



Winchester
City Council

**Interim Solent Recreation Mitigation Partnership
Strategy (SRMPS)**

Guidance to Applicants

Winchester City Council

August 2014

Overview

The Solent is internationally important for its wildlife interest and much of the Solent coastline is protected by environmental designations including three Special Protection Areas (SPAs) designated under the Habitat Regulations. Recreational activity resulting from residential development in the vicinity of the Solent can impact upon the coastline's ecology and the Council has to take this into account when making planning decisions.

In order to deal with the effects of new housing therefore councils on or near to the Solent coastline have agreed to support a mitigation strategy and from August 2014, residential development resulting in a net increase in dwellings will usually be asked to contribute £172/dwelling (index linked). These contributions will be used to implement the strategy and will enable housing proposals to meet the requirements of the Habitat Regulations.

In Winchester this applies to development in the southern area of the district. New residential development within the southern area of Winchester District and in neighbouring areas is having a significant effect on the Special Protection Areas (SPA) of the Solent as more people visit the coast. Under the Conservation of Habitats and Species Regulations 2010 as amended (Habitat Regulations), Winchester City Council may not permit a plan or project which will have an adverse affect on a SPA. This includes applications for planning permission.

The Interim Solent Recreation Mitigation Partnership Strategy provides a way forward, by enabling developers to contribute towards agreed mitigation schemes across local authority boundaries thus enabling planning permission to be granted. Under this strategy developers can make a contribution of £172 per new residential unit (index linked), rather than having to demonstrate how their proposal meets the requirements of the Habitat Regulations which, in many cases, would be very difficult for developers to do on a case by case basis.

This guidance sets out more information on the strategy, the area of the district affected and how the Solent Recreation Mitigation Partnership Strategy approach will help enable development to proceed.

Please Note: The information relating to the Solent Recreation Mitigation Partnership Strategy contained in this guide is intended to assist developers and land owners to understand the Strategy and determine how they can meet the requirements of the Habitat Regulations for a particular impact. It should be noted that this advice only relates to mitigation for in-combination effects of disturbance on Special Protection Areas; other effects may still need to be assessed under the Habitat Regulations and will be considered on a case by case basis. If in doubt, developers and land owners are advised to seek their own professional advice.

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Introduction

The Solent is internationally important for its wildlife interest; much of the Solent coastline is protected by environmental designations including three Special Protection Areas (SPAs) designated under the Habitat Regulations. These are designated predominantly for the protection of the large numbers of waders and wildfowl which spend the winter on the Solent.

The planned additional housing development along the Solent, which includes part of Winchester's District's area, is likely to increase the number of people visiting the coast and thereby have a significant impact on coastal birds which are protected under the Habitat Regulations.

As more people visit the coast, the wildfowl and wading birds which overwinter along the Solent are more likely to be disturbed. This disturbance can displace the birds from their feeding grounds, and reduce their ability to feed to the extent that they are not sufficiently strong to successfully complete the return journey to their breeding grounds in the spring. The impacts are assessed in the Solent Disturbance and Mitigation Project¹

Winchester City Council has a responsibility under the Conservation of Habitats and Species Regulations 2010 as amended² (Habitat Regulations) to not permit a plan or project which will have an adverse effect on a SPA and this includes applications for planning permission. Natural England has advised that residential development is likely to have a significant effect on the SPAs in this area, and therefore new residential development needs to demonstrate how it will comply with the Habitats Regulations³. If residential development is to continue in the Solent area, it must demonstrate that it can avoid any impacts through appropriate mitigation.

Local Authorities along or near to the Solent coastline, Natural England and other conservation organisations are working together to set up a strategic mitigation scheme where every new residential development can contribute towards wider mitigation projects. A standard contribution of £172/new dwelling unit has been agreed to facilitate development which would otherwise be required to undertake an Appropriate Assessment under the Habitat Regulations.

In the absence of a strategic mitigation scheme, under the Habitat Regulations, applicants for planning permission would have to demonstrate how they would avoid or mitigate significant effects resulting from their housing proposals in combination with other plans and projects across the Solent area. This may require them to identify projects along the Solent as mitigation or they would need to show why their development would be unlikely to have any significant effect. In reality this would be difficult for developers to do on a case by case basis. If they were unable to do this the Council would have little option but to refuse planning permission and Natural England has indicated that they would be likely to raise objections to developments where mitigation measures have not been secured.

The strategic mitigation strategy which has been developed with neighbouring authorities and Natural England will therefore provide a cost effective way forward for development.

