

11.3 Policy Context, Legislation, Guidance and Standards

This section discusses the context of the scheme with regards to the relevant International, National, Regional and Local planning policy and legislation.

11.3.1 *Flood and Water Management Act & Sustainable Drainage Systems: Written Statement – HCWS161*

The Flood and Water Management Act 2010ⁱ (the 'FWMA') implements several key recommendations of Sir Michael Pitt's Review (2008) of the summer 2007 floods, to protect water supplies to consumers and protect community groups from excessive charges for surface water drainage. It gives the Environment Agency (EA) a strategic overview role for flood risk and gives local authorities (known as Lead Local Flood Authorities (LLFAs)) responsibility for preparing and putting in place strategies for managing flood risk from groundwater, surface water and ordinary watercourses in their areas. Hampshire County Council (HCC) is the LLFA in this area.

The FWMA's Schedule 3 proposed the establishment of Sustainable Drainage Systems (SuDS) Approval Bodies (the "SAB") at County or Unitary local authority levels. The role of the SAB was envisaged as implementing the recommendations of the Pitt Review (2008) in promoting the use of SuDS within future development.

Following a period of consultation, the proposed role of the SAB has been amended, with the promotion of SuDS being incorporated into the planning process. This has been achieved by designating LLFAs as statutory consultees with regards to 'local' sources of flood risk and surface water management. Ministerial Written Statement HCWS161ⁱⁱ details this change in policy, which came into effect in April 2015.

The FWMA also amends Section 106 of the Water Industry Act 1991 (the 'WIA') in respect of the right of connection to a public sewer. In the future, the automatic right of connection will be revoked and all new connections must be made via a Section 104 Agreement for foul sewers and following the consent of the SAB for surface water connections. As the role of the SAB has been removed following HCWS161, this amendment to Section 106 of the WIA is now subsumed into the planning process under the purview of the Lead Local Flood Authority.

11.3.2 *Water Environment (Water Framework Directive) (England and Wales) Regulations (DEFRA, 2003)*

The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003ⁱⁱⁱ transpose the European Union Water Framework Directive^{iv} (WFD) into national law. The WFD is a wide-ranging piece of European legislation that establishes a new legal framework for the protection, improvement and sustainable use of surface waters, coastal waters and groundwater across Europe in order to:

- Promote sustainable water use;
- Contribute to the mitigation of floods and droughts;
- Prevent deterioration and enhance status of aquatic ecosystems, including groundwater;
- Reduce pollution.

Water management has historically been co-ordinated according to administrative or political boundaries. The WFD promotes a new approach based upon management by river basin - the natural geographical and hydrological unit. River Basin Management Plans (RBMP) include clear objectives in respect of water quality and pollution control and a detailed account of how objectives are to be met within a prescribed timeframe.

WFD classifications are expressed in terms of five classes (High, Good, Moderate, Poor or Bad). The classifications are established on the basis of specific criteria and boundaries defined against the following elements: biological (e.g. numeric measures of communities of plants and animals); physico-chemical (e.g. temperature and level of nutrients); and hydro morphological (e.g. water flow and structure of physical habitats). The overall status of a water body is determined by whichever of these assessments is the poorest.

The WFD's ultimate aim is to ensure all inland and near shore watercourses and water bodies (including groundwater) are of 'Good' status or better, in terms of ecology, and also chemical, biological and physical parameters, by 2027. Therefore, any activities or developments that could cause detriment to a nearby water resource or prevent the future ability of a water resource to reach its potential status, must be mitigated so as to reduce the potential for harm and allow the aims of the Directive to be realised.

11.3.3 The Water Resources Act 1991

The Water Resources Act 1991^v (the 'WRA') in particular Section 92(1)(a) stipulates that the Secretary of State may make provisions "for prohibiting a person from having custody or control of poisonous, noxious or polluting matter unless prescribed works and precautions and other steps have been carried out or taken for the purpose of preventing or controlling the entry of the matter into any controlled waters". This has implications for the Proposed Development in that all potential pollution sources of controlled waters must be mitigated.

