**

(http://ec.europa.eu/environment/nature/info/pubs/docs/others/ecj_rulings_en.pdf)

The following aspects are most pertinent to the material changes made by WCC: -

2.3. Obligations of special conservation measures of species habitats: legal protection regime of special protection areas (SPA)

2.3.1. Classification of SPA and providing them with a legal protection

*“In particular, the interests referred to in Article 2, **namely economic and recreational requirements do not enter into consideration**, as that provision does not constitute an*

autonomous derogation from the general system of protection established by the Directive. (C-355/90, Commission v. Spain – ‘Santoña Marshes’) ”

The same part continues ***“Member States may not take account of economic requirements in so far as they amount to imperative reasons of overriding public interest of the kind referred to in Article 6(4) of the Habitats Directive, as inserted in the Birds Directive. (C-44/95, United Kingdom – ‘Lappel Bank’)”***

3.2.2. Avoidance of deterioration, page 34 (C-127/02– “Waddenvereniging and Vogelbeschermingsvereniging”)

“Article 6(2) of the Habitats Directive, in conjunction with Article 7 thereof, requires Member States to take appropriate steps to avoid, in SPAs, the deterioration of habitats and significant disturbance of the species for which the areas have been designated. Article 6(3) of the Habitats Directive provides that the competent national authorities are to authorise a plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon only after having ascertained, by means of an appropriate assessment of the implications of that plan or project for the site, that it will not adversely affect the integrity of the site. That provision thus establishes a procedure intended to ensure, by means of a preliminary examination, that a plan or project which is not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site. The fact that a plan or project has been authorised according to the procedure laid down in Article 6(3) of the Habitats Directive renders superfluous, as regards the action to be taken on the protected site under the plan or project, a concomitant application of the rule of general protection laid down in Article 6(2). Authorisation of a plan or project granted in accordance with Article 6(3) of the Habitats Directive necessarily assumes that it is considered not likely adversely to affect the integrity of the site concerned and, consequently, not likely to give rise to deterioration or significant disturbances within the meaning of Article 6(2).”

Further the same publication states:

“3.2.3. Assessment of plans and projects and compensatory measures

Article 6.3 and 6.4 According to the case-law of the Court:

Article 6(3) of the Habitats Directive establishes a procedure intended to ensure, by means of a preliminary examination, that a plan or project which is not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site, while Article 6(2) of the Habitats Directive establishes an obligation of general protection consisting in avoiding deterioration and disturbances which could have significant effects in the light of the Directive's objectives, and cannot be applicable concomitantly with Article 6(3).”

And continues with: ***“The Directive does not distinguish between measures taken outside or inside a protected site. Therefore the definition of ‘project’ in national legislation which refers to acts carried out outside a protected site cannot be narrower than that which concerns projects carried out within a protected site. (C-98/03, Commission v. Germany)”***

Clearly Policy SH3 North of Whiteley has required an Appropriate Assessment under both Directives as well as UK statute. We would also like to stress that as a ‘Wetland of

International Importance' (RAMSAR site) the Upper Reaches of the Hamble qualify for enhanced protection measures under the Birds' Directive.

The Preservation Society would also suggest that policy SH3 is in direct contradiction to policy CP16 in terms of the European site, the risks to protected species (e.g. the dormouse, kingfisher [Annex 1 species] etc), and the loss of SINC's within the proposed development area. CP 16 states "...new development will be required to show how biodiversity can be retained, protected and enhanced through its design and implementation..."