¹ Solent Disturbance and Mitigation Project Reports:

http://www.solentforum.org/forum/sub_groups/Natural_Environment_Group/Disturbance_and_Mitigation_Project/

² <http://www.legislation.gov.uk/all?title=The%20Conservation%20of%20Habitats%20and%20Species%20Regulations>

³ Natural England Letter to PUSH Planning Officers Group

http://www.solentforum.org/forum/sub_groups/Natural_Environment_Group/Disturbance_and_Mitigation_Project/Advice_to_PUSH_and_Solent_Forum%20310513.pdf

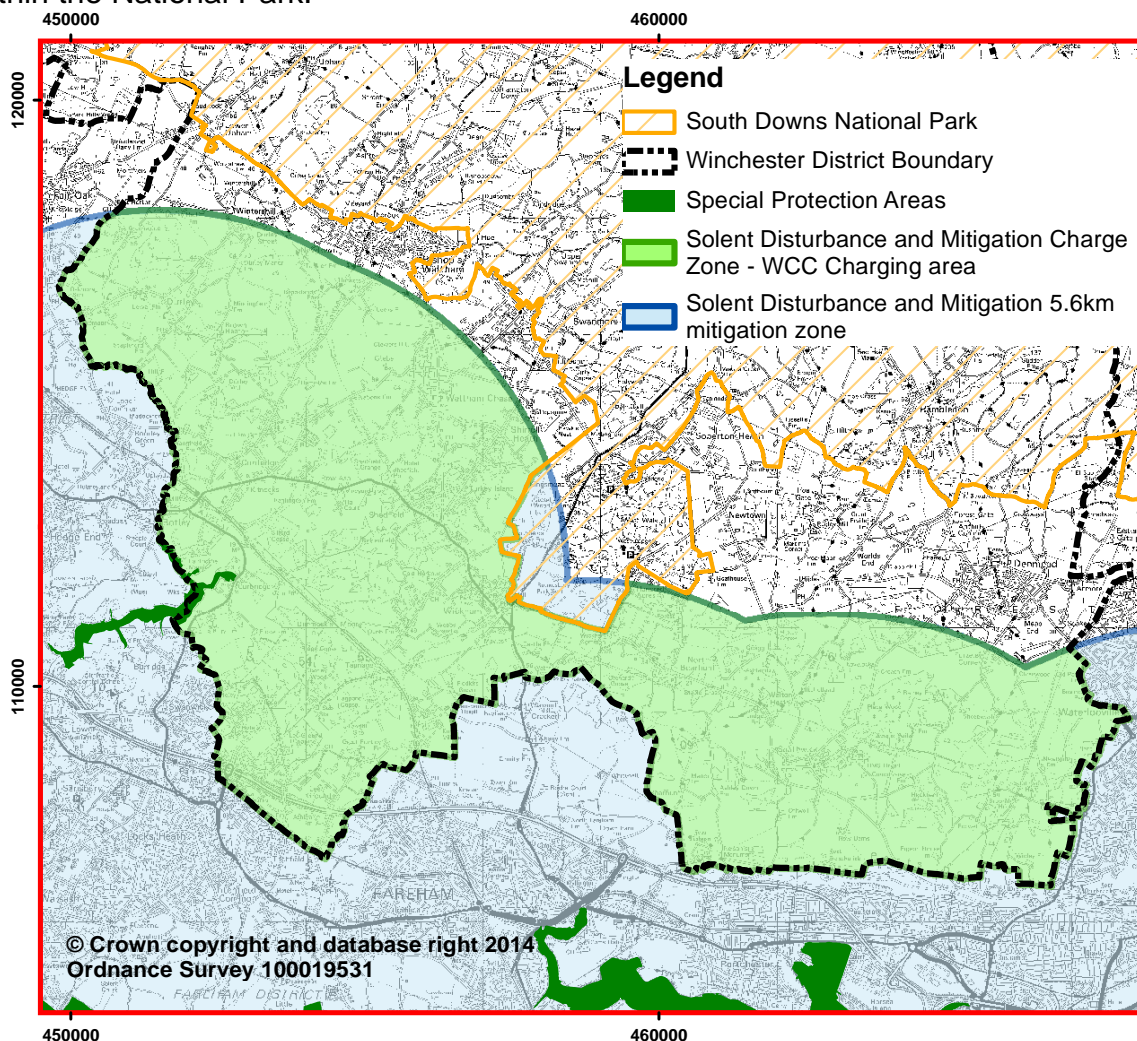
Area in Winchester District affected

Although Winchester District has only a small area within the Solent tidal range (Upper Hamble Estuary), it has been demonstrated that people will travel a number of kilometres to visit the coast⁴. This means that development some distance from the coastline will still be likely to have an impact.

