

ISLE OF WIGHT COUNCIL PLANNING COMMITTEE - TUESDAY, 12 DECEMBER 2017

REPORT OF THE HEAD OF PLACE

WARNING

1. THE RECOMMENDATIONS CONTAINED IN THIS REPORT OTHER THAN PART 1 SCHEDULE AND DECISIONS ARE DISCLOSED FOR INFORMATION PURPOSES ONLY.
2. THE RECOMMENDATIONS WILL BE CONSIDERED ON THE DATE INDICATED ABOVE IN THE FIRST INSTANCE. (In some circumstances, consideration of an item may be deferred to a later meeting).
3. THE RECOMMENDATIONS MAY OR MAY NOT BE ACCEPTED BY THE PLANNING COMMITTEE AND MAY BE SUBJECT TO ALTERATION IN THE LIGHT OF FURTHER INFORMATION RECEIVED BY THE OFFICERS AND PRESENTED TO MEMBERS AT MEETINGS.
4. YOU ARE ADVISED TO CHECK WITH THE PLANNING DEPARTMENT (TEL: 821000) AS TO WHETHER OR NOT A DECISION HAS BEEN TAKEN ON ANY ITEM BEFORE YOU TAKE ANY ACTION ON ANY OF THE RECOMMENDATIONS CONTAINED IN THIS REPORT.
5. THE COUNCIL CANNOT ACCEPT ANY RESPONSIBILITY FOR THE CONSEQUENCES OF ANY ACTION TAKEN BY ANY PERSON ON ANY OF THE RECOMMENDATIONS.

Background Papers

The various documents, letters and other correspondence referred to in the Report in respect of each planning application or other item of business.

Members are advised that every application on this report has been considered against a background of the implications of the Crime and Disorder Act 1998 and, where necessary, consultations have taken place with the Crime and Disorder Facilitator and Architectural Liaison Officer. Any responses received prior to publication are featured in the report under the heading Representations.

Members are advised that every application on this report has been considered against a background of the implications of the Human Rights Act 1998 and, following advice from the Head of Legal Services and Monitoring Officer, in recognition of a duty to give reasons for a decision, each report will include a section explaining and giving a justification for the recommendation.

LIST OF PLANNING APPLICATIONS REPORT TO COMMITTEE – 12 DECEMBER 2017

1 [P/00637/14 TCP/11822/Y](#) **St. Helens** **Conditional Permission**

Page 04 Sites at the Duver Marina, the Duver St Helens, Ryde PO33 1YB, Bembridge Marina, Embankment Road, Bembridge PO35 & Selwyn Boatyard and the Old Boathouse, Embankment Road, Bembridge, Isle of Wight.

Selwyn Boatyard and the Old Boathouse - Demolition of Boathouse; outline for detached dwelling; 6 industrial units with associated parking (Additional information relating to ecological impacts, revised vehicle access, parking and turning arrangements; additional information relating to contaminated land and flood risk, revised red line area relating to Selwyn Boatyard parking area).

Bembridge Marina - Demolition of harbour office; outline for terrace of 5 houses; terrace of 3 houses; floating shower and toilet facilities; associated parking (Additional information relating to ecological impacts, flood risk and requirement for floating shower and toilet block; revised access arrangements, revised ownership plans relating to Embankment Road ecological mitigation area)

Duver Marina - Demolition of harbour office and toilet facilities and removal of septic tank; outline for terrace of 5 houses; new harbour office with shower and toilet facilities; sewerage treatment plant; associated parking (Additional information relating to ecological impacts; revised plans relating to the footprint for proposed houses, revised vehicle parking and turning areas)(further re-advertised application)

Revised plans confirming the omission of a proposed dwelling house at The Old Boat House and 6 industrial units at Selwyn boatyard (Revised description; revised site area; updated ecology report)

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[P/01221/17 TCP/23119/J](#)

Newport

**Conditional
Permission**

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Land at, The Quay, Newport, Isle Of Wight.

Continued use of land at various positions for 'street food market' to include temporary siting of stalls, vehicles and gazebos (revised plans)(readvertised)

01 Reference Number: P/00637/14 - TCP/11822/Y

Description of application:

Bembridge Marina - Demolition of harbour office; outline for terrace of 5 houses; terrace of 3 houses; floating shower and toilet facilities; associated parking (Additional information relating to business justification for the development, additional information relating to ecological impacts) (Revised ownership plans relating to Embankment Road ecological mitigation area)

Duver Marina - Demolition of harbour office and toilet facilities and removal of septic tank; outline for terrace of 5 houses; new harbour office with shower and toilet facilities; sewerage treatment plant; associated parking (Additional information relating to business justification for the development, additional information relating to ecological impacts; revised plans relating to the design of elevations and footprint for proposed houses)

Site Address: Sites at the Duver Marina, the Duver St Helens, Ryde PO33 1YB; Bembridge Marina, Embankment Road, Bembridge PO35 and Selwyn Boatyard and the Old Boathouse, Embankment Road, Bembridge, Isle of Wight, PO35

Applicant: Bembridge Investments Ltd

This application has a resolution for approval subject to conditions and a section 106 agreement to secure the necessary planning obligations. This paper seeks the endorsement of the previous committee resolution subject to addition of the revised conditions and revised planning obligations recommended in this report.

REASON FOR COMMITTEE CONSIDERATION

The planning application was previously referred to the Planning Committee for consideration on 1st December 2015. The original report can be viewed by following this link:

[Click here](#)

The Planning Committee resolved to grant outline planning permission for the development subject to conditions and a legal agreement. Since then and while the legal agreement has been negotiated, a third party has set out detailed concerns about the determination of the planning application. The third party has also provided detailed information relating to the cost of the proposed development and financial information relating to the various companies that control the statutory harbour. As a result, having sought legal advice, Officers have considered it necessary to review the application in light of the information that has been received and to provide members with an updated report on the main issues for this planning application.

This report will not repeat all of the main considerations for the application, as these were set out within the original committee report, which Members should read as well as this report. Equally, the report set out the proposed development and the characteristics of the application site and the surrounding area. Instead, this report focusses on the key areas that have recently been reviewed by Officers.

MAIN CONSIDERATIONS

- Principle
- Flood risk (Sequential Test)
- Environmental Impact Assessment and ecology
- Appropriate Assessment
- Conclusion

1. **Background**

1.1 Members may be aware that since the original Committee consideration of this application, the Planning Authority has received a significant amount of information from third party objectors, which challenge the resolution to approve the development. This information challenges the development viability documents provided by the applicant and argues that accounting practices and changes to the way that the business is managed could lead to capital being diverted from the business that could otherwise be used to fund the proposed improvements to the harbour. The Planning Authority has also received further information from the applicant in response to third party information. The latest information received from both the objectors and the applicant was received in November 2017. Officers have also commissioned independent analysis of the development viability costs, undertaken by the District Valuer. The Planning Authority has also commissioned an Ecologist to undertake an Appropriate Assessment. As a result of this information, Officers have reviewed the recommendation and this is set out within the remainder of this update report.

1.2 In order for members to properly consider this application your attention is drawn to the following points of clarification within the original report. Where the information or explanation in this report differs from that in the original report, this report should be regarded as superseding the earlier material and members are invited to read both reports together on the basis that the contents of this report should be preferred where there are differences.

1.3 **Ownership**

The original report makes reference to the fact that the development land is owned by the applicant, Officers can provide the following clarification as to the ownership of the site.

The applicant is Bembridge Investments Limited and the Harbour Authority is Bembridge Harbour Improvements Company Limited (BHIC). This application is for enabling development to provide improvements to the harbour as listed in the original report. The applicant is the land owner of all of the land on which the proposed development is to occur.

The Harbour Authority are the body who are responsible for and have the power to undertake the surveying and dredging of navigable channels, provide navigational aids, ensure the provision and upkeep of moorings, pontoons, slipways, ablution facilities and docksides.

If members were minded to approve this planning application, it should be noted that in order for the benefits to the harbour to be realised it would be necessary for the Harbour Authority to confirm that it would be willing to accept and run the new facilities and for the applicant (BIL) to provide them for the Harbour Authority to use. This would need to be achieved by a clause within a legal agreement reflecting that position.

For clarity, it should be noted that the proposed harbour improvements, as set out within the original committee report, do not include the provision of dredging within the harbour.

2. Evaluation

Principle

2.1 The main discussion relating to the principle of this development was set out within the original committee report. Members will note from the original report that the application site is outside of the defined settlement boundary and that as a result of the requirements of policies SP1 (Spatial Strategy) and SP2 (Housing) of the Island Plan a local need must be demonstrated for the development. The requirement is reflected within policy BNDP.OL.2 (Rural Exception Development) of the Bembridge Neighbourhood Development Plan, referred to from herein as the Neighbourhood Plan. The applicant's information confirms that the housing is proposed as a form of enabling development to fund proposed improvements to the facilities at Bembridge Harbour (at Bembridge Marina and the Duver Marina). The proposed housing would be sold at open market value and the proceeds would then be used to fund the listed improvements, as set out below:

- New sewage treatment plant and Improvements to the sea wall at The Duver Marina
- New marina offices, shower, laundry and toilet facilities for visiting yachtsmen in one purpose built building at The Duver Marina
- New shower and toilet facilities for visiting yachtsmen at Bembridge Marina

- New parking facilities for Bembridge Marina

Members will note that the original Officer report included 'ongoing dredging of the harbour and harbour access/ pontoons' as part of the improvements. It should be noted that these are not part of the improvements that the enabling funds would contribute towards and that as a result, they will not be included within the legal agreement. Instead, it is considered that a more successful and sustainable harbour business would be able to generate income that could secure an ongoing programme of the maintenance required for the harbour.

- 2.2 Officers remain of the the opinion that the proposed works related to the harbour would regenerate and improve the quality of an existing marine tourism facility. The majority of the works would take place on previously developed land. However, the proposed parking area and silt lagoon mitigation works would take place on previously undeveloped greenfield sites adjacent to Embankment Road. Nevertheless, it is considered that the proposed parking area would provide the parking necessary for visitors to the harbour in an accessible location and it is considered that if approved a condition could be imposed to secure a parking management strategy to ensure that the parking area can be used by visitors to the harbour. Moreover, the silt lagoon works would, as outlined within the ecology section of this report, deliver mitigation works that would provide habitat for wildlife. Therefore, Officers continue to consider that the harbour improvement works would comply with the guidance set out within policy SP4 of the Island Plan and policy BNDP.T.1 of the Neighbourhood Plan.
- 2.3 Because the housing is proposed as enabling development, it is important that the amount of housing would be commensurate to the cost of the proposed improvement works to the harbour. To justify the level of development, the applicant provided Officers with detailed predicted accounts that set out the costs of the proposed development, including both the housing and improvement works. Officers considered the applicant's information in detail within the previous committee report and advised that suitable information had been provided to allow the Council to assess the viability of the development.
- 2.4 The applicant's viability information has been questioned by objectors, who consider that the costs given for the development are over-inflated and that as a result, the amount of housing proposed would be excessive. A group of objectors previously provided their own viability report, which was carried out by a local architectural practice. This predicted lower build costs for the development and thus, objectors raised concerns that the amount of housing proposed is excessive.