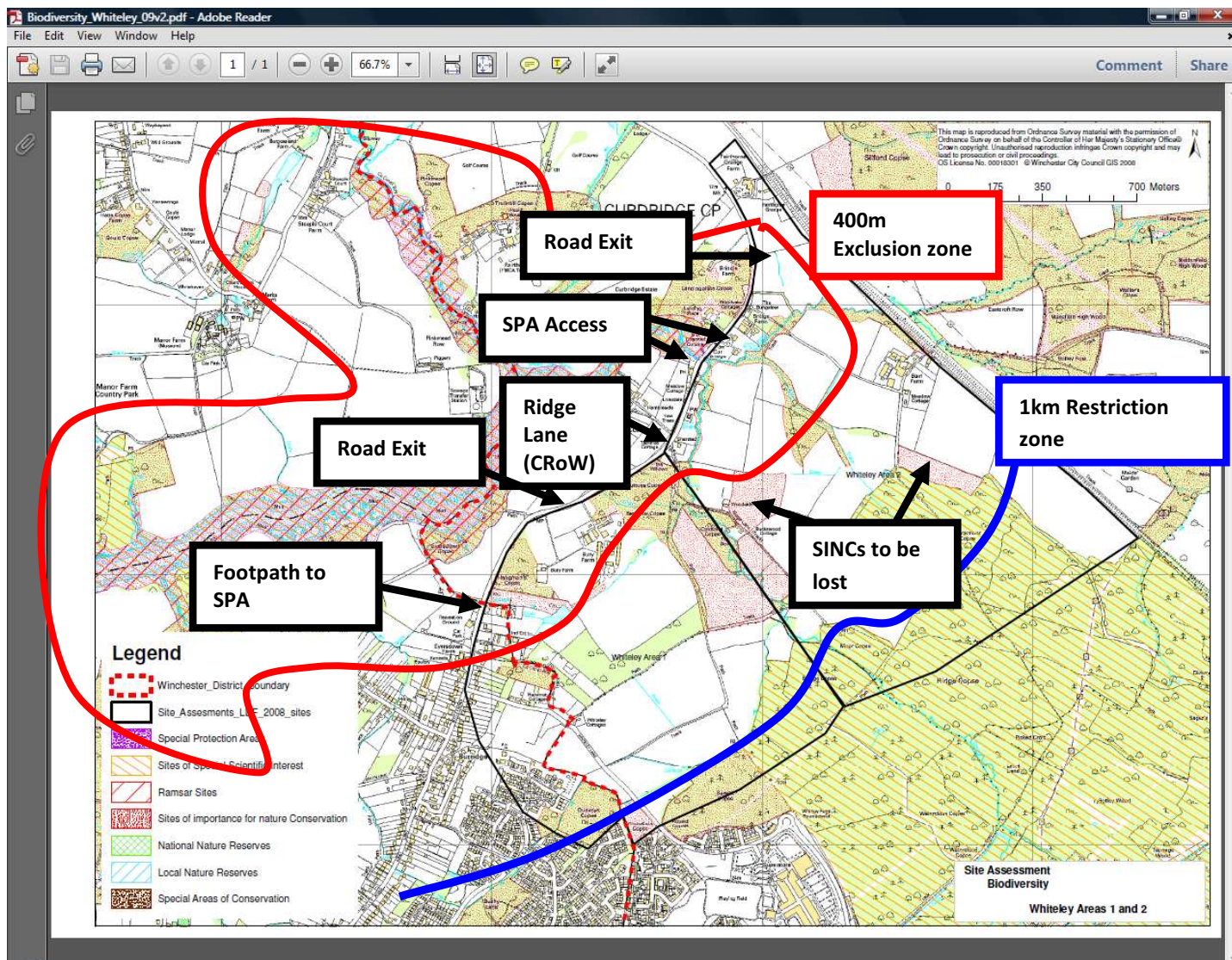
Further WCC is still in breach of the formally adopted PUSH Green Infrastructure Strategy (Objective 5) which is designed to *"Contribute to the mitigation of the impacts of growth on European sites using **buffer zones**, providing alternative recreation destinations and reducing the effects of coastal squeeze by providing new habitat sites."* We also note that the modifications ignore the Brent Goose and Solent Waders Strategy (2009) that is informative to the PUSH biodiversity measures (Appendix C: Review of relevant programme page C4).

Buffer zones are as detailed in Thames Basin Heaths [TBH], suggested as above in the PUSH GI Strategy, and need to include travel to SPA distances from the curtilage of a development to reduce the potential of damage from increased recreational use, to further help with the mitigation from large scale development. Interim Visitor Survey (travel distance to SPA) findings for the Solent Waders Disturbance and Mitigation Project (Phase 2) correlate to those of Thames Basin Heaths at a statistically significant level; further enhancing the need for similar buffer zones/zones of influence.

A 300m – 500m access from the curtilage of the proposed development by foot, car, cycle, with/without dogs, to canoe, fish, walk, mountain bike etc by road and CRoW access is still woefully inadequate especially considering the precautionary principle and the expected in-combination effects of other proposed development in Eastleigh and the statutory requirements. Therefore alternative access/egress points need to be identified.

We would also stress the allure of the riverside pub which will attract people down to the SPA and then engage in recreational pursuits within the protected areas. An on-site dog friendly walking area is a welcome addition, but somewhat inadequate.

