Document NFDC1

Local Plan Part 2:
Sites and Development Management

August 2012

NFDC Response to Inspector’s Preliminary Comments: Note 1

1. This note is prepared by NFDC in response to the questions raised by the Inspector in Inspector’s preliminary Comments – Note 1, July 2012.

NFDC Response to Inspector’s Note paragraphs 1.1 to 1.9: Proposed changes, Proposals/Policies Map and NPPF

2. In response to the Inspector’s suggestion, the Council will carry out a 6 week consultation covering the proposed changes and amendments in Documents NFDC2 and NFDC3, and also providing an opportunity to comment on soundness in the context of the final version of the NPPF. We intend to start a 6 week consultation in the week beginning Monday 6th August and ending in the week beginning Monday 17th September. (This response was e-mailed to the Inspector on 25th July 2012.)

3. In response to comments in para.1.7, the Council has produced a composite text of the plan showing all changes proposed to the proposed submission document. (See Document NFDC5 Composite text with changes and errata as at 7th Aug 2012) (We have not attempted to differentiate between types of changes as all changes and errata will be included in the further consultation documentation.)

4. In response to comments in para.1.8, the Council has produced a revised Proposals Map/Policies Map key for clarification. This is Document NFDC6 Proposals/Policies Map Key.
5. The Poole to Christchurch Bay Shoreline Management Plan (PCBSMP) (Doc.BP36) provided the evidence base, including erosion maps, used to formulate Policy DM5. At the time when the policy was drawn up, relevant national policy was set out in PPS 25 Supplement: Development and Coastal Change. National planning policy required local planning authorities to define Coastal Change Management Areas (CCMAs).

"Policy DCC1: Evidence Base for plan-making of PPS25 Supplement stated that:
DCC1.1. Regional and local planning authorities on the coast should ensure that they have an evidence base at the appropriate scale and level of detail on the current and predicted impacts of physical changes to the coast to inform plan making. The prediction of future impacts should reflect the long-term nature and the inherent uncertainty of coastal processes (including coastal landslip), and take account of climate change. The evidence should be proportionate and sufficient to support the plan.
DCC1.2. This evidence should be drawn from Shoreline Management Plans (SMPs) and associated maps and data developed by the Environment Agency and local authorities, together with other strategic plans that apply to coastal areas.

Policy DCC3.2: Local Planning Approach stated that:
Local planning authorities should set out for CCMA(s):
(i) The type of development that will be appropriate taking account of the character of the coast including designations and the variation in risk across the CCMA
(ii) The circumstances in which certain types of development may be permissible within the CCMA(s), and
(iii) Allocations of land for appropriate development within the CCMA(s)."

6. The approach set out in PPS25 - i.e. using the evidence provided in the relevant Shoreline Management Plan to determine the CCMA and the related policy - was followed by the Council in preparing policy DM5 and the associated Proposals Map changes. While the PPS25 Supplement is now replaced by the National Planning Policy Framework (NPPF) (Document N70, paragraphs 105-108), the NPPF retains (paragraph 106) the requirement for local authorities to define CCMAs and to set associated policies for types of appropriate development.

7. The Environment Agency (EA) is preparing a coastal erosion map for England and Wales. The EA's coastal erosion map will use the data from the Shoreline Management Plans for the New Forest District and they do not have different data. The Environment Agency has commented that it is very supportive of Policy DM5.

8. Map DM5a: Coastal Change Management Area – Milford on Sea and Map DM5b: Coastal Change Management Area – Barton on Sea in the Council's Submission Document are taken directly from the “With Present Management” scenario maps in Appendix C3 of the Shoreline Management Plan (Document BP36). (Note: The wrong map was included for Milford-on-Sea in the published Proposed Submission document and this is to be replaced by the correct map as shown in NFDC2 Proposed Changes Schedule – Aug. 2012, Ch2.19.) The “With Present Management” scenario maps are in Appendix C3 on pages 84, 90, 92, and 94 of the Shoreline Management Plan (Document BP36). These are the only settlements within the plan area affected by coastal slippage/coastal erosion. Barton on Sea is significantly affected by coastal
slippage and the western edge of Milford on Sea is affected by coastal erosion. No settlements within the plan area are likely to be affected by permanent inundation.

9. The policy in the PCBSMP (Document BP36) at Barton on Sea is one of ‘Managed Realignment’. The policy in the PCBSMP at Milford on Sea is a mixture of ‘Managed Realignment’ and ‘Hold the Line’ (see the Policy Summary Map on the last page of Section 6 of the PCBSMP – Document No BP36). Policy DM5 of the Submission Document (Document S1) takes account of the forecasts in the PCBSMP and is consistent with the PCBSMP as it restricts certain developments in the CCMA given the potential for physical changes to the coastline as outlined in the PCBSMP.


11. With regards to criterion e (i) of Policy DM5 in the Submission Document (Document S1), subdivisions of properties, the Council’s intention is that the criterion is dealing with the subdivision of buildings only and not the subdivision of plots. The Council proposes the following change to clarify this in Proposed Change No. Ch2.3 in Document NFDC2:

### Policy DM5: Coastal Change Management Area

A coastal change management area (CCMA) is defined along the Plan Area’s southern coast as shown on the Proposals Map (See maps DM4a and DM4b below). Within this CCMA the following criteria will apply:

- **a.** New residential development will generally not be appropriate (subject to the exceptions in criteria e.i, e.ii and e.iii, below);
- **b.** Certain types of essential infrastructure and Ministry of Defence installations may be permitted;
- **c.** Within the indicative erosion zone up to 2025, only development directly linked to the coastal strip, such as beach huts, cafes/tea rooms, car parks and sites used for holiday or short-let caravans and camping may be permitted. All development will be subject to time-limited planning permissions.
- **d.** Within the indicative erosion zones from 2025 up to 2055, and 2055 to 2105, in addition to the above, the following types of development may be permitted subject to time-limited planning permission where appropriate;
  - i. hotels, shops, office or leisure activities requiring a coastal location and providing substantial economic and social benefits to the community;
  - ii. key community infrastructure, which has to be sited within the CCMA to provide the intended benefit to the wider community and there are clear, costed plans to manage the impact of coastal change on it and the service it provides;
- **e.** Within the indicative erosion zones from 2025 up to 2055, and 2055 to 2105, the following types of residential development may be permitted:
  - i. subdivisions of properties buildings, including residential subdivisions;
  - ii. limited residential extensions that are closely related to the existing scale of the property; and
  - iii. replacement dwellings of a scale and impact no greater than the dwelling to be replaced.

This change will be included in the six week consultation prior to the hearing sessions taking place.
NFDC Response to Inspector’s Note paragraphs 2.4 – 2.6: DM7, DM8 and DM9

12. Policies DM7, DM8 and DM9 form a suite of development management policies designed to protect and maintain the valuable green spaces within the urban environment of the built-up areas of the settlements within the Plan Area.

13. The purpose of Policy DM7: Protection of public open space, private recreation land and school playing fields is to secure the long term retention of existing and proposed recreational open space. The sites are identified on the proposals/policies maps with three different notations which differentiate between:
   - Existing public open space
   - Proposed public open space, and
   - Private/education authority recreational land

   These are the same as shown on the New Forest District Local Plan First Alteration Proposals Maps (See Document S21), subject to the open space map changes set out in Appendix 1: Part D, pages 63-130 (Document S1).

