

## Examination of the Fareham Local Plan 2037

### Hearing Statement: Matter 10 Natural Environment

#### Hallam Land Management Limited

This Hearing Statement has been prepared on behalf of Hallam Land Management Limited (“Hallam”) and is in response to the Inspector’s Questions relating to the Matter 10 Natural Environment. Hallam control the overwhelming majority of the area allocated as HA55 Land South of Longfield Avenue and have prepared a Statement of Common Ground with the LPA and Ms Susan Williams in respect of this Site. Hallam submitted representations to both the 2020 Regulation 19 Plan and the 2021 Revised Regulation 19 Plan, where the Council introduce HA55 and which has criteria directly related to matters raised in the Inspector’s Questions.

#### **Policy NE1- Protection of Nature Conservation, Biodiversity and the Local Ecological Network**

##### **Question 1. Is the policy consistent with the Framework? Is the Policy clear and would it be effective?**

1. Policy NE1 requires in each instance new development to protect and enhance designated sites. This requires that:
  - (a) no harm is caused to the asset concerned (i.e., it is protected) and
  - (b) there is improvement to its condition (i.e., it is enhanced).
2. Paragraph 179 of the NPPF places a broad obligation on Local Plans to safeguard wildlife components and to promote the conservation and enhancement of priority habitats and protected species. However, paragraph 180 is more specific in terms of principles to apply. Policy NE1 is not consistent with the approach therein.
3. In effect there would be two contrasting approaches: one in the development plan which only permits new development where it protects and enhances various ecological designations and / or attributes and one on in the NPPF.
4. For example, criterion 180(a) of the NPPF contemplates where significant harm could arise and how this is addressed whilst 180(b) is framed by the concept that adverse effects on land within or outside and SSSI would “not normally” be permitted.
5. Paragraphs 9.11 and 9.13 of the supporting text express the approach differently to wording implied in Policy NE1 itself; the former is more closely aligned with the NPPF. Consequently, the Policy is not clear and the conflict means that the policy is not effective. This can be addressed through a modification to the Policy.

## **Policy NE2 Biodiversity Net Gain**

### **Question 2. Are the requirements of the policy sufficiently clear in relation to**

- i) the ability for developments to buy ‘credits’ where net gain on site is not achievable.**
  - ii) That compensation can include new habitat or restoring/enhancing existing habitats.**
6. There is now a mandatory requirement in the Environment Act 2021 that biodiversity net gain is a condition of granting planning permission (Section 98 and Schedule 14 refer). DEFRA are currently consulting on the regulations to be associated with this provision which will come into effect at the end of the transition period. It is arguably the case therefore that, in common with other regulatory matters that are subject to separate legislation, the Local Plan does not need to repeat that statutory requirement.
7. Turning however to the wording of the Policy, it is unambiguous in requiring net gain of at least 10%; the word “should” is to be interpreted as obligatory. This does not account for the flexibility that is set out in the supporting text to the policy that appears to exempt situations where it has been agreed that the policy doesn’t apply (see paragraph 9.33 and 9.37 for example).
8. The Policy as presently worded does not address either the question of credits or compensation.

### **Question 3. How has viability been addressed?**

9. An allowance for biodiversity net gain was included in VIA001 (paragraph 5.3.6 refers).

## **Policy NE3 Recreational Disturbance on the Solent SPA**

### **Question 5. Is the Policy clear in relation to how it would be implemented, and would it be effective?**

10. The policy requires that where there is a net increase in residential units there should be either:
- (a) In the first instance, a financial contribution towards the Solent Recreational Mitigation Strategy; or
  - (b) alternatively, a developer-provided package of measures to mitigate negative effects from the increase in resident population.

11. In the event of the financial contribution being paid, implementation of the recreational mitigation strategy falls to the Solent Recreational Mitigation Partnership which is comprised of various local authorities and other organisations including Natural England, the RSPB and the Hampshire and Isle of Wight Wildlife Trust (NE001 refers). Mechanisms relating Implementation, Governance, Reporting and Review are set out in the Strategy. Of note is that the Strategy seeks to provide mitigation for development planned until 2034 but with regular strategic reviews every 5 years.
12. In the alternative, a site-specific habitat regulations assessment would determine whether the developer-provided package comprises suitable measures to ensure that the project would not adversely affect the integrity of the SPA.

#### **Policy NE4 Water Quality Effects on the SPAs, SACs and Ramsar sites**

##### **Question 6. Is the policy clear and would it be effective?**

13. The policy would require the decision maker to determine whether a proposal would adversely affect the integrity of a European site. That requires an Appropriate Assessment to be undertaken pursuant to the Habitat Regulations Assessment. Paragraph 9.52 of the supporting text provides this explanation.