This objective 5 as identified in table 5.1 (p42) of that strategy confirms that the PUSH initiative will deliver against that objective in this area of the sub-region; yet Winchester failed to identify the Upper Hamble as an SPA/SAC in the Green Infrastructure Strategy Appendix B: HRA issues identified from LDFs in the sub-region in June 2010 stating in that report: "No mitigation at this stage in HRA process" (page B4).



We are pleased to see the inclusion of the following comment in the Submission document's changes: *"The mitigation measures will need to be consistent with both the PUSH Green Infrastructure Strategy, and the Solent Disturbance and Mitigation Project, once it is completed, which might require further off-site measures to mitigate potential impacts. The full package of measures should demonstrate that harmful impacts on any European site would be avoided or adequately mitigated, otherwise the scale of the development would need to be reduced accordingly."*

This ignores the Brent Goose and Solent Waders Strategy (2009) and appears to be somewhat at odds with the siting of the proposed development so close to an SPA where its very location (as seen from that strategy's research results) will cause that part of the SPA to be less suitable for waders to use it. Page 9 Solent Wader and Brent Goose Strategy shows that there is a statistically valid correlation demonstrated between increased nearby development and unsuitability for waders to use a designated site – therefore an indication that to develop Policy SH3 in accordance with this proposal would in itself cause significant detriment to SPA/SAC and its conservation objectives – as shown in the Wildlife Trust's Table

	Waders	
Factor	More suitable	Less suitable
Area of buildings (m ₂) within 50m zone*	No buildings in this zone	Buildings in this zone
Area of buildings (m ₂) within 50-500m zone*	No buildings in this zone	Buildings in this zone
Area of buildings (m ₂) within 500-2500m zone*	No buildings in this zone	Buildings in this zone

We would again stress the very recent use of the SPA at the bridge in Curbridge by SPA designated features.

However a significant concern is that in early 2012 WCC stated at a North of Whiteley Development Forum meeting on the subject of adopting the final findings of the Solent Waders Disturbance and Mitigation Report being fully complied with (before it has been finished)

The following codicil was expressed that they *'couldn't sit on their hands and wait for the report to be finished'* rather that planning application would be determined as soon as possible. This with a determination to, as initial development phases, start building at the Botley Road (A3051) junction and Bury Farm (A3051 exit); areas which would cause the greatest impact to potential visitor number increases to the SPA through a lack of buffer zones and mitigation.

Further to this point we would stress that the recreational use of the SPA in the area around Botley, Burridge and Curbridge is at saturation point with over 15,000 children (source YMCA 2012) and young people using the facilities at YMCA Fairthorne Manor per annum, including very significant levels of use of the river, and planning consent has just been given by WCC for a publicly accessible campsite in the YMCA's grounds.

2. WCC clearly state *'but the site should be capable of delivering at least 3,000 new dwellings. The final figure may exceed 3,000'* and later made the following change: *"New Insert new paragraphs after policy SH3: Proposals for the development of this site are being prepared... If at some point in the future it becomes clear that the site is failing to deliver the level of housing proposed, the implications for the Council's ability to ensure adequate housing land supply across the District will be assessed."*

This clearly suggests that WCC are expecting to have the northern extension of Whiteley have the same reduced level of interest/uptake as was demonstrated with the original Whiteley development, which reduced its number of dwellings by approximately 25% this gives rise to concern over all the expressed levels of housing numbers and particularly their distribution as proposed in the Local Plan Part 1. The June/July 2012 edition of the WCC e-publication 'Parish Connect' gave a snapshot of the 2011 census results and the change since 2001: -

"The total number of households has increased by 3,762 (also 8.7%) from 43,138 to 46,900. Only four age groups have shown a decline in their numbers over the past 10 years. These

are the 25-29, 30-34, 35-39 and 50-54 age groups. **The age group with the largest increase is the 60-64's (up 2,369 or 44.4%).**"

This result again gives concern that this extent of development is disproportionate to need as it would suggest that in the plan period only 8,000 dwellings are required across the whole district, as well as the distribution being unsustainable.

It also raises concerns over the wisdom of this proposed development so close to the most protected site in the District as well as its ability to be able to deliver the suggested infrastructure with this uncertainty, let alone all aspects of its sustainability.

3. WCC Made the following change: - Add new bullet point after bullet 6: *"avoid harmful impacts on water resources, given the proximity of the site to European sites of nature conservation interest. The development should provide a fully integrated Sustainable Drainage System to mitigate against any potential flood risk and apply a flood risk sequential approach to development across the site"*.