- 2.5 Officers have discussed the two sets of viability information in detail with both the applicants and objectors and note that differences exist between them. However, the applicants remain of the opinion that the build costs that have been provided are realistic and that the higher costs reflect the need to flood proof the development and the objector's information has only assessed build costs, rather than including a wider range of development costs. While Officers acknowledge these differences, it is noted that the applicant's appraisal has been carried out by surveyors based on the proposed plans. Moreover costs such as sales, legal and architect's fees as well as contingencies were not included within the objector's document.
- 2.6 On behalf of the Planning Authority, the District Valuer has undertaken a full independent review of the likely costs of the proposed development, taking into account build costs for the housing and improvements along with the additional costs mentioned above. The assessment has been based on the nationally recognised figures produced on a regular basis by the Royal Institution of Chartered Surveyors (RICS). Officers have provided the District Valuer with the information submitted by the applicant and third parties along with the proposed plans for the development.
- 2.7 The District Valuer has adopted the cost figures provided by the applicant for demolition, a proposed sub-station, sewage plant, sea wall, car park and floating shower block as well as the cost of piling works and the silt lagoon mitigation scheme. The District Valuer has also concluded that the applicant's predicted build cost for the proposed office facility would be reasonable. In terms of build costs for proposed housing, the District Valuer has adopted a predicted figure of £1,449 per square metre, based on RICS figures for the Island. This is significantly lower than the predicted figure provided by the applicants. However, the overall conclusion of the District Valuer is that the proposed development (the housing and improvements) would make a marginal loss of £3,058. Given the amount of development, this suggests that the development could break even, delivering the proposed housing and the listed improvements.
- 2.8 Third party objectors have raised concerns that the level of profit derived from the development would be high and that the quantum of houses proposed would be correspondingly excessive when compared to the cost of the harbour improvements. Part of their concerns relate to the applicant's intention to settle debts held by the company, utilising profits from the development. The objector's criticism is that this demonstrates an excessive level of housing. However, it is normal practice in viability assessments to consider a developer's profit as a cost that would be borne by the development and as result, the District Valuer has adopted a developer profit at 20 per cent.

- 2.9 It is Officer's view that how the developer utilises that profit is a business decision that is not relevant to this planning application. The allowance of a profit for a developer is standard practice (see National Planning Practice Guidance, Viability para. 24) and it is not for the Planning Authority to determine how that profit is then used nor is there any policy guidance that would obviate the developer profit due to a scheme being considered enabling development. Should the applicant use the developer profits derived from the scheme to repay debts, then this would potentially increase the viability of the business but that is a decision for the applicant. Members should note that in the event of the development yielding profit above the predicted 20 per cent level, that revenue would be secured via an overage clause within the legal agreement. Those monies would then have to be spent on further improvements to the harbour.
- 2.10 Members should note that recent third party criticisms have been made in respect of the method used by the Council to assess enabling development. The objectors have referred to Historic England guidance for enabling development in relation to heritage assets; however it should be noted that this guidance is not directly relevant to this planning application, as the proposals would not affect heritage assets.
- 2.11 Therefore, taking into account the District Valuer's conclusions, Officers consider that based solely on a valuation assessment, the quantum of housing development is commensurate to the costs required to deliver the proposed improvements.
- 2.12 As stated above, the Planning Authority has also received significant amounts of information from third parties in relation to the manner that the harbour business is currently managed. The information is based on publicly available accounts related to companies owned by the applicant, and related to Bembridge Harbour. As a result of that information being provided, Officers invited the applicant to provide formal responses to the information, which was subsequently submitted.
- 2.13 The third party documents refer to various business transactions that have been made between four companies owned by the applicant since 2012. These four businesses include the Bembridge Harbour Improvements Company (BHIC), which is the Harbour Authority, Bembridge Investments Limited (BIL) which is the applicant, Bembridge Boat Storage Limited (BBS), which offers storage facilities within the Harbour and Hawk Property Development Company Limited. The transactions that have been referred to include the sale of houseboats within the statutory harbour, rent and management fees charged by Hawk to the Harbour Authority and annual interest charges paid for a loan between Hawk, the Harbour Authority and another of the applicant's companies. Third party comments have also referred to potential income that could be generated by the lease or freehold sale of

moorings to another sailing club within Bembridge Harbour.

- 2.14 The view of third party objectors is that there may be other resources available to the applicant that could be used to fund the proposed improvements rather than the proposed enabling housing. The resources would be derived from a mix of curtailing expenditure, changing loan arrangements between companies, using the income from the sales of houseboats plots or disposal of unnecessary assets and changing business practices. These matters are discussed below.

Houseboat sales

- 2.15 The information provided by both the applicant and the third party objectors show that since 2012, four houseboat plots have been sold by the Harbour Authority, for prices that ranged between £112,500 and £12,000. Officers understand that once fees and other normal costs associated with conveyancing were deducted, the profits from those sales were then returned to the harbour and used to pay for improvements and its day to day functions. Therefore, there is no possibility that revenue from past sales could now be used to fund the current development proposals. However, in 2014 a 99 year lease for plot 20 was sold for £1 by BHIC to BBS and then on the same day, sold to a private party for £87,500. Third party objectors have claimed that these transactions led to the harbour not recuperating the full value of the plot, thus removing capital from the business that could have been used to fund the proposed improvements.
- 2.16 The applicants have since provided further information to clarify the manner that plot 20 was sold. The accounts provided to Officers and relating to the sale show that £80,000 was subsequently transferred from BBS to BHIC in repayment for an earlier loan between these companies. Thus, the revenue received from the sale of plot 20 has been accounted for. Recent accounts for BBS shows that it only holds limited assets, which could not fund the harbour improvements nor could the proceeds from previous houseboats sales, as these have been used for ongoing harbour improvements.
- 2.17 Third parties have referred to differences between sales prices for the various plots that have been sold, raising concerns that plots may have been sold under market value. As stated above, the recouped revenue for the plots has varied so that plot 20 was sold for £87,500 whereas plot 23 was sold for £115,000, both in 2014. The applicant has commented that the value of sales is dependent on the length and depth of each plot as well as its location. Officer's view is that these differences are similar to any property transaction whereby a number of factors can determine value. In conclusion, Officer's consider that there is no substantive evidence to show that past houseboat sales could provide any substantial sums that could be used to fund the proposed improvements to the harbour.

Rental practices and management charges

- 2.18 The accounts for the Harbour Authority shows that it pays rent to Hawk for the offices that it occupies. In addition, over this same period, Hawk charged management fees to the Harbour Authority. Third parties have averred that the rental charges are excessive and that no information has been provided to confirm what services Hawk provides for the Harbour Authority. The yearly figures within the BHIC accounts had shown that the amount of rent it paid had varied (£31,000 to £104,166) over the 4 years of accounts that are available. Such figures would be in excess of a reasonable rental amount, set by the District Valuer. However, further information provided by the applicant has shown that the amounts of rent paid between the Harbour Authority (BHIC) and the applicant's company (Hawk) included both rental charges and the management fees for services provided by Hawk.
- 2.19 Information provided by the applicants has shown that since purchasing the Harbour business, a yearly rental charge of £18,000 has been paid to Hawk, along with £102,000 per annum for management fees, resulting in yearly charge of £120,000. However, this fee is adjusted to reflect services provided by the Harbour Authority for the other companies within the group, hence the altering yearly charges shown within the accounts. The applicant has also confirmed that the management fee paid to Hawk is in fact a yearly salary paid to its two directors, who run the Harbour business. This level of salary is not considered to be excessive.
- 2.20 As a result, Officers are satisfied that the applicant's additional information has demonstrated the reason for the varying figures contained within the BHIC accounts and shown that both the rental and management charges paid to Hawk are not excessive and would not represent an alternative form of funding for the proposed improvements. It should be noted that the applicant has agreed to enter into a s.106 agreement that would set a fair market rent for the use of the improved harbour facilities by the Harbour Authority. Officers would therefore negotiate a suitable method for fixing a rental level that would not prejudice the Harbour Authority.

Inter-company loans

- 2.21 The third party document has referred to a significant loan charged to the Harbour Authority by Hawk. This leads to yearly interest charges being paid by the Harbour Authority. The company accounts show that the loan has not been reduced and that the Harbour Authority pays yearly interest. Third parties have argued that this removes assets from the Harbour Authority.
- 2.22 Further information has been provided by the applicant to show the reason for the loan and interest paid. The applicants have reasoned that the loan derives from a debt held between the previous owners of the Harbour Authority and

their bank. When the applicants purchased the Harbour Authority, they repaid the debit in full in order to prevent it from being wound up. The current loan reflects the cost of repaying the debt and the interest charges mirror those previously paid to the bank. Thus, the Harbour Authority is not paying any additional interest to Hawk than it was to its bank.

- 2.23 Officers have discussed this matter in detail with the applicant and in particular, asked whether the terms of the loan could be renegotiated in order to release funding. However, the applicants have stated that this would not be possible, given the risk of indebting the Harbour Authority. Moreover, as stated above, the applicants have confirmed that it is the intention for the loan to be repaid following the completion of the development, as the development should allow the loan to be repaid with the 20 per cent developer profit. As a result, Officers are satisfied that the current loan arrangements between the Harbour Authority and Hawk are not artificial nor are they uncommercial and that restructuring could not release further capital for the proposed improvements.

Disposal of assets

- 2.24 Third party objectors have questioned whether alternative funding could be derived from sale of assets that the Harbour Authority currently owns, specifically in relation to moorings leased by the Harbour Authority to a neighbouring sailing club. Officers have queried the applicants about this and have been informed that the moorings are let on a long-lease for a peppercorn rent that is likely to be renewed, thus not providing the potential for disposal or income that could be used to fund the proposed improvements.
- 2.25 Third party objectors have also queried whether income derived from future sales of houseboats could be used to fund the proposed improvements. The Planning Authority is currently in the process of determining a Lawful Development Certificate (LDC), that if approved would confirm that the siting of houseboats on the foreshore adjacent to Embankment Road would be lawful. The LDC relates to 34 houseboat plots, of which 25 are currently occupied by houseboats. The Planning Authority is also in receipt of an invalid planning application that seeks permission for a further seven houseboat plots. The objectors claim that the additional plots could be sold by the Harbour and therefore, represent a potential source of income that could be used to fund the proposed improvements.
- 2.26 However, it should be noted that the current LDC is not currently determined and has been the subject of a recent change of description, on which the Planning Authority will undertake formal public consultation. At this stage, it is not certain whether the LDC would be approved or not, given that objections containing material facts could be submitted during the consultation process that could introduce ambiguity or alternatively, confirm facts and because

Officer's will need to carefully weigh up the evidence that is relevant to the case. Thus, at this stage it is not clear whether or not the LDC will be granted or the timeframe for doing so. The applicant has stated that recent sales of houseboats have declined due to the undetermined LDC and therefore, it would be difficult for potential income from those plots to be factored into the current planning application.

2.27 Likewise, the planning application relating to seven additional houseboats remains invalid and thus, carries little weight in the determination of this planning application. Once valid, the application would need to be fully assessed with comments from consultees and third parties taken into account. Given the designated nature of the harbour, the outcome of the application is not certain and therefore, it would be unreasonable to suggest that income generated by the potential plots should be taken into account for this current planning application.