##### **Question 7. Is it clear to decision makers, developers and the local community which developments are subject to this policy and how mitigation could be achieved?**

14. Paragraphs 9.50 and 9.51 of the supporting text imply that the policy applies to all new development that result in a net gain in overnight accommodation. This definition would exclude other development proposals that result in increased wastewater production which is the test in Policy NE4. This ultimately turns on the screening exercise required by the HRA process.

##### **Question 8. What progress is being made to secure strategic options for mitigation?**

15. This is a question for the Council to answer, noting that certain of the allocated sites can be brought forward without the need for strategic mitigation.

##### **Question 9. How has viability been considered?**

16. In the case of certain of the allocated sites, the nutrient budget returns a negative result (i.e., a reduction in nutrients) because of the fundamental change in the land use regime. In those instances, mitigation is not required and there is no viability consideration *per se*.

## **Policy NE5 Solent Wader and Brent Goose Sites**

### **Question 10. Is the policy clear and would it be effective?**

17. Subject to comments made in respect of Question 20, we agree that the Policy is clear. The differentiation between areas is provided by the way in which mitigation is provided where the first instance “on-site” mitigation cannot be achieved. Criteria b), d), e) and g) have different requirements as to the type of off-site mitigation that is to be secured. This reflects the different status of the various areas, for example, rightly, the type of off-site mitigation is broader for low-use areas than for core or primary support areas.

### **Question 11. Do any of the sites allocated for development in the plan, or parts of sites, fall within sites used by Solent Waders and Brent Geese?**

18. Site HA55 is shown on the Policies Map as being low-use classification; this extends to some 55 hectares south of Longfield Avenue. Surveys undertaken between 2018 and 2022 indicate that a small population of Golden Plover is concentrated in one area of the site east of Peak Lane.
19. These surveys indicate a consistent pattern; Golden Plover usage (on 33% of occasions), with flocks of up to 56 birds and averaging 21, concentrated in one area measuring 1.4ha east of Peak Lane. Allowing for sight lines, the area of land increases to 8.74ha. The bird activity does not extend across the broader site area east of Peak Lane (55ha).
20. There is no evidence in the surveys undertaken of other bird activity on this site.
21. Golden Plover are not a qualifying feature of the Solent and Southampton Water SPA / Ramsar. Golden Plover is not predominantly an estuarine bird. They prefer grasslands, open grazing marshes, and arable land in the winter, and are widespread throughout the UK. They are also not a bird of conservation concern in the UK.

### **Question 12. Does the Policy sufficiently reflect the recommendations of the Solent Waders and Brent Geese (SWBG) Strategy?**

22. The Solent Water and Brent Goose Strategy was published by the Hampshire and Isle of White Wildlife Trust. Section 7.3 concerns Mitigating/Compensatory Measures and includes on-site and off-site habitat creation/enhancement. Policy NE5 reflects that approach.

**Question 13. What is the justification for including the sites on the policies map when they may be updated and reviewed during the plan period? Should it be clearer that reference should be made to the SWBG Strategy?**

23. The Policies Map includes designations relating to Waders and Brent Geese and are associated with Policy NE5. This designation covers four categories of land – Core and Primary Support Areas, Secondary Support Areas, Low Use Areas and Candidate Areas.
24. The extent to which the land concerned is used by Waders and Brent Geese, particularly beyond the Core Areas, is transitory and can differ from time to time as a consequence of changes in agricultural practices (for example, arable land with wintering cereals provides an optimal foraging resource, whereas when this is replaced / succeeded by grassland habitats its function can change, which could affect species assemblages and frequency of use). Changes in land use will also have an effect on the suitability of a location as a habitat (for example, newly built structures, such as the Stubbington Bypass).
25. Therefore, to delineate these areas in the manner shown on a Policies Map, which affords permanence to the classification, fails to take account of the potential changes in circumstance and is not sound as a matter of principle.
26. The practical effect of this is that Policy NE5 directs the decision-maker to consider development proposals against the criteria listed therein and the status of the land by reference to the designations shown on the proposals map, which may at that point in time no longer be up-to-date or relevant.
27. Through Hallam's work in respect of the land to the South of Fareham, and through discussion with Natural England, it has identified a different classification to that shown on the Policies Map for certain of those parcels of land, as shown on Appendix 2 of our Representations. This illustrates how the application of Policy NE5 could misdirect the decision maker.
28. On this basis, these designations should not be shown on the Policies Map in the manner they are presently.
29. A more generic designation such as Areas of Waders and Brent Geese Sensitivity, which does not classify individual land parcels, would be more appropriate. It would follow that Policy NE5 would be amended to require planning applications to assess and determine the use of land subject to those development proposals and at that point, when an up to date classification has been determined, the criteria and mitigation in Policy NE5 would apply.