Winchester City Council has received advice from Natural England (government advisor on nature conservation) that any additional housing development within 5.6km of the Solent SPAs is likely to have significant in-combination effects i.e. its own impact has to be assessed taking account of other housing developments in the area. As a result therefore avoidance measures are required under the Habitat Regulations³.

Winchester will therefore seek contributions towards the Strategy within the 5.6km zone in the south of the district as shown on the map below (a higher quality map can be downloaded here: www.winchester.gov.uk/assets/files/21094/SRMP-Map-FINAL-for-web-12.08.14.pdf). Within this area, any additional residential (C3 use) development will be asked to contribute towards mitigation schemes.

A very small area in the District lies in the 5.6km zone and the South Downs National Park. If residential development is proposed in this area the matter will need to be considered on a case by case basis. The South Downs National Park is the planning authority for this area and Winchester City Council will therefore not seek contributions for the Strategy within the National Park.



⁴ [Solent Disturbance and Mitigation Project Phase II Report, \(2010\) Footprint Ecology](http://www.solentforum.org/resources/pdf/natcons/Final%20Solent%20Visitor%20Report.pdf)
<http://www.solentforum.org/resources/pdf/natcons/Final%20Solent%20Visitor%20Report.pdf>

Criteria

A Solent Recreation Mitigation Partnership Contribution payment is required to be paid by the developer for all new dwellings, including single dwellings, in the southern area of Winchester District as set out on the map above.

The Solent Recreation Mitigation Partnership Contribution payment is established by the number of dwellings proposed and has been agreed by Winchester City Council based on evidence gathered through the Solent Disturbance and Mitigation Project.

The Charge

A standard contribution of **£172 per new dwelling⁵** unit has been agreed to facilitate development which would otherwise be required to undertake an Appropriate Assessment under the Habitat Regulations. This amount is index linked to the Retail Price Index (base date April 2014).

Development applications subject to the charge

The following types of planning application within the SDMS charging zone are considered to have a likely significant effect under the Habitat Regulations and can therefore make contributions to the Solent Recreation Mitigation Partnership Strategy to meet the requirements of the Habitat Regulations:-

- a) permitted development under the General Permitted Development Order for change of use to residential (C3) , and
- b) applications for planning permission (outline and full) which involve a net increase in residential (C3) use.

Under article 3(1) of the General Permitted Development Order and regulations 73 and 75 of the Conservation of Habitats and Species Regulations 2010, a development which is likely to have a significant effect and is not directly connected with or necessary to the management of the site, must not be begun or continued before the developer has received written notification of the approval of the local planning authority. Approval can only be granted after the local planning authority determines there will not be an adverse affect on the integrity of the site.

Therefore, when a developer notifies the City Council of a development involving the formation of new residential units under the General Permitted Development Order 1995 (as amended), the City Council will advise the developer of 'Likely Significant Effect' under the Habitat Regulations if applicable. Where there is likely to be a significant effect the City Council will require the developer to contribute towards the Strategy through a legal agreement or other appropriate means before it is able to grant approval.

For outline and full planning permissions, consents will only be granted if the applicant has entered into a legal agreement or provided a unilateral undertaking which will secure contributions towards the Strategy. The contribution will be due prior to the commencement of the development.

⁵ The method used for calculating the contribution is shown in the appendix to the Interim Solent Bird Disturbance Mitigation Strategy which can be downloaded from www.winchester.gov.uk/n/planning/solent-recreation-mitigation-partnership/

Other applications will be assessed under the Habitat Regulations on a case-by-case basis. In addition, the strategy only addresses in-combination impacts of disturbance to the Solent SPAs; other impacts may still need to be assessed under the Habitat Regulations.

How to make a payment

A legal agreement or unilateral undertaking will be needed to secure the contribution.

1. If a S106 agreement is being drawn up to cover other contributions such as affordable housing, the SRMPS contribution can be included within the agreement. The agreement needs to be completed before planning permission can be issued.
2. If a S106 agreement is not required for any other purposes, then applicants can:-
 - a. sign a unilateral undertaking if you are entitled to enter into such an agreement, or
 - b. make an up-front payment using the template form.

For any undertaking, the payment and signed unilateral undertaking, and any up-front payment must be completed before the application is permitted. If in the case of the undertaking, the application is not permitted, any monies paid (not the checking fee) will be reimbursed.