2.28 Officers note that this current planning application could be delayed until the determination of the LDC. However, the current application has been with the Planning Authority since December 2014 and has carried a resolution for planning permission (subject to a s.106 agreement) since December 2015. There are still outstanding issues relating to the LDC application and the Planning Authority is not in a position to predict its outcome. Therefore, it is considered unreasonable to further delay the determination of the current planning application based on the outcome of the LDC.

Conclusion on principle

2.29 Members will note that how a business functions is governed by legislation outside of the planning process and largely dependent on the choices of its owners. The Planning Authority's role is not to dictate how a business is run. However, the proposed housing is put forward as enabling development for the proposed improvements to the Harbour. Members will note that enabling development is development that would be unacceptable in planning terms but for the fact that it would bring public benefits sufficient to justify it being carried out, and which could not otherwise be achieved. The applicant's argument is that the improvements must be financed by the housing, due to the Harbour's inability to fund them via income from the core business, as referred to within the original Officer report. Therefore, whether there may be other sources of capital that could assist funding the improvements or clear evidence of mismanagement, unnecessary or profligate expenditure that could diminish the company's ability to do so would be a material consideration.

2.30 Following the receipt and assessment of significant information, Officers are satisfied that the applicants have provided sufficient information to show that there are not substantial assets or resources available that could fund the proposed improvements. Moreover, Officers are satisfied that the payments

made by the Harbour Authority are not excessive or evidence of poor management that would prevent it from utilising otherwise available resources. On this basis, Officers would not be in a position to suggest that the management of the company should be altered or that there would be other realistic means of funding the proposed improvements to Bembridge Harbour.

- 2.31 Officers consider that the proposed improvements to the Harbour would be compliant with the requirements of policy SP4 of the Island Plan. The conclusions set out within the original report which relate to the benefits of the improvements have not changed. Based on the assessment carried out by the District Valuer, Officers consider that the quantum of housing development is commensurate to the costs required to deliver the proposed improvements that are listed above at paragraph 1.1. Therefore, Officers remain of the opinion that enabling development meets a local need and that the development complies within the guidance within policies SP1 and SP2 of the Island Plan and policy BNDP.OL.2 of the Neighbourhood Plan.
- 2.32 Members will note that during the course of development, there is the potential for costs to alter and potentially realise a greater level of profit, given the predicted nature of the District Valuer's assessment. The District Valuer's assessment set a reasonable developer profit level for the development however, should real-time profits exceed this figure, the quantum of the housing development could be brought into question. To address this possibility, Officers have required the inclusion of a clause within the legal agreement, which would secure any additional profits for use in relation to further improvements within the Harbour. The Planning Authority would monitor this matter.

Flood risk (Sequential Test)

- 2.33 The whole of the application site is located within flood zone 3 and therefore at a high risk of flooding in the event of a flood event. Paragraph 100 of the NPPF states that 'inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere.'
- 2.34 The detailed guidance relating to this issue is set out within the original committee report, and this sets out the requirement for necessary development to comply with the Sequential Test that is outlined within paragraphs 101 & 102 of the NPPF and the supporting technical guidance that is set out within the Government's National Planning Practice Guidance website (PPG). If a development is found to meet the requirements of the Sequential Test, Local Planning Authorities should apply the Exception Test outlined within paragraph 103 of the NPPF.

- 2.35 In accordance with Paragraph 101 of the NPPF, the aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. The NPPF states that ‘development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.’
- 2.36 In addition, paragraph 34 (Flood Risk and Coastal Change) of the PPG states that ‘It is for local planning authorities, taking advice from the Environment Agency as appropriate, to consider the extent to which Sequential Test considerations have been satisfied, taking into account the particular circumstances in any given case. The developer should justify with evidence to the local planning authority what area of search has been used when making the application. Ultimately the local planning authority needs to be satisfied in all cases that the proposed development would be safe and not lead to increased flood risk elsewhere.’
- 2.37 Officers remain of the view that the proposed harbour facilities would be water compatible development and that the function of these facilities would be related to the operation of the harbour. The facilities, including the replacement harbour office would replicate the current use of the Harbour and therefore not increase flood risk. Thus, Officers consider that the proposed improvements (the harbour office, floating toilet block and parking area) would be suitable for development within the application site. Moreover, as set out within the original committee report, it is considered that the proposed flood risk measures set out within the applicant’s information in relation to the proposed Harbour office would pass the Exceptions Test.
- 2.38 It should be noted that the applicant’s original Sequential Test information was undertaken on the basis of the development proposals that were originally submitted. As a result, the Sequential Test considered the need to provide space for the marine industrial units proposed for Selwyn Boatyard and the proposed dwelling at the Old Boathouse. These two elements of the proposals have since been removed and therefore, Officers requested that the applicant undertake a fresh Sequential Test that reflected the revised proposals. The applicants have since provided a revised Sequential Test, which has been undertaken to reflect the current revised proposals. Officers remain of the opinion that the study area for alternative sites is appropriate. Whether any sites with a lower flood risk within that study area are suitable and available needs careful consideration, given that the development has different elements and the residential part is put forward as enabling development, as discussed below. The purpose of this update is to assess whether the revised development could be located on a site or sites that would be sequentially preferable to the application site, due to them being at a lower risk of flooding.
- 2.39 The applicant’s Sequential Test has identified 11 sites within the study that are at a lower risk of flooding. The sites were identified as a result of searching the

deliverable or developable sites included within the Council's Strategic Housing Land Availability Assessment (SHLAA). Members will appreciate that the sites included within the SHLAA have been assessed as a result of a high level exercise and that their inclusion does not mean that they would be policy compliant should a planning application be made for development. Officers agree with the sites that have been identified and having carried out further investigations, have not identified other alternatives.

2.40 The sites that have been assessed are:

LDF 489, Bembridge Primary School
LDF 278, Land off St Michaels Road, St Helens
LDF 434, Land opposite to Fakenham Farm, St Helens
LDF 041, Land at Foreland Fields Road, Bembridge
LDF 088a Land north of Mill Road, Bembridge
LDF 088b Land at Hillway Road, Bembridge
LDF 607 Windmill Inn, Bembridge
LDF 576 Land off Carpenters Road, St Helens
LDF 135 Land at Stonewood Campsite, St Helens
LDF 186 Fakenham Farm, St Helens
LDF 498 St Helens Primary School

2.41 The applicant's Sequential Test concludes that 'given the distance of alternative sites from the harbour, none of the alternative sites that have been identified would provide a site appropriate for the proposed development.' The applicant's Sequential Test has grouped the whole development together. However, it should be noted that the proposed harbour facilities would be water compatible development and that the function of these facilities would be related to the operation of the harbour. Thus, Officers consider that the proposed improvements (the harbour office, floating toilet block and parking area) would be suitable for development within the application site. Officers consider that locating these elements of the proposals away from the harbour would not be reasonable or sustainable. The proposed housing development would not relate to the operation of the harbour and therefore, locating it at more distant sites would not compromise the function of the harbour.

2.42 Of the sites that have been evaluated, Officers agree that several would not be reasonably available for the development. The site at Bembridge Primary School would not be available to the applicant, given that a development of eight houses has been commenced by a housing provider. In addition, the Planning Committee has recently resolved to grant planning consent for 9 dwellings for the site at Forelands Field Road, Bembridge. While a suitable size for the proposed dwellings, this site is owned and being developed by a different landowner.

- 2.43 Three further sites within Bembridge have been considered, these being land at Mill Road, land at Hillway Road and the site of the Windmill Public House. The two sites at Mill Lane and Hillway Road are far larger than would be required for the proposed housing but these could be sub-divided. Both sites are in single ownership and so could be available. Both sites are within flood zone 1 and neither is the subject of designations, apart from the site at Hillway Road, which is the subject of protected trees. The site of the Windmill is an operating public house that serves its local community. Officers would resist the loss of this facility. As a result, Officers are of the opinion that three of the sites identified within Bembridge, those at the Windmill Public House, Bembridge School and Forelands Field Road, would not be reasonably available to the applicant.
- 2.44 Of the sites identified for St Helens, the sites at Stonewood Campsite and opposite to Fakenham Farm are listed as being 'not currently developable' within the SHLAA. As a result, these sites must be discounted. Moreover, St Helens Primary School remains an open school and while potentially suitable for development, would not be classed as deliverable. The remaining sites are immediately adjacent to the settlement boundary. The two sites at Carpenters Road and St Michaels Road are adjacent to each other and to the west of St Helens. The site at Fakenham Farm is to the north of St Helens. None of these sites are within the flood plain or affected by other designations and they are allocated the 'developable' status within the SHLAA and therefore could be developed in the next 6 years.
- 2.45 When considered simply in terms of a general availability for residential development, it is apparent that there are two sites at Bembridge and three at St Helens that are sequentially preferable to the application site. These are all large sites that would be much larger than the area required for the proposed housing at Bembridge Harbour, but there would be the potential for sub-division.
- 2.46 However, as stated above, paragraph 101 of the NPPF states that 'the aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. Moreover, the Government's PPG states when applying the Sequential Test a pragmatic approach on the availability of alternatives should be taken. For example, in considering planning applications for extensions to existing business premises it might be impractical to suggest that there are more suitable alternative locations for that development elsewhere. In this context, Officers consider that the applicant's argument for the need of the housing must be considered, in order to determine whether in pragmatic terms the sites are in fact suitable and reasonably available for the development proposed.

- 2.47 Officers recognise that the delivery of the improvements to the harbour facilities is reliant upon the viability of the whole development and in essence, the ability of the residential development to fund the proposed works. Therefore, rigidly applying a requirement for the housing to be delivered on land currently outside of the ownership of the harbour authority and at a lower risk of flooding would, taking into account the applicant's viability assessment, lead to the development being unviable and undeliverable due to the likely costs associated with purchasing sites outside of the applicant's control. Officers consider that this is a valid consideration, given the pragmatic approach for Sequential Tests that is advocated by the Government's policy guidance. The applicant has included land values within the submitted viability assessment for the sites proposed for development, based on asset values. Officers have undertaken searches of land values for potential housing plots and these have shown that purchasing sites outside of the applicant's control would be a significant cost that would render the proposed development unviable.
- 2.48 Members will be aware that detailed assessments have been provided in relation to the costs of the development, which include the purchase cost of the land on which the housing and improvements would be sited. The District Valuer has accepted the land value. The cost of alternative land, not currently owned by the applicant and suitable for development, would significantly reduce funds available for the proposed improvements to the harbour and not only remove developer profit but also prevent the delivery of improvements to regenerate the harbour.
- 2.49 The cost of development land on the Island can range between £100,000 and £200,000 per housing plot and given the quality of the proposed housing, the cost of comparable land would be likely to be at the higher end of this scale. While build costs per house within flood zone 1 may reduce (flood resilience measures would no longer be necessary) it should be noted that additional costs to form means of access, service roads, drainage, power supplies and other services to greenfield sites would be likely to add to build costs, as would the normal fees associated with buying land. It should be noted that the application site includes existing means of access, hardstanding and services (albeit that require upgrading). Therefore, it is considered that the cost of purchasing additional land would not only remove reasonable developer profit, but diminish the ability to deliver the proposed improvements, particularly as the District Valuer has concluded that the scheme would make a marginal loss. Moreover, the Harbour has no disposable assets or resources to fund land costs and would have to rely upon further borrowing.
- 2.50 Therefore, given the viability issues relating to the application, it is considered that there would be no reasonably available alternative sites at a lower risk of flooding to deliver the proposed housing development. Therefore on an exceptional basis, as a form of enabling development, on balance Officers

consider that the proposal satisfies the Sequential Test. However, even if it was concluded that the general availability of lower risk sites meant that the Sequential Test was not satisfied in terms, Officers consider that the need for the residential element of the proposal to function as effective enabling development for the improvements to harbour facilities (and the viability implications of the lower risk sites making them unable to fulfil this role), provide strong reasons to justify departing from the Sequential Test on the facts of this case. As noted in the original report, the proposal is able to satisfy the Exception Test and will deliver sustainability benefits and the occupiers of the development can be kept safe by the flood warning and resilience measures proposed.

