

Brighton & Hove City Council
Decision Required Under Delegated Procedure

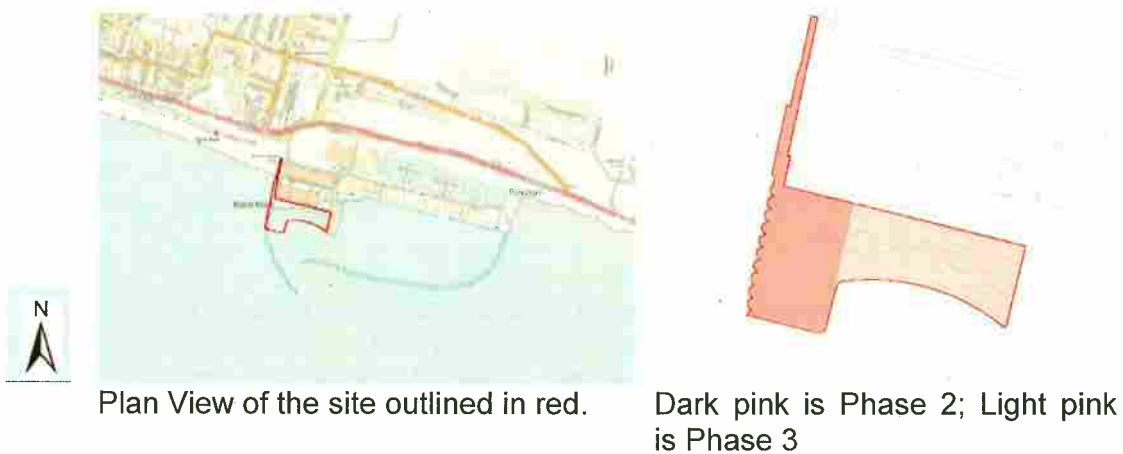
Date: 31st January 2019
Report to: Planning Manager
From: Sarah Collins, Development Management
Subject: Environmental Impact Assessment Scoping Opinion

Ward affected: Rottingdean Coastal

1. Purpose of the report

- 1.1 To provide a formal Scoping Opinion in accordance with Regulation 15 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended in 2018) on the content of an Environmental Statement proposed to be submitted for Phases 2 and 3 of the Brighton Marina Outer Harbour Development, which represent significant changes to the 2006 Planning Permission (reference BH2006/01124).
- 1.2 This Scoping Opinion is required following a formal request made by GVA Planning on behalf of the Outer Harbour Development Company Partnership LLP on 28th November 2018. GVA Planning agreed to extend the Scoping Opinion deadline to the 31st January 2019.
- 1.3 EIA 'scoping' forms one of the early stages of the EIA process and refers to the activity of identifying the environmental 'topics' that should be considered within the EIA. In addition, EIA scoping allows for the early identification of the receptors that may be affected or impacted by a new development. Through consideration of environmental 'topics' and potential receptors (both existing and introduced as a result of a new development), EIA scoping initiates the process of defining the potential for significant effects, which in turn results in the identification of the issues to be addressed in the EIA.
- 1.4 The application site also falls within the jurisdiction of the Marine Management Organisation (MMO), and as such the EIA scoping report will also be assessed in accordance with Regulation 13 of the Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2017 by the MMO.
- 1.5 The proposals are to be submitted in full detail for Phase 2 and in outline for Phase 3 (a hybrid application) and comprise a residential-led mixed use development including associated car parking, access, public realm, and infrastructure (harbour wall) works.

- 1.6 The application site is bounded to the south by the sea wall breakwaters, beyond which lies the open sea, to the west by the western sea wall breakwater, to the east by Phase 1 of the 2006 Outer Harbour Planning Permission and the marina and harbour beyond, and to the north by the existing service access road behind the David Lloyd, Bowling and Casino buildings, which form part of the Inner Harbour. The site is currently harbour water and Spending Beach, and includes the raised harbour wall along its northern boundary. It also includes a cofferdam (a watertight enclosure pumped dry to permit construction work below the waterline) which was recently constructed on the western end of Spending Beach as part of the enabling works for Phase 2 of the 2006 permission.