14. Policy DM8: Protection of Landscape features seeks to protect identified landscape features within (or in some cases adjoining) a settlement boundary which make a valued contribution to the character and local distinctiveness of an area. Some of these features may be on private land, others are on public land (including highway land). The Council has undertaken a review of the landscape features previously identified on the New Forest District Local Plan First Alteration Proposals Maps (See Document S21). The Landscape features previously shown on the Proposals Maps of Document S21 are completely replaced by the Landscape features set out in Appendix 1: Part E, pages 131 – 171 of Document S1.

15. As stated in para.2.31 of the Plan (Document S1) the areas identified on the proposals/policies map under policies DM7 and DM8 often appear as isolated green features/ spaces within the urban areas. However, there is added value to be gained in terms of recreation, health, wildlife and biodiversity, and amenity for these green ‘islands’ to be connected to form a green network within each town.

16. Policy DM9: Green Infrastructure, as stated in para.2.34, the Plan (Document S1) sets out the overall framework for the preparation of a Green Infrastructure Strategy (GI Strategy) for the plan area which will be prepared as a Supplementary Planning Document (SPD) to the Local Plan. The GI Strategy will identify wider green networks for each settlement. Policy DM9 identifies the type of features which will be identified specifically through the GI Strategy. It is not considered appropriate to try and define each of these features in detail in a development plan document on an ordnance survey map base. Many of the features will in practice have ‘fuzzy’ and changeable boundaries. The Council acknowledge that features only identified through the SPD will not have the same level of ‘protection’ as those identified on the Local Plan Proposals/Policies Map. However, this is not considered inappropriate.

17. The GI Strategy SPD, will refer to the areas already defined under policies DM7 and DM8 of the Local Plan, and will itself define the additional elements under DM9 which complete the overall network of Green Infrastructure for each settlement.

18. A draft Green Infrastructure Strategy (Document BP38a) was published for public consultation, alongside the Sites and Development Management DPD – Public
Consultation Document (Document S2) in January 2011. The Council intend to progress work on the GI Strategy SPD following the adoption of the Local Plan Part 2. The final document will be significantly different from the public consultation draft to ensure consistency with the Local Plan, and will be subject to further public consultation. It will provide an appropriate supplementary document to the policies of the Local Plan, and in particular policy DM9. The public consultation draft document BP38a did indicate the location of particular GI features which will be identified in the SPD. It is envisaged the SPD will be completed within a year of adoption of Local Plan Part 2.

In response to the Inspector’s questions in 2.5 relating to DM7:

19. In response to the first point: Policy DM7 relates to para.74 of the NPPF and is consistent with that policy. Change No.2.5 (Document NFDC2) specifically addresses the second bullet point in para.74.

20. The Council has made no specific ‘Local Green Space’ designations under NPPF paras. 76 and 77. As stated in the NPPF Compatibility Checklist (Document S6, page 26), should any further areas meriting protection as ‘Local Green Spaces’ under the terms of NPPF para. 77 emerge, for example through community-based/neighbourhood plans, this matter will be dealt with through a future review of the Local Plan.

21. In response to the second point: Evidence relating to open space provision is given in the following documents:
   - BP13 - PPG17 Sport, Recreation and Open Space Study
   - BP38b - New Forest District (Outside the National Park) Open Space Profiles.

   No recreational land was identified as surplus to requirements. The adopted Core Strategy Policy CS7 sets a minimum standard of public open space provision. In this context surpluses do not arise.

22. In the context of this Plan Area, the mitigation of recreational impacts of residential development is required because of the potential significant effects of recreational pressures arising from residential development. (See para. 2.26 of the Plan - Document S1 and the Habitat Regulations Assessment – Document S12, in particular para.1.11, Table 2.11 page 14 and Table 3.5 page 49.) Increasing the supply of local open space and green infrastructure is a component of the necessary mitigation measures.

23. In response to the third point: The location of evidence for additional requirements and the plan proposals is set out in the table below:

<table>
<thead>
<tr>
<th>Policy No.</th>
<th>Proposal</th>
<th>Evidence of Need/Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOT19</td>
<td>New public open space north east of Bartley Park</td>
<td>Doc. BP38b page 4-12</td>
</tr>
<tr>
<td>TOT20</td>
<td>Extension to public open space south of Bartley Park</td>
<td>Doc. BP38b page 4-12</td>
</tr>
<tr>
<td>HYD6</td>
<td>New public open space south of Hardley Lane, west of Fawley Road</td>
<td>Doc. BP38b page 19-25</td>
</tr>
<tr>
<td>HYD7</td>
<td>New public open space west of Lower Mullins Lane</td>
<td>Doc. BP38b page 19-25</td>
</tr>
<tr>
<td>MoS1</td>
<td>Land north of School Lane</td>
<td>Doc. BP38b page 41-44</td>
</tr>
</tbody>
</table>
### Additional Public Open Space allocations

<table>
<thead>
<tr>
<th>Policy No.</th>
<th>Proposal</th>
<th>Evidence of Need/ Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>NMT9</td>
<td>New public open space west of Fernhill Lane</td>
<td>Doc. BP38b page 52- 60</td>
</tr>
<tr>
<td>NMT10</td>
<td>New public open space off Culver Road</td>
<td>Doc. BP38b page 52- 60</td>
</tr>
<tr>
<td>NMT11</td>
<td>New public open space south of Lymington Road, north of Chestnut Avenue</td>
<td>Doc. BP38b page 52- 60</td>
</tr>
<tr>
<td>RING1</td>
<td>Industrial land (including former Wellworthy site) east of Christchurch Road, Ringwood</td>
<td>Doc. BP38b page 66 - 71</td>
</tr>
<tr>
<td>RING5</td>
<td>Public Open Space Proposal, land west of Green Lane</td>
<td>Doc. BP38b page 66 - 71</td>
</tr>
<tr>
<td>FORD1</td>
<td>Land east of Whitsbury Road, Fordingbridge</td>
<td>Doc. BP38b page 72 – 77</td>
</tr>
</tbody>
</table>

24. The Plan’s proposals do not attempt to address all identified deficits in public open space provision. The Council has been mindful of what is realistically deliverable within the Plan period.

25. In response to the fourth point: See response to first point.

26: In response to the fifth point: This matter was dealt with in the Core Strategy. (See Document S14, Policy CS7.)

In response to the Inspector’s questions in 2.6 relating to DM8:

27. Having considered the Inspector’s comment, the Council agrees that policy DM8 should include provision for exceptions to the prohibition of loss of landscape features, similar to those made provision for in policy DM2 (Document S1) and as proposed for policy DM7 in the NFDC Proposed Changes Schedule (Document S3/NFDC2, Ch2.5).