Environmental Impact Assessment and Ecology

- 2.51 The application site is within an area that is environmentally sensitive. The harbour basin forms part of the Solent and Southampton Water SPA/ Ramsar site and is also designated as a SSSI. The area of lagoon to the south and east of Embankment Road forms part of the South Wight Maritime and Solent and Isle of Wight Lagoons Special Areas of Conservation (SAC). The areas of the site proposed for development (the buildings and parking areas) are not designated for ecology reasons, however the area of land to be used for the silt lagoon mitigation project falls within the SPA, Ramsar site and SSSI.
- 2.52 The impact of the development upon the nearby designated sites was considered in detail within the original committee report. Following consultation with Natural England, Officers concluded that the development would not result in harm to designated sites and that suitable means of mitigation had been secured. Objectors have challenged these conclusions and also argued that the planning application should have been the subject of an Environmental Statement and Appropriate Assessment.

Environmental Impact Assessment

- 2.53 The situations where a development is considered to be 'EIA development' and thus require an Environmental Statement are set out within the Environmental Impact Assessment Regulations 2011, hereafter referred to as the 'EIA regulations.' Whether or not an Environmental Statement is required to support a planning application is assessed by Local Planning Authorities via a process known as screening.
- 2.54 Screening involves assessing a range of matters, set out within the EIA regulations, being considered to establish whether the proposed development would be likely to result in a significant effect on the environment. The assessment is set out within a screening opinion, which when completed is adopted by the Planning Authority. The EIA regulations require screening opinions to be accompanied by a written statement that sets out clearly and

precisely the full reasons for the conclusions within it. In addition, where development would take place within AONBs, SSSIs or European sites such as SPAs or SACs, the carrying out of a screening opinion is mandatory. In this case, the sites at Bembridge Marina (including the parking area) and the Duver Marina are outside of but adjacent to the designated sites. The site set aside for the proposed silt lagoon mitigations works is within the SPA, Ramsar site and SSSI.

- 2.55 In this case, the Planning Authority undertook a screening opinion prior to the submission of the planning application and concluded that an Environmental Statement was not required and that instead, the environmental impacts of the development could be suitably assessed through a standard planning application supported by specialist reports.
- 2.56 When the planning application was first submitted, it proposed development on sites at Bembridge Marina, the Duver at St Helens, land at Selwyn Boatyard and the Old Boathouse at Bembridge. For clarity, the development at Bembridge Marina also includes a proposed parking area and a silt lagoon mitigation project, both located to the south east of the marina on the southern side of Embankment Road.
- 2.57 The proposals for Selwyn Boatyard and the Old Boathouse included a replacement dwelling on the site of a former railway shed and six light industrial units on an area of undeveloped land that had been used in the past for tipping. During the processing of the planning application Natural England and the Council's Ecology and Environmental Health Officers raised concerns about the development of these sites due to the potential release of contaminants from former uses.
- 2.58 Both sites are adjacent to a lagoon that forms part of the SAC and that has direct links to Bembridge Harbour. In particular, the Old Boathouse is located partially within the lagoon and is waterlogged for much of the year. Therefore, the Planning Authority raised serious concerns with the applicants that the development of the two sites would harm the adjacent designated sites. As a result of these concerns the applicant withdrew these two sites from the overall development proposals. Thus, the proposals considered by the Planning Committee related to sites at Bembridge Marina and the Duver Marina, St Helens.
- 2.59 Following the committee decision and in light of comments received from objectors, Officers have taken legal advice and undertaken a further screening opinion to assess whether the revised development proposals should be considered EIA development or not. As is normal practice, Officers have carried out the screening opinion having formally consulted with statutory consultees including, amongst others, Natural England and the Council's Ecology and Environmental Health Officers. The conclusion of consultees is

that the proposals would not require an Environmental Statement.

- 2.60 Officers have carefully assessed the likely impacts of the proposed housing, harbour improvements, car parking areas and the silt lagoon mitigation works on the environment and having taken into account the conclusions of consultees, have concluded that the current proposals would not result in a significant effect and thus, would not be classed as EIA development. Officers are satisfied that the likely effects of the development are understood and that impacts can be satisfactorily assessed through a standard planning application supported by the applicant's ecology report. Therefore, it is considered that an environmental statement would not be required.

Ecology

- 2.61 As members will appreciate, the impacts of the proposed development on ecology were assessed in detail within the original committee report. This included assessing the impact of the development on designated sites and protected species. Objectors have queried the applicant's information relating to ecology, stating that a detailed assessment was not carried out. However, Members will note that the application has been supported by an ecology report that has been updated following revisions to the proposals and comments received from statutory consultees and Officers.
- 2.62 The applicant's ecology reports are based on surveys that were undertaken in June 2014. The ecology report states that these surveys should be considered valid for a year from the time of writing. Given the time that has elapsed since the surveys were carried out, Officers have sought clarification from the applicant's ecologist to establish whether the results remain valid. The ecologist's view is that the data from the surveys remains live given the lack of a material change to the site. The ecologist has however, advised that badger surveys should be undertaken prior to commencement of site clearance in relation to the proposed parking area at Bembridge Marina. Officers consider that this is a reasonable conclusion, given that the state of the sites has not changed since the time of submission. Moreover, it is considered that the proposed badger surveys could be secured by condition, if this application was approved. It should be noted that at the time of the surveys, badgers were not present at the site.
- 2.63 The ecology report is considered to be sufficiently detailed to allow an assessment of the impacts on protected species and designated sites and it should be noted that Natural England and the Council's Ecology Officer have not raised objection to the development, subject to the mitigation measures set out within the applicant's information being carried out.
- 2.64 The ecology report sets out a range of mitigation measures that would be undertaken and these are set out within the original Officer report. However,

the Officer report did not refer specifically to a proposed warden scheme that would be undertaken by the applicants and that was set out within the applicant's ecology report. The warden scheme would involve the following duties being undertaken by Harbour staff:

- Provide information, knowledge and advice to the visiting public regarding the Harbour's special environmental quality and character, the wildlife to look out for, when and where to find it, and how to help look after it by respecting habitats and species during their stay
- Promote, to all audiences, the Harbour's environmental and ecological quality as fundamental to its business.
- Patrol and warden the Harbour, manage recreational pressures to support positive behaviour and educate those potentially damaging Harbour ecology.
- Record wildlife sightings in the Harbour and contribute to the IW Local Records Centre.
- Monitor the condition of wildlife sites and habitats within the Harbour.
- Manage and coordinate wildlife conservation projects, organize public and community involvement in conservation tasks, provide 'in-house' ecological advice to Harbour works.
- Liaise with National Trust and RSPB, develop collaborative approaches to landscape and habitat management.

2.65 The above measures have been endorsed by Natural England, who stated *'the outline appears to be what would be expected from a warden on a site important for nature conservation.'* Natural England have reasoned that the Solent Recreation Mitigation Project uses wardens for the education and recreational disturbance management in a similar manner to that outlined in the first three bullet points above. Natural England have advised Officers that the addition of the four measures set out within the last bullet points above gives additional benefit over and above that of the SRMP wardens who do not currently have a monitoring remit. Natural England have concluded *'This gives the warden aspect of the mitigation proposed added benefit in an around the Harbour (Providing it is carried out effectively and in partnership with the other conservation bodies [NT & RSPB]) and makes it more effective overall.'*

2.66 In addition, Members will recall additional mitigation proposed by the applicants that would involve 3.5ha of a former silt lagoon, located on the southern side of Embankment Road, being managed to provide an additional roosting area for wildfowl. This was referred to within paragraph 6.69 of the Officer report. However, reference to these works was brief and therefore, for clarity Officers can confirm that the works would include:

- coppicing roadside trees and scrub to open sight lines for birds
- mowing vegetation to form a short patchy sward to allow roosting
- monitoring the response by birds

The monitoring of the level of bird use would take place for a period of 5 years during construction and then a further 5 years post construction and the maintenance of the mitigation works would take place in perpetuity. These measures have been supported by the Council's ecology Officer, who has recommended that they are secured by condition. In addition, Natural England has confirmed that they agree with the specific mitigation works for the old silt lagoon site as presented within the applicant's information. It is considered that these works would secure additional habitat for migrating birds and that the monitoring scheme would provide information to show how birds would respond to the additional habitat. If the development was approved, these works would be secured by a planning condition and a clause within a legal agreement.

2.67 The original Officer report set out a range of pre-commencement conditions that related to ecology. In particular, the conditions required the submission of the following information prior to the commencement of development:

- External lighting (condition 7)
- Means of glazing for buildings and dwellings (condition 5)
- Construction Environment Management Plan (condition 11)
- Detailed reptile and dormice mitigation strategies (condition 13)

The applicant has since provided further information relating the above issues and in particular has provided an outline of the glazing systems to be used, means of external lighting and measures to prevent light spillage, a reptile mitigation strategy and noise controls to be undertaken during the construction phase. With respect to external lighting, the applicants have confirmed that no details have been provided to date. However, they have confirmed that when submitted, the lighting will be selected to comply with the following:

- Design and specification of lighting will follow guidance set out by Institution of Lighting Professionals Guidance Notes for the Reduction of Obtrusive LightGN01:2011.
- External lighting will be kept to a minimum level and only installed where necessary and to prevent dark spots around the proposed buildings where anti-social behaviour or crime could take place
- Any external lighting will be predominantly down-lit to avoid any unnecessary light spill with restricted hours of operation
- Building illuminance will be minimised

For internal lighting, the following protocols would be adopted:

- The choice of light fixtures should be shielded instead of globe type models to prevent any light spill that will contribute to light pollution
- Down-lighting should be specified wherever possible to prevent directing light into the night sky
- Light fixtures should be assisted with motion sensors or timers where

- possible to ensure lights aren't left on for longer than necessary
- Curtains or blinds should be closed when possible to dilute any potential light spill that may contribute light pollution.

Natural England has confirmed that the above measures would be suitable and therefore, Officers consider that if this development was approved the final details could be secured by condition, in accordance within the above principles.

2.68 In addition, the applicants have also provided a reptile mitigation strategy that would apply to the proposed parking area. The Council's Ecology Officer has advised that while no reptile survey has been carried out, the details set out precautionary mitigation and enhancement measures that would be reasonable and sensible. The Officer has suggested that vegetation clearance should be carried out in September and October to avoid the breeding bird season and whilst reptiles are still active. Officers consider that if this development was approved, these matters could be secured by conditions.