At the last time of requesting sight of this, WCC confirmed that they still had not looked at the SuDS system's design, its adequacy and were prepared to ensure it remained confidential to the consortium so it could not be assessed by outside bodies. Therefore we have no assurance of it being 'fit-for-purpose' and being able to protect existing properties in the grade 3a floodzones in Curbridge or to 'avoid harmful impacts on water resources'.

4. Modification No 58 states in the new paragraphs: *"A key feature of this development is to achieve the completion of Whiteley Way"*. Travel/road creation aspirations still ignore the SPA and the harmful impact of increased air pollution has on waders' use of the SPA. WCC still have no aspiration to take traffic away from the SPA through the Whiteley Way, and the continued provision of two new accesses onto the A3051 at Curbridge will only increase air pollution and recreational access to the SPA. Again we stress the need for the Whiteley Way and other access/egress points to remove traffic from the SPA area seeking alternative connection points to the local road network in line with TBH Buffer Zones/areas of influence.

Department for Transport Guidance as expressed in the Design Manual for Roads and Bridges (DMRB, Volume 11 Environmental Assessment, Section 3 Environmental Assessment Techniques, Part 1: Air Quality) states that the first process in determining air quality impacts from road schemes is to determine whether the road in question is an 'affected road' which is defined as, among other criteria, if it will experience an increase in flows of more than 1,000 Average Annual Daily Traffic (AADT). The A3051 will experience at least such an increase from this proposed policy SH3 and the A3051 abuts the SPA/SAC/RAMSAR site at the bridge. Again we would draw attention to the European case-law above and the use of the eastern most point of the SPA at Curbridge by designated features. As shown by Eastleigh Borough Council's recent consultation this should have been covered in the HRA as a significant factor affecting the conservation objectives of the SPA both under the Birds' Directive and the Habitats' Directive.

5. **In terms of the Legal Compliance Checklist we would raise a couple of issues:**

Stage Three: Plan Preparation Formulation Stage

Part 11. *Are you preparing reasonable alternatives for evaluation during the preparation of the development plan document?*

(Regulation 12 of The Environmental Assessment of Plans and Programmes Regulations 2004 No. 1633)

WCC's response is: *"The Live for the Future frontloading exercise, together with the Sustainability Scoping Report led to the identification of a number of issues and possible options for policies. These were developed into the Issues and Options Plan, which presented a series of options for the spatial strategies and 'core policies' of the Plan. Each option was expressed as two or three alternatives, usually including a baseline 'do nothing' approach; limited growth/change vs significant growth or 'step change'. These represented a reasonable range of alternatives and the consultations invited people to suggest other reasonable alternatives for consideration."*

The "Live for the Future" exercise, promoted by WCC as the start of this process took place in **February and March 2007** (source <http://www.winchester.gov.uk/planning-policy/local-plan-part-1/live-for-the-future/>).

Therefore we would take issue with this, as commented in our pre-submission consultation response; the "options" were always as follows and had been already determined: -

2005 was the true start of the 'consultation' in the "Where Shall We Live?" PUSH consultation, under the emerging S.E. Plan (which came into being in 2009 and sets the Sub-Regional Strategy) 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 significant development at Whiteley and specifically 'North of Whiteley' as well as West of Waterlooville – *a fait accompli*.

This we believe is in breach of Regulation 12 as there were no **"reasonable alternative for evaluation"** and to be precise none of the specific 'consulted options' are being followed as planning consent has been given for 2500 in the Winchester District for West of Waterlooville and 3,000+ are being proposed for North of Whiteley some 5,500+.

Part 21. *Where sites are to be identified or areas for the application of policy in the development plan document, are you preparing sufficient illustrative material to:*

- *enable you to amend the currently adopted proposals map (Regulations 9 and 14)*

WCC's response is *"No changes are proposed to settlement boundaries as part of Local Plan Part 1. **The adopted Local Plan Proposals Map and inset maps were updated in other***

respects for the Submission Plan to ensure that the locations of proposals and changes are clear."

It has been noticed that the HCC property Woodside in Ridge Lane and the surrounding fields are now not part of the proposals site for this policy. There is no clarification as to their status, whether this land is now outside of the South Hampshire Urban Areas and back as part of Curbridge which is a MTRA level 4 policy zone; clarification is urgently needed.

Finally, we would like to point out that the final proposals map for Policy SH3 is in error. Unfortunately WCC appear to be preparing the land of Buckswood Cottage (and Annex) at Ridge Lane, Curbridge, for large scale development without either informing, or gaining the prior consent of, the landowner.

This we find somewhat extraordinary after 7 years of plan preparation.