28. The Council propose the following additional proposed change (See Document NFDC2 Ch2.16) (which will be included in the additional round of public representations advised by the inspector):

#### Policy DM8: Protection of Landscape features

Development will not be permitted which would cause loss of, or significant damage to landscape features, including those identified on the Proposals Maps, which make an important contribution to the character and local distinctiveness, or the green infrastructure network within the locality, *unless the existing landscape feature is replaced by equivalent or better provision, in terms of quantity and quality, as part of the development proposal.*
NFDC Response to Inspector’s Note paragraphs 2.7: DM10 (Occupancy of housing provided to meet a local need)

29. Policy CS12 is a policy specifically directed at providing additional housing to meet a **local housing need**. The Inspector conducting the Core Strategy Examination commented in his report (Document O66) that:

   “3.26 Policy CS12 makes provision for the allocation of additional housing sites to meet local needs. Policy CS15(b) sets a minimum threshold of 70% affordable housing in such cases. Clearly, this is a high figure. However, the policy represents a particular response to the scale of affordable housing need in the Core Strategy area. To my mind, it is an innovative approach that should, in principle, be welcomed.”

30. The Council considers that it is essential for the delivery of the Core Strategy that the additional affordable housing provided specially to address a local need is actually occupied by the local people whose needs it is intended to address. Any planning permission for development in accordance with CS12 will be required, by legal agreement, to restrict the occupation of the affordable housing element of the development to occupiers that have a local connection.

31. While the Council had considered it helpful to set out a policy dealing with this matter in the Local Plan, it accepts the Inspector’s point that policy DM10 is primarily about housing management practice, and as such is inappropriate for inclusion in a development plan document. The Council therefore propose that policy DM10 be deleted and replaced with appropriate text as follows (See Document NFDC2 ,Ch2.17):

   “2.53 It is essential for the delivery of the Core Strategy that the additional affordable provided under Core Strategy policy CS12 specially to address a local need is actually occupied by the local people whose needs it is intended to address. Any planning permission for development in accordance with policy CS12 will be required, by legal agreement, to restrict the occupation of the affordable housing element of the development to occupiers that have a local connection.

   2.54 Housing management policies will establish appropriate allocation policies to ensure the affordable housing provided under Core Strategy policy CS12 is directed primarily towards the needs of the community in which the development is located. Priority will be given to persons with a local connection to the parish in which the development is built, followed by those with a local connection to adjoining parishes, followed by other persons resident within New Forest District (including the National Park).”

32. Regarding the Inspector’s question on whether or not the Council is satisfied that the cascade of persons eligible to occupy such housing will ensure that affordable units can always be occupied and are not left vacant, the Council’ Housing Needs Manager comments as follows: “We do not have any long-term voids in any local connection areas (with the occasional exception of older persons’ schemes where demand is lower).”
NFDC Response to Inspector’s Note paragraphs 2.8: DM11 (Residential accommodation for older people)

33. The Council is concerned that housing provision made in accordance with Policies CS11 and CS12 is not compromised by the provision of care home development on these sites. The Council has given consideration to the Inspector’s comments and propose the following additional change to Policy DM11. (See Document NFDC2 Ch2.17). This change will be included in the additional round of public representations requested by the inspector:

<table>
<thead>
<tr>
<th>Policy DM11: Residential accommodation for older people</th>
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<tbody>
<tr>
<td>Residential accommodation designed specifically to meet the needs of older people, including care homes and extra care housing, will normally be permitted on sites appropriate for residential development. Care homes will not be permitted on sites allocated for residential development under Core Strategy policies CS11 and CS12, if they would prejudice the achievement of the housing figures set out in those policies.</td>
</tr>
</tbody>
</table>

34. The Council believes that un-restricted use of housing allocations made under policies CS11 and CS12 for care home development, could prejudice the delivery of these Core Strategy policies. (Care home developments do not count as housing provision contributing to housing land supply and are not required to provide affordable housing.) Where, at the detailed planning stage, it can be shown that an allocated site has the capacity to comply with the relevant site specific policy, meet housing and local needs housing requirements, and still have the capacity to accommodate a care home development, the revised policy would allow a care home to be considered as part of the allocation development.
In response to the question regarding the reason for the proposed change from the 5 additional pitches in the submitted plan to the around 8 in Document S3.

35. The Hampshire and Isle of Wight Gypsy and Traveller Accommodation Assessment 2007 (Document BP22), which identified needs for the period up to 2011, found that there was a need for 3 new pitches in New Forest (para.7.10.3 of the GTAA). This figure related to the District Council’s Plan area plus the National Park. Further work to identify needs beyond 2011 factored this figure up to 5 for the period to 2016 (the ‘Option A’ figure for New Forest District published in the submitted SEERA partial review of the South East Plan initial consultation document – later abandoned). This is currently the only Gypsy and Traveller Accommodation Assessment available.

36. The Council’s submission document focused on making provision to meet this identified need for new pitches (although the needs figure also included the National Park) and proposed (in paragraph 2.57 and Policy TOT10) that the 5 pitches should be provided through an extension to the existing traveller site at Little Testwood Farm, Totton. However, further work examining the capacity of the proposed allocation indicated that the site was capable of accommodating more than 5 pitches. In the interests of making the most efficient use of the land and providing for some additional provision within the plan period beyond 2016, the Council proposed the change to provide for up to 8 pitches on the site (Document S3 change number Ch2.8).

In response to question: What period does the 8 cover? If only to 2016, how does the Council intend to make provision for any further needs that the new GTAA identifies?

37. The proposal for 8 pitches on the site at Little Testwood Farm will provide an additional 3 pitches over the identified need for the district up to 2016.

38. The Council is working with other Hampshire authorities to progress a new assessment to examine future needs. This assessment will look at identifying needs up to 10 years ahead. Household survey work for this assessment is currently underway and a report is expected before the end of 2012.

39. In the light of the new GTAA (and additional provision which is made through the implementation of Core Strategy Policy CS16), the Council will look at whether there is a need to review provision for travellers in the Local Plan and will instigate a selective review of the Plan if necessary.

In response to question: How will the plan provide for a 5 year supply of pitches for gypsies and travellers as required by national policy?

40. The assessment of a 5 year land supply should be made in relation to targets for pitch provision. There is no formal target for pitches because the partial review of the South East Plan on this matter was abandoned. In the absence of a formal target, the Council’s own evidence (Hampshire and Isle of Wight Gypsy and Traveller Accommodation Assessment) is the only basis for calculating a 5 year land supply. However, the assessment covers New Forest District including the New Forest National Park, which is outside the Plan Area and, although the submission plan proposes to meet all of the identified need for the district within the Plan Area, it would not be appropriate to treat this as a requirement for the Plan Area alone. It is unclear therefore on what basis a 5 year land supply calculation could be made. The Council would be likely to view as
unjustified a suggestion that a district-wide (including the National Park) figure for additional pitch provision should be treated as a target for the Plan Area alone.

41. There is also the fact that the assessment of needs runs only to 2016. Thus a calculation of land supply based at April 2012 would have to rely on projecting forward the previous GTAA figure for a further two years in order to meet the Government’s specified measure. Given that a new assessment of needs is being progressed, the Council considers that these matters should be addressed in the light of the new evidence and if necessary through a selective review of the Local Plan in due course.

42. The new TAA currently underway will provide figures for each of the participating authority areas, so separate figures will be provided for the District and the National Park. This would provide a sound basis for calculating a 5 year supply of sites.