2.69 In terms of glazing, the applicants have set out design protocols for all glazed units in order to prevent harm to birds as a result of collisions. The following protocols would be adopted:

- Curtains or blinds to be closed when possible to break up the illusion of a clear passage or reflected surroundings and reduce consequential light spillage
- Household plants to be moved away from glazed units as birds may view this as a place of refuge and try to perch on them.
- Where bird feeders exist these should be moved close to glazed units, reducing the distance birds require to build momentum and thus unable to hurt themselves if they fly against glazed units.

Night time collisions to be prevented by controlling where light shines. For instance:

- Using light fixtures that are shielded instead of globe type models that produce light spill
- Choose down-lighting over up-lighting to prevent directing light into the night sky
- Use motion sensors and timers to ensure lights aren't left on for longer than necessary

Natural England has confirmed that the above information is acceptable.

2.70 The planning application is in outline and it should be noted that the reserved matters stage would not normally include controls over the height of a development based on ecological grounds. The applicant's updated ecology report, dated June 2015 advises that the scale of the replacement buildings will be broadly similar to those already on the site and that bird flight paths are primarily (rather than exclusively) within the Harbour or between the Harbour and the river mouth. Thus, the information does not explicitly rule out flights across the Duver, raising the potential for birds to fly within proximity or over the buildings. In order to ensure that the development would not compromise protected species, if this development was approved, it is considered reasonable and necessary to impose a condition that would secure the height of the proposed buildings to be no greater than that shown on the submitted plans.

2.71 The applicants have also provided an outline of the measures that would be undertaken during the construction phase of the development to prevent noise. The protocols would include the following:

- Phasing the works to maximise the benefit of existing natural screening and avoiding seasonal ecological receptors
- Any compressors brought on to site should be silenced or sound reduced models fitted with acoustic enclosures
- All pneumatic tools should be fitted with silencers or mufflers
- All plant items should be properly maintained and operated according the manufacturers' recommendations in such a manner as to avoid causing excessive noise
- All plant should be sited so that the noise impact at nearby noise-sensitive properties and habitats is minimised
- Local hoarding, screens or barriers should be erected as necessary to shield particularly noisy activities

Natural England has confirmed that the above information is acceptable. Moreover, Officers consider that the above measures would be suitable and therefore it is recommended that the relevant condition is altered to require the CEMP to be in accordance with the principles of the above details.

2.72 The proposed development is considered to be contrary to the requirements of the Island Plan due to a lack of justification for the proposed housing and its location within an area at high risk of flooding. However, in respect of ecology, Officers remain of the opinion that the proposed development, if approved, would not harm the biodiversity value of designated sites or individual protected species provided further detailed information was secured at reserved matters stage, and that therefore the development would comply with the requirements of policies SP5 and DM12 of the Island Plan. It is therefore considered that a reason for refusal based on ecology matters should not be included.

Appropriate Assessment

- 2.73 It should be noted that when making decisions Planning Authorities are bound by the terms of the Habitats Directive, a European directive that aims to conserve natural habitats and wild species across Europe. To do so, a network of sites known as Natura 2000 sites (generally referred to as European sites) have been established and these include SACs, SPAs & Ramsar sites.
- 2.74 Under Article 6(3) of the Habitats Directive, a Habitat Regulations Assessment (HRA) is required where a plan or project is likely to have a significant effect upon a European site, either individually or in combination with other projects. In order to determine whether an HRA is required the planning authority work through four stages. The first stage is to establish whether the project is likely to have significant effects on European sites, alone or in combination with other projects.
- 2.75 If it is concluded that there would be a likely significant effect, or that there is uncertainty as to whether such an outcome is likely, then the second stage, an appropriate assessment, must be undertaken to establish whether there would be an adverse effect on the integrity of European site. Stage three then assesses potential alternatives and stage four assesses whether there would be Imperative Reasons of Overriding Public Interest (IROPI) for the development to proceed subject to compensatory measures being secured.
- 2.76 For completeness, an Appropriate Assessment (AA) has now been undertaken on behalf of the Council by an Ecology Consultant. In carrying out the AA the Ecology Consultant has noted the comments provided by Natural England. The AA assesses the overall impact of the proposed development on the European features of nature conservation interest to establish whether it would result in an adverse impact on the integrity of the Solent and Southampton Waters SPA/ Ramsar site with respect to over-wintering and passage bird populations. The Consultant has also considered the impact of the development upon the Solent and Isle of Wight Lagoons SAC, given its proximity to the Old Boathouse, which had previously formed part of the planning application. However, impacts of the development on the SAC have been scoped out of the AA given the revisions to the application, which included removing the redevelopment of the Old Boathouse from the proposals. As a result, the Consultant has advised that the SAC is not considered to be at risk from current proposals.
- 2.77 The AA lists the interest features of the SPA/ Ramsar site, the conservation objectives for it and the impacts that the proposed development (during construction and operational phases) could have on the European site. These impacts include the following:
- Recreational impacts upon overwintering and passage waterbirds

- Construction disturbance, including piling
- The effect of new buildings on flight lines for birds
- Distraction to birds as a result of external lighting
- Deterioration of water quality as a result of pollution incidents

2.78 The AA concludes that the construction impacts of the development for both the Bembridge Marina and Duver Marina sites would not result in harm to the European site, provided that the measures outlined within the applicant's ecology report and the requirements of recommended conditions 11 and 12 are followed. In coming to this conclusion, the Ecology Consultant has reasoned that the development would take place within a working harbour with established associated noise and activity. Moreover, the Consultant has reasoned that the development sites are physically segregated from the SPA.

2.79 In relation to pollution, the Ecology Consultant advises that construction incidents can be minimised through best practice working techniques that would include storing building materials, fuels, oils or waste 10m away from the harbour wall, ensuring that waste is regularly removed to landfill to prevent accumulation and preventing site traffic from parking on the quayside. The AA concludes that such measures could be secured through condition 11. In respect of the floating ablution block, the Ecology Consultant notes that it would comprise full service connections to mains sewers, electricity and water, along with flotation pumps. However, it is noted that the block would include an emergency system that in the case of a blockage or breakdown, would close it down. As a result, the AA concludes that recommended condition 16 would address pollution control issues.

2.80 Turning to the operational phase, the Ecology Consultant has concluded that the development would not result in an adverse effect on the European site as a result of the impact of building heights on sightlines for birds. The Ecology Consultant has advised that at the Duver Marina site, the location and scale of the proposed buildings would be broadly similar to those that would be replaced. Moreover the Consultant has advised that the bulk of bird movements are through the harbour and thus, would not be affected by the proposed buildings. Nevertheless, the Ecology Consultant has advised that there are likely to be some movements across the Duver site and that as result, a planning condition should be imposed to secure building heights. The Consultant has advised that this could be achieved through recommended condition 33. The Consultant has advised that the proposed buildings at Bembridge Marina would be in a location and scale that matches those they would replace and would not intrude into the estuary. The Consultant has advised that condition 33 would ensure that the proposed buildings would not exceed the height of those currently at the site.

2.81 The Consultant has also considered the impact of the silt lagoon that is located to the south of Embankment Road. The Consultant has advised that the

lagoon is not currently much used by waterbirds, possibly due to trees that currently align the highway. The proposals for this section of the site are to remove trees and scrub cover and to then provide an area of roosting for waterbirds. The Ecology Consultant has advised that this should address impacts and mitigation and that recommended conditions 8 and 10 would secure the works.

- 2.82 In respect of illumination, the Ecology Consultant has noted the applicant's intention to install external lighting that would comply with the standards set out within paragraph 2.55 of this report and that native planting would be undertaken within the proposed parking area to screen lights. The Consultant has concluded that these measures would be addressed by recommended conditions 5, 7 and 8.
- 2.83 With respect to the impact of residents on the SPA (indirect impacts) the Ecology Consultant has noted the proposed mitigation measures would be undertaken by the applicant. The range of measures would be extensive and to avoid repetition, are set out within the above ecology section of this report and paragraph 2.52. However, in short, the mitigation would include a wardening scheme that would be implemented by the applicant. The Consultant has advised that this scheme would provide added benefit in and around the harbour provided that it was carried out in partnership with other conservation bodies such as the National Trust and RSPB. The Consultant has advised that recommended condition 31 would address this requirement and that the impacts on wintering and migratory waterfowl from the construction and operation of the two sites are considered to not be significantly greater than existing.
- 2.84 The AA concludes that alone, the proposed development should not result in the deterioration in the condition of the SPA/ Ramsar site, subject to the imposition of recommended conditions and the implementation of their requirements. The Ecology Consultant has reasoned that any increased activity arising from the increased number of residential units should not significantly contribute to disturbance impacts to wintering and migratory wildfowl and advised that any impacts over and above the impacts currently prevailing in the area would be de-minimus and that this plan/ project alone would be unlikely to result in an adverse effect on the integrity of the Solent and Southampton Water SPA.
- 2.85 In terms of in-combination impacts, the AA concludes that there will be no adverse impact on the integrity of the Solent and Southampton Water SPA. This is due to the contributions that would be secured by the legal agreement towards the Solent Recreation Mitigation Project, understanding of other projects and the provision of the wardening scheme described above. The overall conclusion of the AA is that the plan or project would not alone or in combination result in adverse effects to the European site. Therefore, it is

considered that an HRA is not required in relation to this proposed development.

Progress on the legal agreement

- 2.86 Officers consider that the proposed improvement works that are listed at paragraph 1.1 of this update paper would be beneficial to the harbour and also Island's tourism economy, for the reasons outlined within the principle section of the original Officer report. Officers consider that the proposed housing has been justified as a form of enabling development whereby the projected profits from the housing would be used to fund the improvements to the harbour. The resolution to grant outline planning permission is subject to the satisfactory completion of a Section 106 agreement. The purpose of the agreement is to secure the funding from the housing development towards the harbour improvements and to ensure that the improvements are undertaken. Moreover, the legal agreement would include clauses to ensure that any profit from the housing development that exceeded that projected by the applicant, would be secured and used for additional harbour improvements. The legal agreement would limit the works for which any additional profit could be used in order that the development would be beneficial for the harbour.
- 2.87 Paragraph 203 of the NPPF states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. In this case, as stated above, it is considered that the proposed housing development would be acceptable, subject to profits derived from it being used to deliver improvements to the harbour. Because planning conditions cannot secure such requirements, a legal agreement is required.
- 2.88 The legal tests for when a legal agreement can be used are set out in regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (CIL Regulations). The tests set out within regulation 122 states that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:
1. necessary to make the development acceptable in planning terms
 2. directly related to the development; and
 3. fairly and reasonably related in scale and kind to the development.
- Officers consider that the use of a legal agreement in this case complies with the above tests, due to the requirement for funds to be secured from the housing development to enable the identified improvement works. Without such an agreement, the application would not be acceptable in planning terms given that the housing development would be located outside of a defined settlement boundary. The agreement would be directly related to the development and related in scale and kind to the development.

2.89 The legal agreement would also include for the provision of the silt lagoon mitigation project and SPA mitigation payments. Officers consider that without such requirements, the development would compromise protected habitats. The requirement for the SPA contribution is set out within the ecology section of the original Officer report and this must be secured via a legal agreement due to the financial nature of the contribution. Moreover, the silt lagoon mitigation works would be required to mitigate for the additional impacts that have been identified.