2. Information/Background

- 2.1 The 2006 permission (BH2006/01124) granted 853 flats, offices, restaurants, doctors surgery, community uses, two bridges and a new RNLI building. Phase 1 of this permission has been built out which provides two buildings comprising 195 flats, seven restaurants, doctors surgery and the RNLI building.
- 2.2 Whilst an existing consent is in place for Phases 2 and 3 of the 2006 permission, the applicant advises that financial viability issues are preventing the implementation of these later phases. To address this, the applicant is seeking to increase the footprint and massing across both Phases 2 and 3, providing a greater number of residential units and a different design approach. The approved Phases 2 and 3 of the 2006 permission include 658 flats including a 40 storey tower, community uses and two bridges.
- 2.3 The proposed development will comprise circa 950 flats of mixed tenure, with ground floor commercial and retail space (use classes A1-5, B1, D1, D2) on a raised podium deck level, serviced by a suspended deck below

the podium which is to be accessed via the existing road network within the marina. This will provide for car parking spaces across Phases 2 and 3. The remainder of the parking for the proposed development has already been provided as part of Phase 1.

- 2.4 The proposed development includes 11 buildings, ranging from 7 to 28 storeys in height, which would be considered as 'tall' or 'very tall' in terms of the LPA's Tall Buildings SPG. A series of gardens, courtyards and public spaces featuring a new waterfront grand crescent would be incorporated. The architecture has been inspired by Brighton's Georgian planned squares and crescents.
- 2.5 Cycle and pedestrian path connections from the centre of Brighton to the application site would be achieved from the top of the existing western seawall. New pedestrian routes are proposed through the application site which would link up to Phase 1. It is proposed that vehicular access will be retained as per the current development built out in Phase 1, which is via the existing roads and roundabout leading into the Marina and subsequently down the access road which loops around the retail sheds to the north of the site.

3. Sensitive Receptors

- 3.1 The site lies within the Brighton Marina Site of Nature Conservation Importance (SNCI), designated due to Brighton Marina supporting a range of shallow water substrates, which create colonisation opportunities for a wide range of marine species.
- 3.2 The site also lies within a National Flood Zone 3.
- 3.3 Brighton Marina is surrounded by a Marine Conservation Zone (MCZ) named Beachy Head West. This designation is mainly focused on marine habitats, but there are also three species of specific interest (native oyster, *Ostrea edulis*, mussel, *Mytilus edulis*, and short-snouted seahorse, *Hippocampus hippocampus*).
- 3.4 The Black Rock Beach SNCI to the northwest of the site, designated for its vegetated shingle, which is a rare and important habitat for local and migrating species.
- 3.5 The Brighton to Newhaven Cliffs SSSI (Site of Special Scientific Interest) lies approximately 300 metres to the north of the site.
- 3.6 The site is in a visually prominent location, and the development proposed would be highly visible from the Kemp Town Conservation Area which lies to the northwest of the site. In particular, the Grade I listed properties of

Lewes Crescent and Sussex Square. Further west, most of the seafront and the band of urban development fronting onto it is designated conservation areas containing the bulk of Brighton and Hove's listed buildings. The development would be highly visible to the north of the Marina above the cliffs which includes locally listed Marine Gate and 40&40a White Lodge, The Cliff. The grade II listed Roedean School lies to the northeast, and The Ovingdean and Rottingdean Conservation Areas are beyond.

- 3.7 The proposed development will also be visible from parts of the South Downs National Park (SDNP), which lies approximately 600 metres from the site.
- 3.8 Nearby residential receptors comprise of the residents within Phase 1 of the Outer Harbour Development, immediately to the east of the site.
- 3.9 The scoping report proposes the methodology of assessment and the issues to be 'scoped in' and 'scoped out' of the forthcoming Environmental Statement:

Potentially Significant Effects to be Scoped In

Air Quality
Climate Change
Daylight, Sunlight and Overshadowing
Ecology and Nature Conservation
Heritage, Townscape and Visual Impact Assessment
Marine and Coastal Environment
Noise and Vibration
Socio-Economics
Traffic and Transport
Water Resources and Flood Risk
Wind Microclimate

Topics Scoped Out

Archaeology
Ground Conditions and Land Contamination
Interference to Radio and Television Reception
Waste and Materials
Major Accidents and Disasters
Human Health
Energy and Sustainability

4. Recommendation

- 4.1 Approve the scope of the Environmental Statement under Regulation 15 of the Town and Country Planning (Environmental Impact Assessment)

Regulations 2017 (as amended in 2018) as set out in the EIA scoping report submitted by GVA Planning on 28th November, subject to the scoping in of lighting impact (artificial lighting and its impact on sensitive receptors), and assessment of noise and vibration during construction which are further explained below, and subject to addressing the issues and advice set out in Section 5 below.