The WRA sets out the responsibilities of the EA in relation to water pollution, resource management, flood defence, fisheries, and in some areas, navigation. The WRA regulates discharges to controlled waters, namely rivers, estuaries, coastal waters, lakes and groundwater. Discharge to controlled waters is only permitted with the consent of the EA. Similarly, a licence is required to abstract from controlled waters.

The Water Act 2003 (the 'WA') amends the WRA and the WIA. The four broad aims of the WA are the sustainable use of water resources; strengthening the voice of consumers; a measured increase in competition; and the promotion of water conservation. The WA amends the WRA to improve long-term water resource management and amends the WIA so that water companies are given a duty to prepare and publicise drought plans; are placed under a duty to agree and publicise water resource management plans; and are placed under an enforceable duty to further water conservation through these measures.

11.3.4 National Planning Policy Framework and Planning Practice Guidance

The National Planning Policy Framework^{vi} (NPPF, 2024) and the accompanying Planning Practice Guidance^{vii} (PPG) sets out the Government's national policy on development and flood risk. The NPPF aims are to ensure that flood risk is taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding and to direct development away from areas of highest risk. In exceptional circumstances where new development is necessary in flood risk areas the policy also aims to ensure it is safe, without increasing flood risk elsewhere, and, where possible, reducing flood risk overall.

The NPPF requires the use of a risk based sequential test, in which new development is directed towards the areas of lowest risk of flooding. The different areas of flooding are defined by the following Flood Zones:

- Flood Zone 1: Low probability of flooding - less than 0.1% (1 in 1,000) annual probability of river or sea flooding in any year;
- Flood Zone 2: Medium probability of flooding - between 1% and 0.1% (1 in 100 and 1 in 1000) annual probability of river flooding and between 0.5% and 0.1% (1 in 200 and 1 in 1000) annual probability of sea flooding in any year;
- Flood Zone 3a: High probability of flooding - 1% (1 in 100) or greater annual probability of river flooding or 0.5% (1 in 200) or greater annual probability of sea flooding in any year;
- Flood Zone 3b: The functional floodplain (where water is stored in times of flood, including water conveyance routes, annual probability of 1 in 20 or greater in any given year).

It should be noted that Flood Zones 1, 2 and 3a definitions ignore the presence of flood defences.

In addition, the PPG specifies the type of land use, defined by its flood risk vulnerability that is appropriate in each Flood Zone. For example, more sensitive developments that would be most severely affected in the event of flooding, such as hospitals, should not be permitted in areas at high probability of flooding, although leisure and tourism developments may be allowed in Flood Zone 3a.

EA supporting guidance to the NPPF 'Flood Risk Assessments: Climate Change Allowances' (May, 2022^{viii}) states how new development must include appropriate consideration of the potential effects of climate change on flooding and the hydrological regime. These have been taken into consideration in both the FRA and surface water drainage strategy (ES Appendix 11.1).

The 2015 updates to the PPG reflect the updated 'Non-statutory technical standards for sustainable drainage systems'^{ix} (described in paragraph 11.3.6).

11.3.5 HBC Havant Borough Core Strategy (adopted March 2011)

Policy CS15 relates to 'Flood and Erosion Risk' and states:

"Development in areas at risk of flooding now and in the future as identified on the latest Environment Agency flood risk maps and Strategic Flood Risk Assessment climate change maps will only be permitted where:

- 1. It meets the sequential and exception test (where required) in relation to PPS25.*
- 2. The site is located in a low hazard area as defined in the Strategic Flood Risk Assessment.*
- 3. A site-specific flood risk assessment demonstrates that the development will be safe, including the access, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.*
- 4. The scheme incorporates flood protection, flood resilience and resistance measures appropriate to the character and biodiversity of the area and the specific requirements of the site.*

5. *Appropriate flood warning and evacuation plans are in place.*
6. *New site drainage systems are designed taking account of events which exceed the normal design standard.*

All development will be required to ensure that there is no net increase in surface water run off. Priority should be given to incorporating Sustainable Drainage Systems (SuDS) to manage surface water drainage, unless it is proven that SuDS are not appropriate. Where SuDS are provided arrangements must be put in place for their whole life management and maintenance.