2.90 Regulation 123 of the CIL Regulations includes restriction on the pooling of contributions that have been secured by legal agreements for identified infrastructure projects. The regulation states that no more than five contributions can be secured to fund an infrastructure project. The elements of the legal agreement that relate to specific on site matters would not trigger the limits within regulation 123. However, the legal agreement would secure contributions towards the Solent Disturbance Mitigation Project. The purposes of this project are set out within the Council's Solent Special Protection Areas SPD and Members will note that all developments that propose housing within the SPA buffer are required to contribute towards the mitigations measures that are set out within the SPD. The contribution would provide funding towards the following:

- a project officer to oversee and co-ordinate across the Special Protection Areas and to oversee the rangers
- a team of rangers who will work on the ground at European sites to reduce disturbance levels and initiate specific measures at the sites to reduce disturbance levels
- a Coastal Dog Project and
- a monitoring scheme

2.91 Members will note that the potential for SPA contributions to be subject of the pooling limit set by the CIL Regulations has been considered by Planning Inspectors during recent appeal decisions. In particular, for an appeal in relation to 86 dwellings at Place Road, Cowes (P/01307/13) the Planning Inspector considered this issue at length. The Inspector provided the following comments and conclusions:

'Regulation 123 of the Community Infrastructure Levy Regulations sets out limitations on the use of planning obligations. The provisions in the undertaking are either outside the definition of "infrastructure" as set out in section 216(2) of the Planning Act 2008 or are projects where there have been less than five obligations entered into since April 2010. In particular, the SPA mitigation contribution would be spent on a project officer, rangers, a coastal dog project and monitoring in accordance with the Supplementary Planning Document. I am therefore satisfied that the requirements of both Regulation 122 and 123 are complied with and that the obligation may be taken into account as a

reason for granting planning permission.'

- 2.92 Officers have sought further advice from Natural England and the co-ordinator for the Solent Recreation Mitigation Partnership (SRMP) on this matter. Natural England has concluded that the SPA contribution is not classed as infrastructure and can be collected through a S106 agreement. Natural England's opinion is that the contribution has no impact/baring on Reg 123 of the CIL Regulations 2010. In addition, the SRMP have advised that the bulk of the funding collected for the SPA is used to pay the salaries of a team of rangers on the coast with the remainder being used to fund initiatives to encourage dog walking (e.g. website, leaflets, other publicity etc) plus the salary of the project coordinator. As a result, it is considered that the SPA contribution is NOT used to fund infrastructure and that the agreement would comply with the tests set out within Regulation 123 of the CIL Regulations 2010.
- 2.93 Since the Committee resolution Officers have been involved in detailed negotiations with the applicants in order to secure suitable clauses within the agreement that would secure the funding for improvements to the harbour. The current draft agreement would secure the following:
- An SPA contribution of £2236
 - The completion of improvement works at Bembridge Marina including the provision of the proposed car park, prior to the demolition of the existing facilities at the Bembridge Marina site and occupation of any dwelling on the Bembridge Marina site.
 - The completion of improvement works at Duver Marina prior to the demolition of the existing facilities and the occupation of any dwelling on the Duver Marine site
 - The carrying out of habitat mitigation works and the silt lagoon mitigation works prior to the occupation of any dwelling and the requirement to continue to manage the silt lagoon in accordance with the submitted ecology report
 - A marketing period to be carried out for the dwellings to secure a priority period for persons with a local connection
 - The provision of an overage clause that would collect profits above the agreed developer profit level and direct monies to be spent on further improvements to the harbour, including dredging.
 - A clause to ensure that the improvements are let to the Harbour Authority at a fair rental charge, the method to be agreed between the Council and the applicant.
- 2.94 Officers can confirm that both the applicant and the Harbour Authority will be parties to the section 106 agreement.

3. Recommendation

- 3.1 For members to note the content and recommendations within this update paper and to endorse the previous committee resolution for outline planning permission to be granted, subject to addition of the revised conditions and the execution of a legal agreement under s.106 of the Town and Country Planning Act 1990, to contain the clauses outlined above.

Revised conditions/ Reasons

- 5 No windows or glazing units shall be installed until details of the proposed windows and glazing units have been submitted to and approved in writing by the Local Planning Authority. The details shall outline the measures to be employed to reduce reflective glare and light spillage from glazing glare and shall be in accordance with the protocols set out within the Architectural Mitigation by Design document dated May 2016. Development shall be carried out in accordance with the approved details and shall be retained thereafter.

Reason: In order to avoid impacts to features of ecological interest and to comply with the requirements of policy DM12 (Landscape, Seascape, Biodiversity and Geodiversity) of the Island Plan Core Strategy.

- 7 No external lighting shall be installed until details of means of external lighting for the development have been submitted to and agreed in writing by the Local Planning Authority. Details shall include measures to minimise light pollution and to prevent glare and shall be in accordance with the protocols set out within the Architectural Mitigation by Design document dated May 2016. Development shall be carried and maintained out in accordance with the agreed details and be retained thereafter.

Reason: To protect the amenities of nearby residential properties, to prevent light pollution from harming the character of the surrounding area and the nearby nature reserve and to comply with the requirements of policies DM2 (Design Quality for New Development) and DM12 (Landscape, Seascape, Biodiversity and Geodiversity) of the Island Plan Core Strategy.

- 10 The ecology mitigation and monitoring measures detailed in sections 5, 6 & 10 of the submitted Ecology Assessment (ARC, June 2015) and section 2 of the Addendum to Silt Pond Restoration (ARC, October 2015) shall be implemented in full prior to the occupation of the dwellings hereby permitted. Thereafter, the compensation measures shall be maintained and retained in accordance with the approved details.

Reason: In order to avoid impacts to features of ecological interest and to comply with the requirements of policy DM12 (Landscape, Seascape, Biodiversity and Geodiversity) of the Island Plan Core Strategy.

11 No development shall take place until a Construction Environment Management Plan has been submitted to and approved in writing by the Local Planning Authority. The information shall set out the measures that will be implemented to avoid and minimise impacts to the adjacent designated sites including pollution prevention measures, the timing of works, measures to be used during the development in order to minimise the environmental impact of the works, a map or plan showing habitat areas to be specifically protected during the works and the means of protection, construction methods, lighting controls. Measures to minimise noise shall be in accordance with the protocols set out within the Architectural Mitigation by Design document dated May 2016. Thereafter the works shall be carried out in accordance with the approved details.

Reason: In order to avoid impacts to features of ecological interest and to comply with the requirements of policy DM12 (Landscape, Seascape, Biodiversity and Geodiversity) of the Island Plan Core Strategy. This is a pre-commencement condition due to the timing at which the agreed CEMP would need to be employed.

13 No development shall take place until a detailed reptile and dormice mitigation strategy has been submitted to and approved in writing by the Local Planning Authority. The strategy shall be in accordance with the measures outlined in the Ecological Assessment Report (ARC, December 2014) and the Scheme of Reptile Mitigation dated May 2016 and shall set out full details of mitigation including timings of works, a methodology for the removal of vegetation and species searches/ identification and a relocation programme for protected species.

Reason: To avoid harm to protected species and to comply with the requirements of policy DM12 (Landscape, Seascape, Biodiversity and Geodiversity) of the Island Plan Core Strategy. This is a pre-commencement condition due to the impacts that site clearance works could have on protected species.

Additional conditions/ reasons

31 No development shall take place until details of an ecology warden scheme and ecology site interpretation boards have been submitted to and agreed in writing by the Local Planning Authority. The warden scheme shall be in accordance with the strategy set out by the applicant and listed below:

- To provide information, knowledge and advice to the visiting public regarding the Harbour's special environmental quality and character, the wildlife to look out for, when and where to find it, and how to help look after it by respecting habitats and species during their stay
- To promote, to all audiences, the Harbour's environmental and

- ecological quality as fundamental to its business.
- To patrol and warden the Harbour, manage recreational pressures to support positive behaviour and educate those potentially damaging Harbour ecology.
- To record wildlife sightings in the Harbour and contribute to the IW Local Records Centre.
- To monitor the condition of wildlife sites and habitats within the Harbour.
- To manage and coordinate wildlife conservation projects, organize public and community involvement in conservation tasks, provide 'in-house' ecological advice to Harbour works.
- To liaise with National Trust and RSPB, develop collaborative approaches to landscape and habitat management.

The ecology warden scheme must be commenced upon the first use of the harbour buildings or dwellings hereby approved, whichever is the sooner, and must be operated in accordance with the agreed details thereafter. The ecology site interpretation boards shall be undertaken in accordance with the agreed details prior to the first occupation of the dwellings hereby approved and shall be retained in a legible condition thereafter.

Reason: To avoid harm to protected species and to comply with the requirements of policy DM12 (Landscape, Seascape, Biodiversity and Geodiversity) of the Island Plan Core Strategy.

- 32 The parking area hereby approved and located to the south of Embankment Road, shall not be brought into use until a parking management strategy has been submitted to and agreed in writing by the Local Planning Authority. The details shall set out measures to secure suitable space for visitors to the harbour and a parking charging regime. The parking area shall be managed thereafter in accordance with the agreed details.

Reason: To ensure that adequate parking areas are provided for visitors to the harbour, to prevent congestion within the highway network and to comply with the requirements of policies SP7 (Travel) and DM2 (Design Quality for New Development) of the Island Plan Core Strategy.

- 33 The buildings hereby approved shall not exceed the following height limits:

The Duver Marina

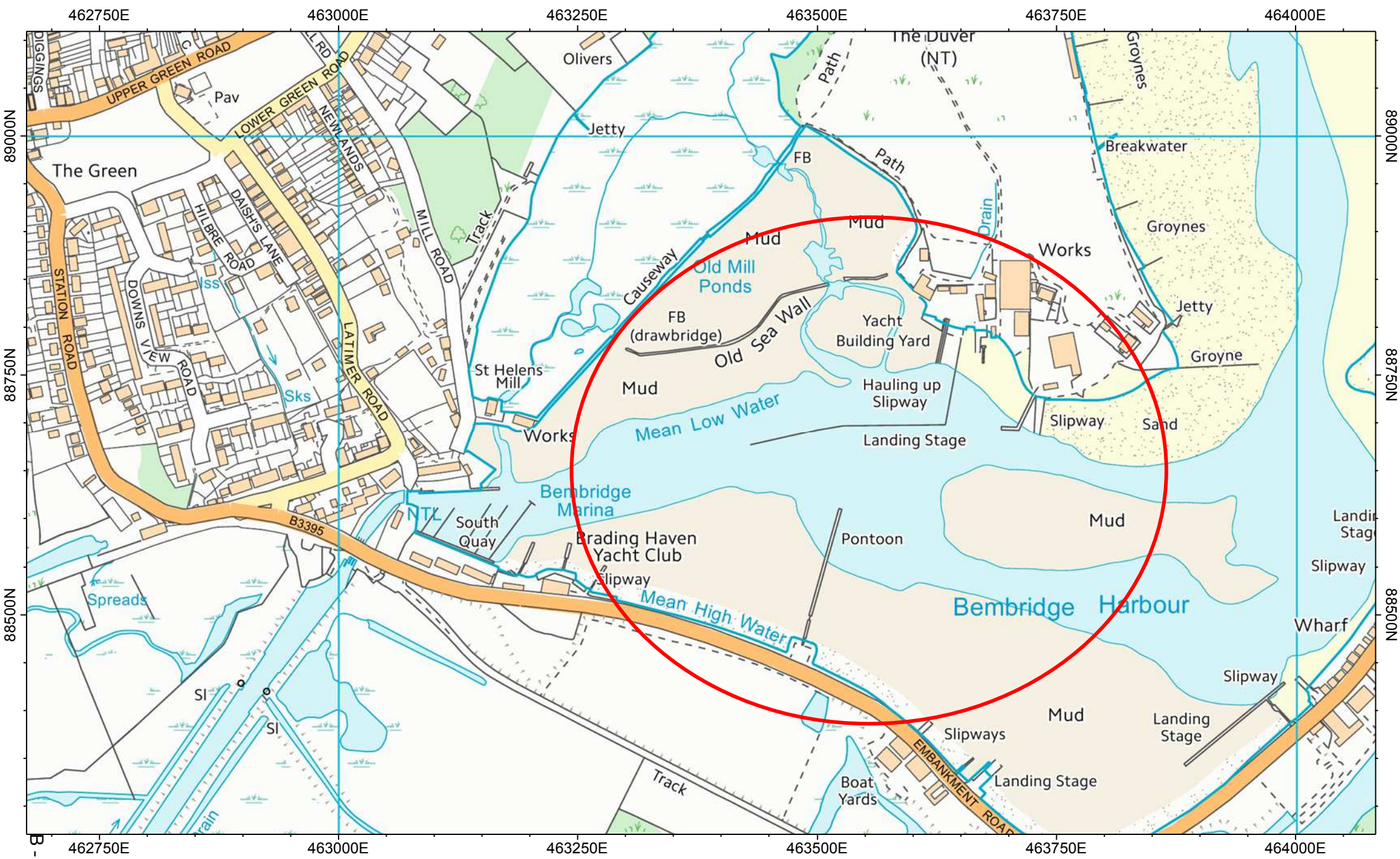
Terrace of houses – 8.9m (11.9m AOD)
 New harbour office/ facilities building – 6.8m (9.8m AOD)

Bembridge Marina

Both terraces of houses – 9.1m (12.7 AOD)

The floating ablution block – 3.7m above surface water level

Reason: To ensure that the development hereby permitted would not cause harm to protected species of migratory birds for which the SPA designation applies and to comply with the requirements of policy DM12 (Landscape, Seascape, Biodiversity and Geodiversity) of the Island Plan Core Strategy.



Scale 1:5000



P/00637/14 - TCP/11822/Y - Sites at the Duver Marina, the Duver St Helens, Ryde PO33 1YB, Bembridge Marina, Embankment Road, Bembridge PO35 & Selwyn Boatyard and the Old Boathouse, Embankment Road, Bembridge, Isle Of Wight, PO35

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02 Reference Number: P/01221/17

Description of application: Continued use of land at various positions for 'street food market' to include temporary siting of stalls, vehicles and gazebos (revised plans)(readvertised)

Site Address: land at, The Quay, Newport, Isle of Wight

Applicant: Isle of Wight Council

This application is recommended for Approval

REASON FOR COMMITTEE CONSIDERATION

This application has been referred to the Planning Committee as it is an Isle of Wight Council scheme.

MAIN CONSIDERATIONS

- Principle of the change of use
- Impact on the character of the area
- Impact on neighbouring users
- Highway Considerations
- Flooding

1. Location and Site Characteristics

1.1. The application site comprises the Quay side alongside the River Medina stretching from the flyover of the Medina Way and extending towards the Council offices of Jubilee Stores. The overall land includes the road, pedestrian walkways and a car park along with land immediately adjacent the river which in the winter months is used to store boats outside of the water. The application specifies 3 areas which have been/would be used for the market:

- 1 is to the south of the car park for Jubilee Stores;
- 2 within the car park adjacent to the allotments on Hillside
- 3 underneath the Medina Way flyover (revised plans were submitted to include this site)

2. Details of Application

- 2.1 The application is for a change of use of the land to accommodate a food street market each Friday on one of three areas specified on the plans. This food market has started operating (started on 1 September 2017) and the application has been submitted with a copy of the Street Trading Consent. The current use is being carried out under permitted development rights which allow this use to take place 14 times in a year.
- 2.2 The street market comprises of up to 15 stalls which operate from a variety of vehicles – the largest being a double decker bus, or from tables and include ‘pop-up’ seating areas and gazebos. Setting up starts from 9am and cleared by 5pm with trading taking place between 10:30am and 4pm.

3. Relevant History

- 3.1. No recent/relevant planning history.

4. Development Plan Policy

National Planning Policy

4.1. National Planning Policy Framework

- improving the conditions in which people live, work, travel and take leisure
- Section 1 - Building a strong, competitive economy
- Section 7 - Requiring Good Design.
- Section 11 - Conserving and enhancing the natural environment

Local Planning Policy

- 4.2 The Island Plan Core Strategy defines the application site as being in Niton Rural Service Centre Settlement Boundary. The following policies are relevant to this application:
- SP1 Spatial Strategy
 - SP3 Economy
 - SP4 Tourism
 - SP5 Environment
 - SP7 Travel
 - DM2 Design Quality for New Development
 - DM7 Social and Community Infrastructure
 - DM8 Economic Development
 - DM9 Town Centre
 - DM11 Historic and Built Environment
 - DM12 Landscape, Seascape, Biodiversity and Geodiversity
 - DM14 Flood Risk

- DM17 Sustainable Travel

4.3 Isle Of Wight Council Regeneration Programme – paper approved by the Executive Committee on 15 December 2016.

5. Consultee and Third Party Comments

Internal Consultees

5.1 The Highway Authority has not raised any objections following the submission of further information and with the imposition of a condition relating to traffic management system to prevent vehicle traffic accessing the Quay via Sea Street junction when this bridge is repaired and when the market operates in site 3.

5.2 The Council's Resilience Coordinator (Emergency Planning) has not raised any objections following the submission of a Flood Warning Evacuation Plan (FWEP).

5.3 The Council's Environmental Health Officer has not raised any objections and confirm that to date there have been no complaints received.

5.4 The Council's Rights of Way team has not raised any objections, providing a safe and convenient through route is available for pedestrians and cyclists at all times.

5.5 The Council's Ecology Officer has not raised any objections, noting this section of the River Medina lies within the proposed the proposed Solent and Dorset Coast SPA which is a designation to protect foraging tern species. The market would not cause a significant increase in terms of disturbance and so unlikely to affect any foraging terns in the summer months. Therefore no further ecological considerations are required in this instance.

External Consultees

5.6 The Environment Agency has no objection to the proposed development but suggests an informative relating to the possible need for an Environmental Permit.

Parish/Town Council Comments

5.7 Newport Parish Council has not raised an objection, but only subject to a temporary permission and also raise concerns of the use of site 3 and that this should only be used after an appropriate risk assessment by the applicants as this is an important pedestrian thoroughfare and that this site should only be used during wet weather and not once the bridge is re-opened to vehicular

traffic. It is noted that they also raise other points – that this is a retrospective application Case Officer Note: this application being retrospective does not alter how the application is assessed. With regards the site under the flyover only being used during inclement weather, it is considered such a condition to restrict this would not meet the government tests for conditions i.e. it would not be reasonable or enforceable).

Third Party Representations

5.8 No comments received.

6. Evaluation

Principle

6.1 The site lies within the Medina Valley Key Regeneration Area Settlement Boundary wherein Policy SP1 of the Island Plan Core Strategy encourages new development to be located. SP1 states that appropriate land is considered to be deliverable “*within or immediately adjacent, the settlement boundaries of the Key Regeneration Areas, Smaller Regeneration Areas and Rural Service Centres*” and is close to the town centre (the boundary is immediately adjacent), with pedestrian and cycle access extending through the site and is therefore within a sustainable location.

6.2 Along with Policies SP3 and DM8 which seek to encourage economic development, the site is within the Key Regeneration Area with the objectives as set out in AAP1 including strengthening its positions as the focal point for economic growth. Furthermore, the Isle Of Wight Council Regeneration Programme seeks to increase the prosperity and sustainability of the Island community, based on the ‘pillars’ of regeneration, growth and productivity and as a main option looks to use its own land and assets to kick start its regeneration activity. Eleven projects have been identified in areas of ‘opportunity’, and this includes Newport Harbour and County Hall car parks, of which the application site is part of. This street market is intended to be a temporary use termed as a ‘meanwhile use’ (turns empty or under-used areas into an opportunity for community and local businesses) and forms part of a long term strategy to regenerate this area for mixed uses including leisure/tourist facilities, commercial and residential development. The market would increase visitors into the area, broaden the appeal and public interest of the harbour area as well as supporting economic use and the businesses that form the market, and providing a community facility each Friday.

6.3 It is acknowledged that Policy DM9 seeks to support proposals which contribute to the diversity, choice, vitality and viability of town centres. The application site is outside the town centre boundary, although the Town Centre Boundary is immediately adjacent to the application site to the south.

Furthermore, this is a market use which would only take place on a Friday and comprise of varying numbers of vehicles/food stalls, and other than St. Thomas' Square within the town centre, it is not considered there would be such a location within the town centre which could accommodate this use – and whilst St. Thomas' Square holds a weekly market and farmers' market, the space may not be appropriate for the type of market that this application relates to – i.e. with varying size of vehicles (including a double decker bus) which would have to be parked within the Square (this differs from the existing markets here where it is understood that the vehicles do not need to park here), along with the seating areas as well as each vehicle having its own generator – with potential noise and disturbance to users and occupiers of the Square, noting that there are residential properties above shops.

- 6.4 Therefore, taking into account of the above, and giving weight to the relevant policies, and with particular consideration given to the temporary nature of the use (a condition for a temporary three year use is suggested) and that it only takes place on a Friday (a condition is also suggested on this) and thus officers do not consider the market would have an adverse impact on the town centre of Newport, and given the long term economic regeneration plan of the harbour area, it is therefore considered that the principle of the use is acceptable in this instance, subject to subject to the detailed material planning considerations (below).

Impact on the character of the area

- 6.5 The use would only be on a Friday and comprises a temporary use of parking various vehicles and setting up seating areas on part of the road or parking areas. Given the transient market appearance and within the urban environment, it is considered this use does not result in an adverse impact on the character of the area and actually provides the area with a facility which would enhance the enjoyment of the area, noting also that the three sites are outside the Conservation Area which is just to the south of the flyover, and thus officers consider the use would be in accordance with Policies DM2, DM11 and DM12 of the Island Plan Core Strategy.

Impact on neighbouring properties

- 6.6 There are no residential properties in close proximity to the three sites, noting the pub opposite and various commercial and community buildings nearby (Riverside Centre). However, the apartments of Carpenters Quay, Little London are on the opposite side of the river – the closest site, site 1, is approximately 45m away, which given the nature of the location as a harbour and quay side, is considered sufficient distance to minimise impact on the occupiers of these flats, particularly as the use would only take place during the day. It is also noted that Environmental Health has not received any complaints relating to noise and disturbance. It is acknowledged that each food

vehicle/stall generally has its own generator, and in operation these do generate some noise and it was suggested whether electricity points could be provided, or utilise electricity supply used by the mooring boats. However, this would result in other issues, such as health and safety of the site, given the quay is a public right of way. This would also restrict the ability to move the market from site to site depending on various factors such as boat storage in winter months and inclement weather.