5. Additional Content/Issues

- 5.1 Within paras 2.3.8 and 2.3.9 of the Scoping Report the existing vehicular and pedestrian access to the site from the north and east needs to be described in more detail. Level changes also need to be described.
- 5.2 Para 3.1.4 needs to more clearly describe the proposed vehicular and pedestrian access as existing, as proposed for Phase 2 in its 'temporary condition' and for once Phases 2 and 3 are complete.
- 5.3 Section 4.2 should include reference to the East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013) and the East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017). In addition, SPGBH9 (provision of recreational open space), SPD03 (construction and demolition waste), SPD11 (nature conservation and development) and SPD14 (parking standards) should be included. The forthcoming SUDS (Sustainable Drainage Systems) SPD should also be mentioned.

Air Quality

- 5.4 The Council's Air Quality Officer advises inclusion of Rottingdean in the AQ assessment will depend on the production of weekday traffic. If more than 100 light duty vehicles on the A259 Eastbound (up to the junction with B2123) it will need to be included in the detailed air quality assessment instead of screened out.
- 5.5 The Aecom NO₂ monitoring survey presented in Fig 6.1 of the scoping report is on the consultants own initiative and was not requested or advised by the council. The EIA scoping report mentions "strategic locations". We can confirm with exception of BM8 that the monitoring points selected are at sites that we expect to be "clean or with good dispersion conditions". A number of local monitoring sites have ten years of results. The council does not recommend monitoring surveys for periods less than January-July or July to December. The Aecom survey can be presented in the ES, but should not be used to verify model predictions in the AQMA(s) that has much higher concentrations.
- 5.6 The impact assessment scope should go as far as London Road and North Street that are both street canyon environments. There is no need

to include Kingsway west of Brighton Metropole (Hilton). Assessment of the Brighton AQMA should use AADT with commentary of any difference between Monday-Friday and Monday-Sunday averages.

5.7 Traffic and speed input data to ADMS-5 model used with the detailed AQ assessment shall be shared with the air quality officer.

5.8 A damage cost for NO_x (Sep-2015 cost) and particulate emissions as a result of the development is requested. The Sussex air and mitigation guidance encourages developers to improve the existing environment and air quality by mitigating the cost burden of road traffic emissions.

5.9 For example:

- EV recharging infrastructure within the development (wall mounted or free standing in-garage or off-street points) SPD14 (2016) recommends 20% of parking is electromotive ready. That said for parking facilities completed from 2023 we would expect to negotiate close to 40%. Fitting a car park with ducting when it is built is much lower cost than retrofitting at a later date and the requirement works towards the government's "road to zero emission" industrial strategy (latest version July 2018)
- Car club provision or support to local car club/eV car club;
- Designation of parking spaces for low / zero emission vehicles;
- Differential parking charges depending on vehicle emissions;
- Use of ultra-low emission service vehicles;
- Support local walking and cycling initiatives;
- On-street EV recharging;
- Contribution to low emission vehicle refuelling infrastructure;
- Near no emission bus service provision or waste collection services; electric or advance euro-VI emission standard
- No emission public transport such as cable car
- Bike/e-bike hire schemes;
- Facilitate facilities for zero emission taxis
- Contribution to renewable fuel and energy generation projects;
- Incentives for the take-up of low emission technologies and fuels.

Climate Change

5.10 With reference to climate change, the Environment Agency (EA) have commented that this is a detailed section, and they are pleased to see that the up-to-date UKCP18 Projections will be used if the data is available.