43. Notwithstanding the foregoing arguments, the Council has provided, for the Inspector’s benefit, an assessment of 5 year land supply based at April 2012. This covers the 5 year period 2013 to 2018 (the Government’s required measure) and is based on the level of identified need for the whole district including the National Park (see Appendix 1).

In response to question: How does the intended approach (responding to applications, but not allocating a site) meet the requirement for a 5 year supply of plots?

44. With regard to travelling showpeople, the Hampshire and Isle of Wight Travelling Showpeople Accommodation Assessment (TSAA) proposed that an additional 5 plots is required in the district including the National Park. The Council’s approach is to be responsive to proposals from travelling showpeople based on the criteria set in Policy CS16 of the Core Strategy, rather than make allocations in the Plan Area to meet some or all of this need. It is understood that this is also the favoured approach of the travelling showpeople community and no representations have been received which contradict this approach.

45. Given the Council’s approach to this matter and the relatively low level of need arising within the Plan Area, it is not considered appropriate to provide a 5 year land supply assessment in relation to plots for travelling showpeople.

In response to the question: How / when will TOT10 be delivered? What are the intentions of the landowner?

46. Prior to formulating this policy, discussions were held with the landowner and site manager which included a meeting on-site. The landowner was positively disposed to the proposal, although no written representations have been received from him.

47. The land in question forms an extension to an established traveller transit site. The area is cleared and has ready access to the A36. Given the existing use of the site and infrastructure in place the Council considers that the site could come forward early in the plan period following its allocation.
NFDC Response to Inspector’s Note paragraphs 2.11: DM13 (Tourist and visitor facilities)

48. The Council has no evidence of a problem within the plan area of hotels or guest house accommodation remaining vacant and unused for extended period, although from time to time individual businesses will fail and premises change ownership. Part ii of policy DM13 enables improvements to be made to hotels and guest houses to improve operating efficiency or maintain the viability of a business. Policy DM13 complements policies CS17 and CS19 of the adopted Core Strategy (Doc. S14). Tourism is an important part of the local economy – loss of the established stock of properties that contribute to the leisure/visitor based sector of the local economy could have a detrimental impact on an important part of the local economy.

49. Occasionally the Council receives inquiries from people wishing to change the use of a hotel or guest house that is for sale to a residential dwelling. With the support of previous and proposed Local Plan policies the Council has been able to resist such changes of use and the new owners of the properties have continued to use the building for leisure/visitor based uses.
NFDC Response to Inspector’s Note Section 3: DM12 Marine related industries and Dibden Bay

In response to questions relating to Policy DM12: Marine related industries (paragraph 3.3 of Inspector’s Note).

50. Policy CS17(j) of the Core Strategy states that (the strategy is to) encourage the marine sector by retaining suitable employment sites with direct access to the coast for marine-related businesses. Policy CS18(f) states that (the strategy is to) make (specified) new provision for industrial and office development, and related uses …in particular….sites suitable to accommodate marine industries will be identified.

51. There is a substantial amount of overlap between these 2 policy statements. Policy CS17(j) is a more general statement that had been included in the submitted Core Strategy as text but was added to Policy CS17 through an Inspector’s recommendation (see paragraphs 3.40 and RC32 of Core Strategy Inspector’s Report - Document O66).

52. Policy CS18(f) was already in the submitted Core Strategy.

53. The Submitted document (Document S1) aims to address the requirements of both Policy CS17 (j) and CS 18(f) principally in 2 ways:

   (i) By ensuring access to the water frontage on identified sites adjoining the water frontage

54. Policy DM12 identifies a list of 11 sites within which land adjoining the water frontage is identified as being particularly suitable for marine-related businesses. The Council is proposing some changes to DM12 in the Proposed Submission Document (the Proposed Changes are set out in Document NFDC2, see Ch2.11) and these will be included in the 6 weeks consultation to be held prior to the Hearing Sessions. The proposed revised policy and related text state:

“Sites for marine-related businesses

<table>
<thead>
<tr>
<th>Policy DM12: Sites identified as particularly suitable for marine-related businesses</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Within the framework set by Core Strategy Policies CS17(j) and CS18(f), land adjoining the water frontage at the following sites is considered as being particularly suitable for marine-related businesses:</strong></td>
</tr>
<tr>
<td><strong>a)</strong> Marchwood Industrial Park (wharf and environs)</td>
</tr>
<tr>
<td><strong>b)</strong> Cracknore Industrial Park</td>
</tr>
<tr>
<td><strong>c)</strong> Marchwood Military Port</td>
</tr>
<tr>
<td><strong>d)</strong> Hythe Marina Boat Yard, Endeavour Way</td>
</tr>
<tr>
<td><strong>e)</strong> Hythe Boat Yard, St. Johns Street</td>
</tr>
<tr>
<td><strong>f)</strong> Hythe Marine Park, Shore Road</td>
</tr>
<tr>
<td><strong>g)</strong> Lymington Marina, Bath Road</td>
</tr>
<tr>
<td><strong>h)</strong> Bath Road, Lymington, yacht clubs, harbour office, car and boat parks</td>
</tr>
<tr>
<td><strong>i)</strong> Boat Yard, Mill Lane, Lymington</td>
</tr>
<tr>
<td><strong>j)</strong> Boat Works, Undershore Road, Lymington</td>
</tr>
<tr>
<td><strong>k)</strong> Lymington Yacht Haven, Kings Saltern Road</td>
</tr>
</tbody>
</table>

New development on these sites should be designed to ensure access to the water frontage is maintained.
2.64 The Core Strategy highlights the importance of the marine sector to the economy of the Plan Area. Core Strategy Policy CS17(j) refers to the aim to encourage the marine sector by retaining suitable employment sites with direct access to the coast for marine-related businesses; and Policy CS 18(f) states that sites suitable to accommodate marine industries will be identified."

(ii) Through retaining and increasing the provision of employment sites that provide opportunities for marine-related businesses.

55. It is the case that not all marine-related businesses are, or need to be, located adjoining to the waterfront. Policy CS17(d) states the aim to keep all (except for a few specified exceptions) existing and new employment sites for employment use. Policy CS18 sets out the strategy for new provision. Various site-specific policies in the submitted Sites and Development Management Document (TOT11, TOT12, TOT14, MAR5, MAR6, MAR7, HYD3, HAR1, LYM7, NMT3, NMT7, SOP1, RING1, RING2, RING3, SAND2) provide for employment development opportunities that marine-related industries may make use of. (Note: There is some overlap of this list with the sites listed in Policy DM12 but the above list includes sites that do not have water frontage).

56. It would be inappropriate for the plan to attempt to reserve specific sites for marine-related industries because:
   (a) “marine-related industry” is not a use class and is impossible to define in any meaningful way;
   (b) in the Council’s view, while the marine-related sector is a very important and valuable part of the local economy, it would be an undue interference with operation of the market for the Council to aim to control which type of business can occupy specific sites/premises.