- 6.7 Again, the use only takes place on a Friday and the Street Trading Consent only allows trading from 10:30am to 8:30pm – with the market currently only operating until 4pm. Officers therefore consider that this use is acceptable in terms of impact on neighbouring occupiers and users in accordance with Policy DM2 of the Core Strategy.

Highway Consideration

- 6.8 Newport Quay is un-adopted falling outside of the limit of the adopted highway and beyond the scope of the Island Roads project network as a carriageway. However, Newport Harbour South car park 'Area 2' is maintained by Island Roads along with a public footway / path that runs along the quay from its junction with Sea Street through to Seaclose Park. It is noted that the site can be accessed via the following routes / roads:
- Priority junction with Sea Street at the southern end of Newport Quay.
 - Hillside providing a directly link onto Fairlee Road to the east of the site (although this is gated and only emergency service vehicles, cyclists and pedestrians are permitted to use this route for access on and off The Quay)
 - Seaclose to the north of the site that form a signalised junction with Fairlee Road
- 6.9 The Sea Street priority junction / vehicle access is currently closed by means of a 'Temporary Road Closure' due to failure of an existing bridge structure. Pedestrians are still permitted to use of this route however all motorised vehicular traffic to the site is currently forced to travel through the Seaclose / Fairlee Road signalised junction. A 15mph posted speed limit is displayed on The Quay and traffic calming in the form of speeds humps is present at each of the vehicle links. Pedestrian access to each of the sites can be gained via a mixture of conventional kerbed footways and shared surfaced yet segregated (carriageway markings) pedestrian routes.
- 6.10 The Highway Engineer has stated that if, or when, the bridge from Sea Street is repaired to allow vehicle then the operation of a market in site 3 would pose a safety risk to pedestrians and motorists. The Engineer has advised that for this area to be used once the temporary closure is lifted and barrier system would need to be imposed to prevent the passage of motorised traffic onto The Quay via Sea Street with all vehicle accessing via the Seaclose / Fairlee Road

junction. A condition is therefore suggested to require a barrier should these repairs be completed and the road open to vehicular access.

6.11 The Highway Engineer has stated that due to the scale, nature and proximity of the site to the town centre, and local public transport links (Newport Bus Station / National Cycle Network) it is not anticipated that the proposal will be a significant traffic generator in its own right to have a negative impact on the operation on the surrounding highway network.

6.12 The Highway Engineer also notes that there have been no current recorded capacity issues at this junction resultant from the temporary existing closure of the Sea Street / Quay link (brought about by failure of the link bridge).

Parking

6.13 It is acknowledged that the proposal would result in a loss of parking spaces should the market be based at site 2. The Highway Engineer has stated that in this instance the obligations detailed within the policy 'Guidelines for parking Provision as Part of New Developments SPD (January 2017)' are not applicable. It is also noted that further information has been provided which sets out that the x3 sites fall within walking distance of 4 public car parks with there being scope to accommodate any parking that may be displaced as a result of Area 2 being utilised. Officers also note that on the Fridays the market has been operating, the car parks at Seaclose and also the car park next to the bus museum building on the Quay have available spaces.

6.14 Therefore with the imposition of an appropriate condition relating to the barrier officers consider the proposal would comply with policies DM2 (Design Quality for New Development), DM17 (Sustainable Travel) and SP7 (Travel) of the Isle of Wight Core Strategy.

Flood Risk

6.15 A Flood Warning Evacuation Plan has been submitted. This acknowledges that the site is in an areas with high probability of flooding – Flood Zone 3 (SFRA) and also shows dates of extreme high tide levels over the next few years. The plans sets out that should a flood event occur or be predicted then warning signs would be placed at the entrance to the Quay and cancellation notice would be given – a plan shows where signs would be placed along with escape routes and place of refuge. The Council's Resilience Coordinator (Emergency Planning) has not raised any objections.

7. Conclusion

7.1 Having given due weight and consideration to all comments received in relation to this application and for the reasons set out above, the proposal is

considered to comply with the requirements of the policies listed within this justification. Therefore it is recommended that the development is approved subject to conditions and thus would be in accordance with Policies SP1, SP3, SP4, SP5, SP7, DM2, DM7, DM8, DM9, DM11, DM12, DM14 and DM17 of the Island Plan Core Strategy.

8. Recommendation

8.1 Conditional permission.

9. Statement of Proactive Working

9.1 In accordance with paragraphs 186 and 187 of the NPPF, the Isle of Wight Council takes a positive approach to development proposals focused on solutions to secure sustainable developments that improve the economic, social and environmental conditions of the area. Where development proposals are considered to be sustainable, the Council aims to work proactively with applicants in the following way:

- The IWC offers a pre-application advice service
- Updates applicants/agents of any issues that may arise in the processing of their application and, where there is not a principle objection to the proposed development, suggest solutions where possible

The application was acceptable following revised plans to include the third site and also information relating to parking and a Flood Warning Evacuation Plan.

Conditions/Reasons

1 The use hereby permitted shall cease 3 YEARS from the date of this permission.

Reason: To enable the Local Planning Authority to assess the impact of the use in view of Policies SP1 (Spatial Strategy), SP3 (Economy), SP5 (Environment), SP7 (Travel), DM2 (Design Criteria for New Development), DM8 (Economic Development), DM9 (Town Centre), DM12 (Landscape, Seascape, Biodiversity and Geodiversity) of the Island Plan Core Strategy.

2 The development hereby permitted shall only be carried out in complete accordance with the details shown on the submitted plans, numbered/labelled:

- NP01/01
- NP01/02
- NP01/03
- NP01/04
- NP01/05/Rev A

- NP01/06
- Newport Harbour Flood Warning and Evacuation Plan (received 22/11/17)

Reason: For the avoidance of doubt and to ensure the satisfactory implementation of the development in accordance with the aims of Policy DM2 (Design Criteria for New Development) of the Island Plan Core Strategy.

- 3 The use of the site for a street market shall only take place one day per week.

Reason: In the interests of the amenities of the area and to comply with Policies DM2 (Design Quality for New Development) and DM9 (Town Centre) of the Island Plan Core Strategy.

- 4 Prior to the market being sited in position 3 as shown on drawing numbers NP01/05/Rev A and NP01/06, and once the road has been re-opened to traffic, a suitable barrier must be in place to prevent vehicles accessing the Quay from Sea Street and maintained in place for the duration of the market. The barriers shall be installed in accordance with detail that have been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety and to comply with policy DM2 (Design Quality for New Development) of the Island Plan Core Strategy.

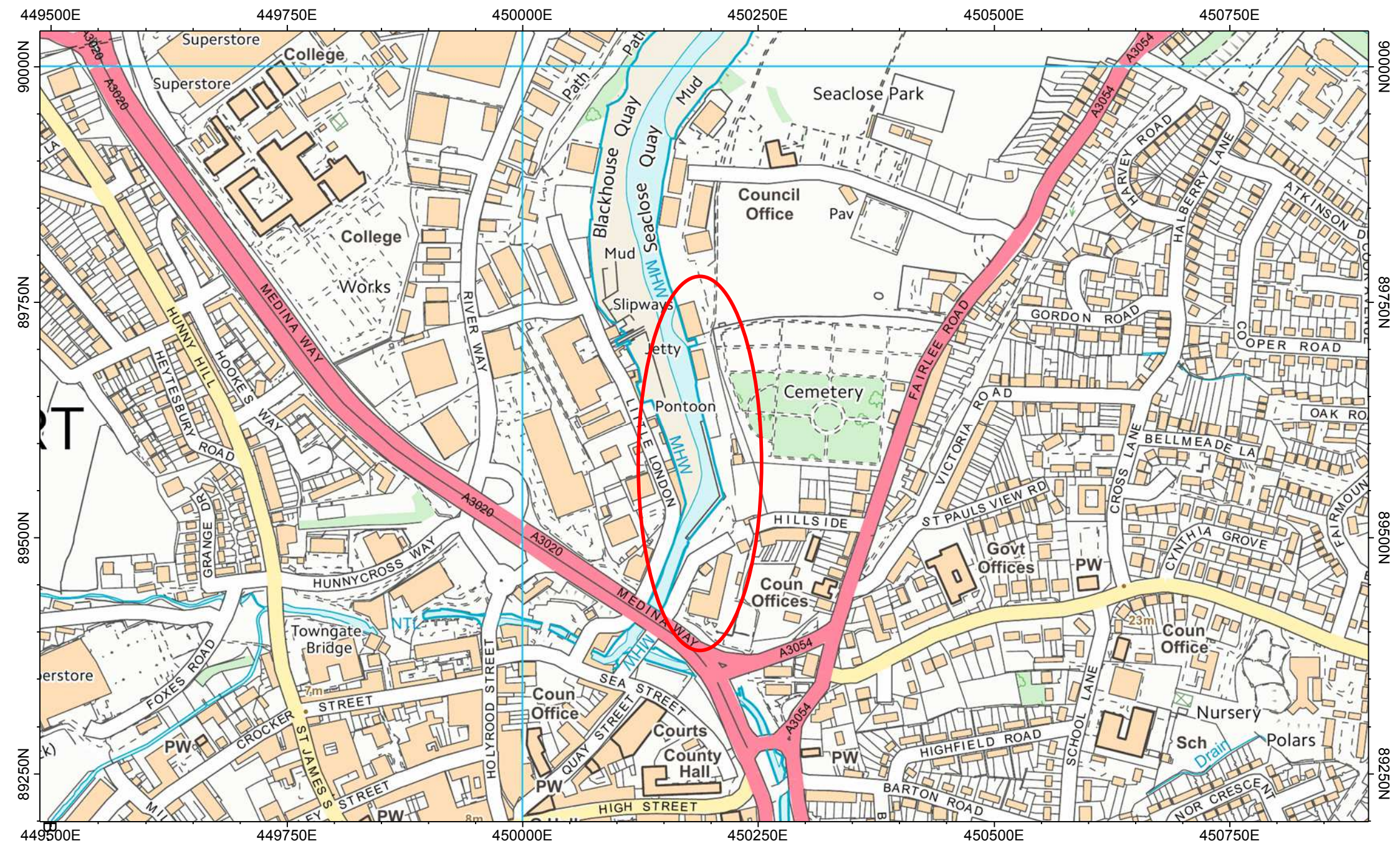
Informatives

- 1 The applicant is advised that if the road link between Sea Street and Newport Quay is reopened, in order to use Area 3, the applicant will be required to submit an application to Island Roads Street Works Team in respect to obtaining a temporary closure order.
- 2 The applicant is advised that this development may require an Environmental Permit or an exemption from an Environmental Permit from the Environment Agency. Any works located in, over, under or within 8 metres of a main river or 16m or a tidal defence, is likely to require a Flood Risk Activity Permit from the Environment Agency.

The applicant is advised to contact the National Customer Contact Centre (NCCC) on 03708 506 506.

The need for an environmental permit is separate to the need for planning permission. The granting of planning permission does not necessarily lead to the granting of an environmental permit.

Further details and guidance are available on the GOV.UK website: www.gov.uk/guidance/flood-risk-activitiesenvironmental-permits



Scale 1:5000



P/01221/17 - land at, The Quay, Newport, Isle Of Wight, PO30

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