Daylight, Sunlight and Overshadowing

5.11 With reference to section 6.3.3, where it is stated that "*the assessment will focus on the adjoining residential buildings where the occupants have a reasonable expectation of daylight and sunlight...*" it is considered that all adjoining residential properties should be fully assessed, as all occupants

should have a reasonable expectation of daylight and sunlight. In addition, the existing overshadowing of external public and private amenity spaces in Phase 1 should be included in the baseline assessment.

- 5.12 In para 6.3.7, the overshadowing of external public and private amenity areas located in Phase 1 should also be included.
- 5.13 In para 6.3.24 the *internal* public and private amenity areas should read *external*.
- 5.14 In para 6.3.25 *Existing Surrounding Buildings* should read *Existing Surrounding Buildings and External Areas*.

Solar Glare

- 5.15 It is agreed that on the basis of the current design (with reflection from the elevations likely to be limited to the windows and balcony doors only), solar glare can be scoped out of the ES. However, should there be design changes to the scheme that significantly increase the amount of glazing on the facades, then this topic should be scoped in to the ES.

Ecology and Nature Conservation

County Ecologist Response:

- 5.16 I agree with the proposal to scope aquatic ecology into the EIA, but to scope out terrestrial ecology. Updated aquatic surveys will be required.
- 5.17 The PEA is in line with best practice guidance and is sufficient to inform appropriate mitigation, compensation and enhancement.
- 5.18 The recommended mitigation measures for potential impacts on breeding birds, wintering birds and Brighton Marina LWS are appropriate and should be implemented, specifically the production and implementation of an Ecological Mitigation and Management Plan, a sensitive lighting scheme, and precautions with respect to breeding birds.
- 5.19 The recommended mitigation measures for potential indirect impacts on Black Rock Beach LWS are broadly appropriate. The report recommends increased education through information boards and increased surveillance to deter camping and bonfires. It is recommended that a management plan for the LWS is required by condition which should detail interpretation requirements, taking into account any existing boards, and lines of responsibility, reporting and remediation for the proposed surveillance.
- 5.20 The recommended enhancements are also appropriate and should be implemented, specifically brown (coastal vegetated shingle roofs) and the provision of bird boxes. These should target starlings and house sparrow

and a peregrine box should be provided on the 28 storey building. The existing permission (BH2006/01124) includes a condition for a nature conservation plan which in addition to the above requires vegetated shingle planters with interpretation within amenity areas. This should be carried through to the current application.

Natural England Response:

General Principles

- 5.21 Schedule 4 of the Town & Country Planning (Environmental Impact Assessment) Regulations 2017, sets out the necessary information to assess impacts on the natural environment to be included in an ES, specifically:
- A description of the development – including physical characteristics and the full land use requirements of the site during construction and operational phases.
 - Expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed development.
 - An assessment of alternatives and clear reasoning as to why the preferred option has been chosen.
 - A description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the interrelationship between the above factors.
 - A description of the likely significant effects of the development on the environment – this should cover direct effects but also any indirect, secondary, cumulative, short, medium and long term, permanent and temporary, positive and negative effects. Effects should relate to the existence of the development, the use of natural resources and the emissions from pollutants. This should also include a description of the forecasting methods to predict the likely effects on the environment.
 - A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.
 - A non-technical summary of the information.
 - An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information.
- 5.22 It will be important for any assessment to consider the potential cumulative effects of this proposal, including all supporting infrastructure, with other similar proposals and a thorough assessment of the ‘in combination’ effects of the proposed development with any existing developments and current applications. A full consideration of the implications of the whole scheme should be included in the ES. All supporting infrastructure should be included within the assessment.