57. The overall provision to be made for employment development over the plan period was determined through the Core Strategy. This includes provision for the marine-related sector. The Core Strategy’s preparation took account of the Solent Waterfront Strategy. The Core Strategy Inspector commented that (subject to a change that was made):
   “…… I am satisfied that the Core Strategy broadly accords with the objectives of the Solent Waterfront Strategy (SWS) which, although not explicitly referenced in the Plan, has clearly influenced its preparation.” (Document O66, paragraph 3.40)
   and
   “Subject to the changes I recommend below (RC25 – RC33), I conclude that the Core Strategy will be effective in achieving the objective of facilitating a healthy and growing local economy without fuelling wider development pressures in the area.” (Document O66, paragraph 3.44)

58. In the evidence-gathering and consultations carried out in preparing the Submission Documents, neither the Council nor any other party has been able to find any additional employment sites with water frontage beyond those included in the Submission Documents, that could realistically be considered for employment development. Most of the plan area’s waterfront is either already developed/included in defined built-up areas, or subject to national/international designations and/or cliffs subject to erosion/land slippage and/or Green Belt (see adopted Proposals Map in Document S21). Given these constraints, the Council considers that it has identified all of the sites within the plan area that are suitable for marine industries.
NFDC Response to Inspector’s Note Section 3: Dibden Bay (questions in paragraph 3.6 of Inspector’s Note)

59. With regard to the first bullet in paragraph 3.6 of the Inspector’s Note, Core Strategy Policy CS18(f) relates to marine-related industries (e.g. boat building) and was never intended to relate to the issue of port development at Dibden Bay which is specifically dealt with in a different section of the Core Strategy (paragraphs 9.15 – 9.16). This is the way in which this matter was dealt with at the Core Strategy Examination where the two matters of marine-related industries [Policies CS17(j) and CS18(f)] and Dibden Bay (paragraphs 9.15-16 of Core strategy) were dealt with in separate sessions.

60. There is a long and involved history relating to port development proposals at Dibden Bay. Of key importance, as set out in paragraph 9.15 of the Core Strategy, are the facts that the land at Dibden Bay is a Site of Special Scientific Interest (SSSI) and adjoins the New Forest National Park. The foreshore is of international nature conservation importance being designated as a Special Protection Area (SPA) and Ramsar site, as well as an SSSI. In 2004 (after a 13 month long public inquiry), the Secretary of State rejected previous proposals for port development at Dibden Bay principally because of the environmental impacts. There has not been any tested evidence since that long Public Inquiry to suggest that the previous reasons against port development at Dibden Bay can be overcome.

61. In particular, any assessment of port development proposals at Dibden Bay, given the international nature conservation designations, would need to fulfil the requirements of European Habitats Directive. If the integrity of the European designations is affected (which seems inevitable) then very demanding requirements have to be met including demonstrating that there are no alternative solutions and satisfying the Imperative Reasons of Overriding Public Interest (IROPI) test. These considerations apply to a plan as well as to specific planning applications. (The requirements are set out in Document N76, Guidance document on Article 6(4) of the “Habitats Directive” 92/43/EEC).

62. The appropriate position to take regarding Dibden Bay in New Forest District Council’s Development Plan was considered in depth in preparing New Forest District Council’s Core Strategy, in the run-up to the Core Strategy Examination and at the Core Strategy Examination (see Document O66 – Inspector’s Report paragraphs 3.41 – 3.45 and RC33). This site was considered at the Examination as a “strategic site”. Initially, at the request of ABP’s representatives, a formal public inquiry session was to be held during the Core Strategy Examination. As a consequence of discussions between the main parties involved (NFDC and the representatives of Associated British Ports) it was agreed by both parties that it would not be appropriate for the Core Strategy to contain a policy allocating or safeguarding land at Dibden Bay for port development, or an allocation on the Proposals Map. The Inspector recommended that two paragraphs (9.15 and 9.16) – as agreed between the Council and ABP - be inserted into the Council’s Core Strategy to summarise the issues surrounding Dibden Bay.

63. More recently, in its submissions to the Hampshire Minerals and Waste Plan Examination (which is still taking place), the Council sought legal advice in response to an invitation by the Inspector to comment on the following suggested policy: “The following are safeguarded as potential, sites for future minerals and waste wharf infrastructure, or rail infrastructure. Investment in sustainable developments in these locations will be encouraged if sites become available or are released from current use.
   a. Northern part of the strategic land reserve identified in the Port of Southampton Master plan
   …..”
64. The Council has prepared a draft response to the Minerals and Waste Examination Inspector incorporating legal advice. While this response statement has not yet been submitted to the Minerals and Waste Examination Inspector (the Hearing sessions have been adjourned), it has been made available to other key parties (Hampshire County Council, Associated British Ports, Southampton City Council and the New Forest National Park Authority). The draft statement, and the draft legal advice included in it, are directly relevant to the questions posed by the Inspector in paragraph 3.6 of his Note 1 and therefore the draft statement is attached to this response statement. The conclusions are that:

4.0 It would be unlawful for a safeguarding policy, whether in the terms proposed by the inspector or otherwise, in relation to Dibden Bay to be included in the Plan without first complying with the requirements of the Habitats Directive and Regulations in relation to adoption of an AA and examination of the proposed policy against the integrity test and, if that test is not met, against the IROPI and alternatives tests. Those steps have not been taken.

4.1 Part a. of the suggested new policy (“Northern part of the strategic land reserve identified in the Port of Southampton Master Plan,...” should be omitted. Text explaining the situation should be included similar to paragraphs 9.15 to 9.16 of the New Forest District (outside the National Park) Core Strategy but relating to the situation of a minerals wharf.

65. As has been said, the issue of port development at Dibden Bay is a strategic matter that was considered in depth at the Core Strategy Examination. ABP’s representatives initially sought a policy and allocation in the Core Strategy for port development at Dibden Bay but this was rejected through the Core Strategy Examination process. The conclusion was that it would be inappropriate to include a policy or an allocation but the issue was best dealt with through inclusion of paragraphs 9.15-16 setting out the situation. At no point was it suggested by the Council that it would be appropriate to include a policy and/or allocation in the subsequent Sites and Development Plan document.

66. The scope of the Sites and Development Plan document (part 2 of the Local Plan) is to set out the detailed allocations, designations and any necessary further development management policies within the framework set by the Core Strategy. This is clearly set out in paragraph 1.1 of the submitted Local Plan Part 2 document (Document S1, page 9). The Core Strategy does not include a policy regarding port development at Dibden Bay that would form the basis for a more detailed policy/allocation in Part 2 of the Local Plan. The only policies and allocations for Dibden Bay in the Core Strategy are the national and international nature conservation designations (Policy CS3).

67. Having regard to all of the points set out above, the Council’s response to the issues raised in the second, third and fourth bullet points in paragraph 3.6 of the Inspector’s Note 1 is that the issue of possible port development at Dibden Bay is clearly a strategic matter beyond the scope of the current document. When the strategic aspects of the Council’s Development Plan are reviewed it will be appropriate to reconsider the matter at that time. Appropriate regard will then be given, in that strategic review, to the National Policy Statement on Ports and to the Port of Southampton Master Plan 2009-2030.