The relevant forms can be downloaded via the following link:

www.winchester.gov.uk/planning/solent-recreation-mitigation-partnership

If the development proposes only a small number of houses it may be more cost effective to use option 2b rather than 2a above because the City Council's charges for checking unilateral undertakings (see fees below).

The Council may refuse an application on the grounds of non-contribution, if the application does not make satisfactory provision to mitigate the impact of the development on the Solent Special Protection Areas, either by payment of the Solent Recreation Mitigation Partnership Contribution, or a Unilateral Undertaking or Section 106 Agreement to secure payment of the contribution.

Unilateral Undertaking

A Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990, must be entered into by everyone who has a legal interest (i.e. freeholder, and leaseholder and/or mortgagee where appropriate) in the application site. The Council will also require that you send with the Undertaking the documentary evidence (by an epitome of title or an official copy) of your ownership in the land, together with a cheque for £230.00 (the legal costs of checking title) made payable to Winchester City Council.

Fees

Developers will be expected to pay the Council's reasonable legal costs associated with the drafting and completing of S106 planning obligations. Those costs must be paid on or before the completion of the obligation. In some cases the payment of a contribution towards the costs of monitoring compliance with the terms of the planning obligation may also be required. If a Unilateral Undertaking is used, the usual cost for checking this is £230.

Payment by cheque

If you wish to pay by cheque, then you can use this guidance to calculate the payment. It is advisable that you check the exact payment amount with a Case Officer. The cheque should be made payable to Winchester City Council and the completed Solent Recreation Mitigation Partnership Payment Form should also accompany it.

The Process

The Planning service provides a pre-application discussion service and encourages applicants (or their agents) to book a meeting with a Planning Officer. At this meeting, the payment of Solent Recreation Mitigation Partnership Contributions or the completion of a Unilateral Undertaking should be discussed and agreed.

A pro-forma copy of Winchester City Council's Solent Recreation Mitigation Partnership Payment Form and/or Unilateral Undertaking and accompanying forms will be provided at this meeting or alternatively, can be sent to you with the required application forms on request. If you choose to make a cheque payment or Unilateral Undertaking, these should be completed and submitted with your application, at the start of the process. If you would like a Planning Officer to check the Solent Recreation Mitigation Partnership Contribution amount for you, please contact us.

Relationship with the Community Infrastructure Levy

The Local Authorities involved in the Strategy have taken the view, following advice from the Department for Communities and Local Government, that the interim mitigation requirements are not infrastructure and therefore do not fall within the scope of the Community Infrastructure Levy. The charge is necessary to make development acceptable under the Habitats Regulations and is therefore a separate requirement to CIL.

In the event that a longer-term strategy evolves which involves additional mitigation measures in the form of infrastructure, CIL funds may be required as such measures could not be funded by using pooled contributions from individual planning permissions.

Policy basis for the contribution

The strategy has been developed to meet the requirements of the Habitat Regulations which sets the EU Birds and Habitats Directives in UK law. Under the NPPF, The presumption in favour of sustainable development does not apply to development which requires an appropriate assessment under these Directives.

Policy CP16 of the adopted Local Plan Part 1 (LPP1) sets out the Council's support for the Solent Recreation Mitigation Partnership Strategy and commitment to securing appropriate strategic avoidance and/or mitigation measured through the planning process to protect sites of European importance from inappropriate development.

Following advice from Natural England regarding likely significant effects on the Solent SPAs from further residential development in the southern area of the District, the City Council agreed at Cabinet on 4 December 2013 to seek financial contributions for all new residential development proposals within the 5.6km zone. These contributions will be used for the mitigation of increased recreational activity along the Solent coastline unless it can be demonstrated that a development can provide mitigation by other means.

How the money will be used

At this stage an Interim Mitigation Strategy has been agreed by the Solent Recreation Mitigation Partnership Officer Group⁶. The money will be collected from the local authorities involved and periodically transferred to the following projects which have been agreed with Natural England as appropriate interim mitigation:

- A team of rangers who will work on the ground to reduce disturbance by influencing the behaviour of visitors;
- A 'Solent Dogs' project to encourage responsible dog walking and steer dog owners to less sensitive parts of the coast;
- A monitoring scheme to track the implementation of mitigation measures and to assess their effectiveness;
- A project officer who will help implement the mitigation measures in this document, undertake monitoring and prepare the definitive mitigation strategy.

A long-term mitigation strategy is being developed, led by local authorities.

If you have any queries, please contact your Case Officer or the Validation Team on the number below:

Customer Service Reception: (01962) 840222

E-mail: planning@winchester.gov.uk

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⁶ The Project Group is formed by local authorities along the Solent, Natural England and other conservation organisations.