The council will work with partners to implement the Coastal Policy Zones in the North Solent Shoreline Management Plan to ensure that development avoids areas at risk from coastal erosion and coastal flooding and that areas required to offset coastal squeeze and prevent habitat fragmentation, to allow species to adapt to climate change, are identified and protected from development”.

Policy DM8 relates to ‘Conservation, Protection and Enhancement of Existing Natural Features’ and states:

“DM8 Conservation, Protection and Enhancement of Existing Natural Features

Development will only be permitted where it protects and enhances local habitats and landscape distinctiveness and which addresses all of the relevant criteria as set out below:

1. *Protects natural features of nature conservation and/or amenity importance on the site, for example trees, woodlands, hedgerows, soils, streams, stream corridors, springs, ditches or ponds from damage, destruction and a deterioration in quality.*
2. *Sympathetically incorporates existing features into the overall design of the scheme including measures taken to ensure their continued survival.*
3. *Provides new landscape works that integrate successfully with the local environment and existing natural features, using local materials and plant species and making provision for future maintenance of new landscape works associated with new developments.*
4. *Ensures sequences of greenspaces are maintained and protects the attractiveness and visual amenity of all green open spaces that contribute to the identity of the borough”.*

11.3.6 Other relevant policy, standards and guidance

Additional relevant international/national policy include:

- The Flood Risk Regulations^x
- Land Drainage Act 1991^{xi}
- The Environmental Permitting (England and Wales) Regulations 2010^{xii}

The ‘Non-statutory technical standards for sustainable drainage systems’^{xiii} (DEFRA, April 2015) should be used in conjunction with the NPPF and PPG. It provides planning guidance for the implementation of Sustainable Drainage Systems (SuDS).

SuDS techniques are described in CIRIA C753 The SuDS Manual^{xiv} (CIRIA, 2015) guidance which outlines approaches to deal with surface water as close to the source as possible and reproduce natural drainage patterns to prevent an increase in the volume and peak discharge from development sites.

At the more detailed stage in the design and planning process of the Proposed Development, further guidance will be referenced and the conceptual strategies outlined here have been considered in this context. These design guides or regulations include:

- Designing for exceedance in urban drainage^{xv} (CIRIA C635);
- Sewerage Sector Guidance – Design and Construction Guidance^{xvi} ;
- Building Regulations Part H^{xvii} ; and
- BS EN 752:2017 – Drain and Sewer Systems Outside Buildings^{xviii}

ⁱ The Flood and Water Management Act (FWMA), (2010)

ⁱⁱ House of Commons Written Statement HCWS161, (2014)

ⁱⁱⁱ The Water Environment (Water Framework Directive) (England and Wales) Regulations, (2003)

^{iv} European Union Water Framework Directive (200/60/EC) (WFD), (Commission of the European Communities, 2000)

^v The Water Resources Act (WRA), (1991)

^{vi} The National Planning Policy Framework (NPPF), (2024)

^{vii} Planning Practice Guidance (PPG), (2024)

^{viii} Environment Agency Flood Risk Assessment: Climate Change Allowance (2022):

<https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances>

^{ix} Sustainable Drainage Systems: Non-statutory technical standards for sustainable drainage systems (DEFRA, March 2015): <https://www.gov.uk/government/publications/sustainable-drainage-systems-non-statutory-technical-standards>

^x The Flood Risk Regulations, (2009)

^{xi} Land Drainage Act (1991)

^{xii} Environmental Permitting Regulations (2016)

^{xiii} Sustainable Drainage Systems: Non-statutory technical standards for sustainable drainage systems (DEFRA, March 2015): <https://www.gov.uk/government/publications/sustainable-drainage-systems-non-statutory-technical-standards>

^{xiv} The SuDS Manual C753 (CIRIA, version 5 2015):

https://www.ciria.org/resources/free_publications/suds_manual_c753.aspx

^{xv} Designing for exceedance in urban drainage- good practice (C635) (CIRIA, 2006)

^{xvi} Sewerage Sector Guidance - Design and Construction Guidance [DCG] for Developers (Water UK, 2020)

^{xvii} Building Regulations Part H (2015) <https://www.gov.uk/government/publications/drainage-and-waste-disposal-approved-document-h>

^{xviii} BS EN 752:2017 – Drain and Sewer Systems Outside Buildings (March 2018)