68. Specifically with regard to the Port of Southampton Master, Plan New Forest District Council objected to the identification of Dibden Bay for port development in this document, without it having been demonstrated how the considerations set out in paragraph 9.16 of the Core Strategy have been complied with. However, the Council’s objections were not taken into account and there was no public examination process to test the document’s proposals. The Port Master Plan is a non-statutory document that
should be viewed as setting out how the owners of the Port of Southampton would like to see the port develop in the medium to long term. In the Council’s view, the appropriate time for its implications for New Forest District to be considered will be during the next review of the strategic aspects of the development plan rather than during the current Examination. As has already been stated, similar considerations apply to the implications of the National Policy Statement on Ports (Inspector’s second bullet point), to the role that land in New Forest District could, or should, play in meeting future port requirements (Inspector’s third bullet point) and to the implications of the NPPF for port development in New Forest District (Inspector’s fourth bullet point).

69. Inquiry document S7 sets out how the Council has complied with the “duty to co-operate” requirements so far, taking into account the changes to the system that have taken place as the Council has been preparing its Development Plan. The Council intends to fully comply with the Duty to Co-operate requirements in a future review of its Development Plan. This will include involvement of neighbouring authorities and Associated British Ports.

70. The Council has not yet set a programme for the review of its Development Plan. Its priority is to get in place a complete Local Plan and CIL Charging Schedule. Following this Examination, and taking into account relevant recommendations of the Inspector, consideration will then be given to the scope and timing of a review.

71. With regard to the Inspector’s 5th bullet point in paragraph 3.6 of his note, the (draft) legal advice referred to above and included in full in Appendix 2 to this statement, is directly relevant. In addition to the issues regarding the lawfulness of such a policy, it is highly relevant that the national and international nature conservation designations covering Dibden Bay effectively safeguard the site from any development that would prejudice any future proposals for port development from being considered. An additional safeguarding policy is unnecessary. The Core Strategy Examination Inspector concluded that there was no need for an allocation or safeguarding policy at Dibden Bay.
NFDC Response to Inspector's Note Section 4: Deliverability

72. In response to the Inspector's comments in paragraphs 4.1 and 4.2, the Council has prepared a new submission document NFDC4 – Delivery of the Infrastructure Projects.

73. In response to comments in paragraph 4.3 an expanded version of Table 2 of the Core Strategy is set out in Appendix 3 of this document.
Appendix 1:

**Five year land supply assessment of pitches for travellers 2013-2018**
*(Government’s required period) set against the GTAA assessment of need for New Forest District (including the National Park)*

**Residual requirement and required building rate**

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) GTAA assessment of need 2006-2016</td>
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</tr>
<tr>
<td>(b) Factoring to provide additional 2 years in order to meet Government’s required period (2013-2018)</td>
<td>1</td>
</tr>
<tr>
<td>(c) Overall target (a)+(b) (2006-2018)</td>
<td>6</td>
</tr>
<tr>
<td>(d) Net completions 2006-2013</td>
<td>1</td>
</tr>
<tr>
<td>(e) Residual requirement 2012-2018 (c) - (d)</td>
<td>5</td>
</tr>
<tr>
<td>(f) Annual building rate required (e) / 5 years (2013-2018)</td>
<td>1</td>
</tr>
</tbody>
</table>

**Assessment of land supply**

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>(g) Proposed allocation in Local Plan Part 2</td>
<td>8</td>
</tr>
<tr>
<td>(h) Outstanding planning permissions</td>
<td>0</td>
</tr>
<tr>
<td>(i) Total supply (g) + (h)</td>
<td>8</td>
</tr>
<tr>
<td>(j) Annual building rate required (line (d) above)</td>
<td>1</td>
</tr>
<tr>
<td>(k) Number of years supply identified</td>
<td>8</td>
</tr>
<tr>
<td>(l) Percentage of required supply</td>
<td>160%</td>
</tr>
</tbody>
</table>

* GTAA assessment of need is for the whole of New Forest District including the National Park. However this assessment only takes account of provision made in the area of the district outside the National Park.
Appendix 2:

New Forest District Council’s draft response to Hampshire Minerals and Waste Plan Inspector’s suggested new policy relating to safeguarding potential sites for minerals and waste wharf infrastructure

Introduction

1.0 This statement by New Forest District Council (NFDC) follows on from the Safeguarding Hearing Session held on the 11th June 2012. NFDC has given detailed consideration to the suggested wording put forward by the Inspector at the Hearing Session. The Council has taken legal advice from Leading Counsel in preparing this statement.

1.1 NFDC’s particular concern is the possible inclusion of a policy in the Minerals Plan that either directly or implicitly refers to a potential minerals and waste wharf at Dibden Bay. The policy outline put forward by the Inspector for comments includes, as part a., the “northern part of the strategic land reserve identified in the Port of Southampton Master Plan,” This is Dibden Bay. Thus the policy outline states that the northern part of Dibden Bay will be “safeguarded as a potential site for future minerals and waste wharf infrastructure, or rail infrastructure. Investment in sustainable developments in these locations will be encouraged if sites become available or are released from current use.”

1.2 In short, NFDC’s position is that:

1.2.1 A safeguarding allocation is only appropriate if the inspector is satisfied that there is some prospect of a proposal for minerals and waste infrastructure development at the relevant location coming forward during the plan period. It cannot be ruled out at this stage that such development will adversely affect the integrity of the designated Natura 2000 site. So the inclusion of such an allocation would make the Plan one requiring Appropriate Assessment (“AA”) under the Habitats Directive and Regulations. The Plan could only be adopted if either (a) on the basis of the AA the integrity test is passed, or (b) the development of the kind envisaged is supported by Imperative Reasons of Overriding Public Interest (“IROPI”) and there are no alternatives.

1.2.2 If there is no prospect of such a proposal coming forward during the plan period, then a safeguarding allocation is unjustified.

1.2.3 A safeguarding allocation is in any event inappropriate given that the location is under ABP’s control and there is no evidence that, in the absence of safeguarding it might be brought forward for development for a competing use during the plan period.

1.3 The Council therefore invites the Inspector to refrain from inserting any safeguarding allocation in respect of minerals and waste development at Dibden Bay. The Council’s reasons for taking that position are set out below.

The Habitats Issue

2.0 As set out in NFDC’s original statement, Dibden Bay is subject to national and international nature conservation designations. The foreshore is a designated Natura 2000 site. Under Article 6 (3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora:

Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or
2.1 Article 6(4) provides:
If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

2.2 These provisions are transposed in England by the Conservation of Habitats and Species Regulations 2010 ("Habitats Regulations"), regs. 61 and 62 respectively, which include the following:

"61 Assessment of implications for European sites and European offshore marine sites
(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—
(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
(b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.

…
(5) In the light of the conclusions of the assessment, and subject to regulation 62 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

…
62 Considerations of overriding public interest
(1) If the competent authority are satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), they may agree to the plan or project notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be). …"

2.3 The Commission Guidance Managing Natura 2000 ("MN 2000") advises at section 4.3.2 that "plan" has "a potentially very broad meaning" that includes "land use plans" and "sectoral plans". The Plan under examination is on any view a "plan" within Habitats Regulations reg. 61(1). The question whether a safeguarding allocation along the lines proposed by the inspector would mean that the plan is "likely to have a significant effect" on the designated foreshore has to be considered in the light of the very low threshold which the Court of Justice of the European Communities has set. In the Waddenzee case, C–127/02, [2004] ECR I 7405, the Court held, at para. 43 of its judgment, that "likely to have a significant effect" means "a probability or a risk" that the plan or project will have significant effects on the site. It continued, at para. 44:
"In the light, in particular, of the precautionary principle, which is one of the foundations of the high level of protection pursued by Community policy on the environment... such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have significant effects on the site. …" [emphasis added]

2.4 The proposed safeguarding allocation would plainly pass that threshold.
2.5 First, a safeguarding allocation can properly be made only if there is evidence of at least a real prospect of a proposal for waste or minerals infrastructure development coming forward in the foreseeable future – in effect, during the life of the plan. If there were no such evidence, it would be wrong in principle to make a safeguarding allocation. So the insertion of safeguarding language into the Plan necessarily denotes that “it cannot be excluded” that such development will come forward. Indeed the inspector’s proposed wording (“Investment in sustainable developments in these locations will be encouraged. . . .”) indicates just how easily a pure safeguarding allocation can segue into positive encouragement for development. In any event, a safeguarding allocation – however worded - implies a policy preference in the Plan for the safeguarded class of development over other, competing classes of development that may come forward. That emphasises the need for a meaningful assessment of the anticipated impacts of the proposed safeguarded class of development on the designated area.

2.6 Second, as in every case where a “plan” rather than a “project” is under consideration, it is not possible to predict in advance the precise scale or impact of the development envisaged. However, the National Policy Statement for Ports makes clear the broad range of impacts on protected sites that must be taken into account when assessing compatibility with the Habitats Regulations. Those include obvious examples such as dredging to enlarge or maintain a channel, but also routine operational activities such as cargo handling/storage, vessel movements, noise and light: see para. 5.1.3. ABP’s Safeguarding Written Statement speculates that the development might be limited in scale, such as “a jetty with conveyor leading to onshore facilities”. But that would not necessarily be so; and even a modest facility of that kind has obvious potential for impacts on the designated foreshore of the kind mentioned in the NPS. So once more, it “cannot be excluded” that development within the safeguarded class would be of a nature and scale liable to have significant effects on the Natura 2000 site.

2.7 For those reasons, a safeguarding policy in respect of Dibden Bay must be regarded as “likely to have a significant effect” on the designated site, and must therefore be supported by an adequate AA. In the light of the conclusions of the AA, it would be necessary to go on to consider the integrity test under Reg. 61(5). Again, the standard is a highly precautionary one. At para. 59 of its Waddenzee judgment the European Court held that the competent authority can treat a project as passing the integrity test only if: “they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects…”

2.8 It follows that the AA, even at the plan stage, must be thorough and comprehensive in relation to the type of development proposed, including the range of potential impacts and the nature and effectiveness of the kinds of mitigation measures likely to be proposed. If it is not possible to conclude that proposals of the kind likely to come forward would necessarily meet the integrity test, then the policy in question could only be adopted on the basis of IROPI.

2.9 The Commission’s published guidance on Article 6.4, and the case-law of the Court of Justice, emphasise the need for a rigorous examination of alternatives to a particular proposal. For example, the Commission’s Guidance document on Article 6(4) of the Habitats Directive 92/43/EEC states [Para 1.2.1.]: ‘The decision to go ahead with a plan or project must meet the requirements of Article 6(4). In particular, it must be documented that:
1. The alternative put forward for approval, is the least damaging for habitats, for species and for the integrity of the Natura 2000 site, regardless of economic considerations, and that no other feasible alternative, exists that would not affect the integrity of the site.

2. There are imperative reasons of overriding public interest, including ‘those of a social or economic nature’.

2.10 At paragraph 46 of its judgment of 26 October 2006 in Commission v. Portugal, Case C-239/04, the European Court said:

“The decisive factor is therefore whether imperative reasons of overriding public interest require the implementation of specifically that alternative or whether they can also be satisfied by another alternative with less of an adverse effect on the SPA. That comparison presupposes that the various alternatives have been examined on the basis of comparable scientific criteria, both with regard to their effects on the site concerned and with regard to the relevant reasons of public interest.”

2.11 In the present context, it would be necessary at the Plan stage for the competent authority to demonstrate – at the very least - why a firm or safeguarding allocation for development for which the Dibden Bay site is said to be suitable could not adequately be accommodated at an undesignated location (which might or might not be part of the Port of Southampton).

2.12 The preparation of the AA, and the subsequent steps of applying the integrity test and considering IROPI and alternatives, must be carried out before a policy is included in the Minerals Plan. No such step has been taken to date. It would not be lawful to include a safeguarding policy in respect of Dibden Bay until these steps have been completed.

2.13 The National Planning Policy Framework states: that:

“Local Plans may require a variety of other environmental assessments, including under the Habitats Regulations where there is a likely significant effect on a European wildlife site...” (paragraph 166)

and

“The presumption in favour of sustainable development (paragraph 14) does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined. (paragraph 119)

2.14 As has been well rehearsed in this examination, in 2004, after a 13 month long public inquiry, the Secretary of State followed his Inspector’s recommendation to reject proposals for a container port at Dibden Bay. The Secretary of State’s overall conclusions state that:

‘…The Secretary of State agrees with the Inspector that there are credible alternatives for container port development. ... (paragraph 67)

…Overall, the Secretary of State agrees with the Inspector that the disbenefits of the scheme, as borne out by its impact on internationally and nationally environmentally sensitive sites, outweigh the potential benefits.’ (paragraph 68)

2.15 Following this decision, the Inspector at the New Forest (outside the National Park) Core Strategy Examination agreed with NFDC that it would be inappropriate to include an allocation/safeguarding in the Core Strategy or any designation on the Proposals Map beyond the nature conservation designations. The Inspector agreed with the
inclusion of text setting out the situation (see paragraphs 9.15 and 9.16 of the adopted Core Strategy as included in NFDC’s original statement). In the light of the points made above, NFDC considers that this approach is entirely appropriate, and the inspector is urged to adopt a similar approach in relation to the present Plan. As outlined at the Hearing Session, NFDC supports the proposal that wording similar to that included in NFDC’s Core Strategy (paragraphs 9.15 and 9.16) be included in the supporting text, amended to relate to the situation of a minerals and waste wharf. This text should include references to the national and international nature conservation designations that affect the site, and the IROPI test that would have to be overcome.

Further observations on appropriateness of a safeguarding allocation

3.0 On ordinary principles, leaving aside the law under the Habitats Directive and Regulations, NFDC considers it inappropriate to include part a. (land at Dibden Bay) in the suggested new policy. As outlined in NFDC’s statement, Dibden Bay is already safeguarded from development by virtue of the national and international nature conservation designations that apply to it. The container port proposals considered at the 2001/2) public inquiry were unable to overcome the IROPI test. No development proposals have been tested at public inquiry since then. Paragraph 26 of ABP’s additional statement on safeguarding (ED072) recognises, with regard to a minerals wharf, ‘Its economic and environmental viability remains to be tested’.

3.1 NFDC observes that the whole point of a safeguarding policy is to protect a desired form of development from some competing form of development that might otherwise come forward during the plan period. Here, the area in question is under the control of ABP itself, which describes the site as part of its “strategic land reserve” (Para. 23 of ABP’s additional statement on safeguarding, ED072) and as a reserve of “Port operational land” (Adams Hendry letter of 31 May 2012). It is inconceivable that any development proposals for non-port development (e.g. housing, employment or retail development) will come forward for this site unless APB have first abandoned it as an operational land reserve – in which case it the reason for safeguarding it would come to an end.

3.2 So the site simply does not need to be “safeguarded” from development. This point was accepted by the Inspector at the New Forest District (outside the National Park) Core Strategy Examination (2009) where the Inspector concluded against any additional safeguarding or allocation policy or designation (beyond the national and international nature conservation designations).

Conclusion

4.0 It would be unlawful for a safeguarding policy, whether in the terms proposed by the inspector or otherwise, in relation to Dibden Bay to be included in the Plan without first complying with the requirements of the Habitats Directive and Regulations in relation to adoption of an AA and examination of the proposed policy against the integrity test and, if that test is not met, against the IROPI and alternatives tests. Those steps have not been taken.

4.1 Part a. of the suggested new policy (“Northern part of the strategic land reserve identified in the Port of Southampton Master Plan…..”) should be omitted. Text explaining the situation should be included similar to paragraphs 9.15 to 9.16 of the New Forest District (outside the National Park) Core Strategy but relating to the situation of a minerals wharf.
Appendix 3:

New Forest District Council's responses to questions raised in Inspector’s Preliminary Comments – Note 1, July 2012

Core Strategy Table 2 (question in paragraph 4.3 of Inspector's Note)

Attached is a revised version of Core Strategy Table 2: Proposed Housing Distribution April 2006 – March 2026.

The columns added to the original Table 2 - as set out next to columns (b), (c), (e) and (g) – list the housing allocations in the submitted Sites and Development Management Document next to the related provision figure in the Core Strategy.

With regard to column (b), not all large site commitments at April 2009 are included as allocations in the submitted document for various reasons. A full list of large site commitments at April 2009 was supplied to the Core Strategy Examination.

With regard to column (c), not all expected urban potential sites over the 2006-2026 period are identified as proposed allocations in the plan. Policy CS10(e) of the Core Strategy provides for further sites to come forward within the defined towns and villages throughout the plan period.
Core Strategy Table 2: Proposed Housing Distribution – adapted to include details of proposed housing allocations in the Plan (July 2012)

<table>
<thead>
<tr>
<th>Settlement</th>
<th>(a) Already developed 2006-2009</th>
<th>(b) Large site commitments @ April 2009</th>
<th>Proposed allocations in the Plan</th>
<th>(c) Large urban potential</th>
<th>Proposed allocations in the Plan</th>
<th>(d) Small urban potential</th>
<th>(e) Further allocation needed</th>
<th>Proposed allocations in the Plan</th>
<th>(f) Total 2006-2026</th>
<th>(g) Possible additional provision to address local affordable housing needs</th>
<th>Proposed allocations in the Plan</th>
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<tbody>
<tr>
<td>Totton &amp; Eling</td>
<td>100</td>
<td>505</td>
<td>TOT3 (330) TOT6 (48) TOT11 (30)</td>
<td>150</td>
<td>TOT4 (18) TOT5 (10) TOT7 (15) TOT8 (15) TOT9 (15) TOT11 (tbc)</td>
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<td>100</td>
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<td>955</td>
<td>Up to 50</td>
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<tr>
<td>Marchwood</td>
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<td>0</td>
<td>40 MAR4 (12)</td>
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<td></td>
<td></td>
<td>335</td>
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<tr>
<td>Hythe &amp; Dibden</td>
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<td>70</td>
<td>30 HYD2 (25)</td>
<td>70</td>
<td>0</td>
<td>335</td>
<td></td>
<td></td>
<td>235</td>
<td>*See below BLA1 (30)</td>
<td></td>
</tr>
<tr>
<td>Holbury, Fawley &amp; Blackfield</td>
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<td>70</td>
<td>0</td>
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<td><strong>Plan Area east sub-total</strong></td>
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<td><strong>630</strong></td>
<td><strong>220</strong></td>
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<tr>
<td>Lymington &amp; Pennington</td>
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<td>LYM3 (15) LYM6 (168)</td>
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<td>LYM4 (10) LYM5 (14)</td>
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<td></td>
<td></td>
<td>*See below MoS1 (20/30)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hordle &amp; Everton</td>
<td>30</td>
<td>0</td>
<td>10</td>
<td>35</td>
<td>0</td>
<td>75</td>
<td></td>
<td></td>
<td>*See below HOR1 (5) HOR2 (15)</td>
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<tr>
<td>New Milton</td>
<td>230</td>
<td>175</td>
<td>NMT2 (54) NMT5 (15)</td>
<td>50</td>
<td>NMT6 (10)</td>
<td>195</td>
<td>0</td>
<td></td>
<td>650</td>
<td>Up to 110</td>
<td>NMT1 (20) NMT4 (90)</td>
</tr>
<tr>
<td><strong>Plan Area south sub-total</strong></td>
<td><strong>600</strong></td>
<td><strong>580</strong></td>
<td><strong>125</strong></td>
<td><strong>415</strong></td>
<td><strong>0</strong></td>
<td><strong>1720</strong></td>
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</tr>
<tr>
<td>Bransgore</td>
<td>20</td>
<td>0</td>
<td>15</td>
<td>20</td>
<td>0</td>
<td>55</td>
<td></td>
<td></td>
<td>*See below</td>
<td></td>
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<tr>
<td>Ringwood</td>
<td>90</td>
<td>40</td>
<td>15</td>
<td>125</td>
<td>150</td>
<td>420</td>
<td></td>
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</tr>
<tr>
<td>Fordingbridge</td>
<td>30</td>
<td>0</td>
<td>10</td>
<td>35</td>
<td>0</td>
<td>75</td>
<td></td>
<td></td>
<td>Up to 100</td>
<td>FORD1 (100)</td>
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</tr>
<tr>
<td>Ashford &amp; Sandleheath</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>0</td>
<td>15</td>
<td></td>
<td></td>
<td>*See below ASH1 (10) SAND1 (10)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Plan Area west sub-total</strong></td>
<td><strong>150</strong></td>
<td><strong>40</strong></td>
<td><strong>40</strong></td>
<td><strong>185</strong></td>
<td><strong>150</strong></td>
<td><strong>565</strong></td>
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<tr>
<td><strong>Possible additional developments at smaller settlements</strong></td>
<td></td>
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<td></td>
<td></td>
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<td>Up to 200 in total</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>1180</strong></td>
<td><strong>1250</strong></td>
<td><strong>385</strong></td>
<td><strong>855</strong></td>
<td><strong>250</strong></td>
<td><strong>3920</strong></td>
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<td></td>
<td>Up to 810</td>
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</table>

Note: Numbers in brackets reflect the capacity of a valid planning permission or, where there is no valid permission, are indicative capacity figures taken from the Plan or from the housing trajectory published in the 2011 Monitoring Report.