Biodiversity and Geology

- 5.23 Ecological Aspects of an Environmental Statement:
Natural England advises that the potential impact of the proposal upon features of nature conservation interest and opportunities for habitat creation/enhancement should be included within this assessment in accordance with appropriate guidance on such matters. Guidelines for Ecological Impact Assessment (EclA) have been developed by the Chartered Institute of Ecology and Environmental Management (CIEEM) and are available on their website.
- 5.24 EclA is the process of identifying, quantifying and evaluating the potential impacts of defined actions on ecosystems or their components. EclA may be carried out as part of the EIA process or to support other forms of environmental assessment or appraisal.
- 5.25 The National Planning Policy Framework sets out guidance in S.174-177 on how to take account of biodiversity interests in planning decisions and the framework that local authorities should provide to assist developers.
- 5.26 Nationally Designated Sites:
The ES should thoroughly assess the potential for the proposal to affect designated sites. The development site is in close proximity to the Brighton to Newhaven Cliffs SSSI. Further information on the SSSI and its special interest features can be found at www.magic.gov. The Environmental Statement should include a full assessment of the direct and indirect effects of the development on the features of special interest within this site and should identify such mitigation measures as may be required in order to avoid, minimise or reduce any adverse significant effects.
- 5.27 Regionally and Locally Important Sites:
The EIA will need to consider any impacts upon local wildlife and geological sites. Local Sites are identified by the local wildlife trust, geoconservation group or a local forum established for the purposes of identifying and selecting local sites. They are of county importance for wildlife or geodiversity. The Environmental Statement should therefore include an assessment of the likely impacts on the wildlife and geodiversity interests of such sites. The assessment should include proposals for mitigation of any impacts and if appropriate, compensation measures. Contact the local wildlife trust, geoconservation group or local sites body in this area for further information.
- 5.28 Protected Species - Species protected by the Wildlife and Countryside Act 1981 (as amended) and by the Conservation of Habitats and Species Regulations 2017 (as amended):
The ES should assess the impact of all phases of the proposal on

protected species (including, for example, great crested newts, reptiles, birds, water voles, badgers and bats). Natural England does not hold comprehensive information regarding the locations of species protected by law, but advises on the procedures and legislation relevant to such species. Records of protected species should be sought from appropriate local biological record centres, nature conservation organisations, groups and individuals; and consideration should be given to the wider context of the site for example in terms of habitat linkages and protected species populations in the wider area, to assist in the impact assessment.

- 5.29 The conservation of species protected by law is explained in Part IV and Annex A of Government Circular 06/2005 *Biodiversity and Geological Conservation: Statutory Obligations and their Impact within the Planning System*. The area likely to be affected by the proposal should be thoroughly surveyed by competent ecologists at appropriate times of year for relevant species and the survey results, impact assessments and appropriate accompanying mitigation strategies included as part of the ES.
- 5.30 In order to provide this information there may be a requirement for a survey at a particular time of year. Surveys should always be carried out in optimal survey time periods and to current guidance by suitably qualified and where necessary, licensed, consultants. Natural England has adopted standing advice for protected species which includes links to guidance on survey and mitigation.
- 5.31 **Habitats and Species of Principal Importance:**
The ES should thoroughly assess the impact of the proposals on habitats and/or species listed as 'Habitats and Species of Principal Importance' within the England Biodiversity List, published under the requirements of S41 of the Natural Environment and Rural Communities (NERC) Act 2006. Section 40 of the NERC Act 2006 places a general duty on all public authorities, including local planning authorities, to conserve and enhance biodiversity. Further information on this duty is available here <https://www.gov.uk/guidance/biodiversity-duty-public-authority-duty-to-have-regard-to-conserving-biodiversity>.
- 5.32 Government Circular 06/2005 states that Biodiversity Action Plan (BAP) species and habitats, 'are capable of being a material consideration...in the making of planning decisions'. Natural England therefore advises that survey, impact assessment and mitigation proposals for Habitats and Species of Principal Importance should be included in the ES. Consideration should also be given to those species and habitats included in the relevant Local BAP.
- 5.33 Natural England advises that a habitat survey (equivalent to Phase 2) is carried out on the site, in order to identify any important habitats present.

In addition, ornithological, botanical and invertebrate surveys should be carried out at appropriate times in the year, to establish whether any scarce or priority species are present. The Environmental Statement should include details of:

- Any historical data for the site affected by the proposal (e.g. from previous surveys);
- Additional surveys carried out as part of this proposal;
- The habitats and species present;
- The status of these habitats and species (e.g. whether priority species or habitat);
- The direct and indirect effects of the development upon those habitats and species;
- Full details of any mitigation or compensation that might be required.

5.34 The development should seek if possible to avoid adverse impact on sensitive areas for wildlife within the site, and if possible provide opportunities for overall wildlife gain.

5.35 The record centre for the relevant Local Authorities should be able to provide the relevant information on the location and type of priority habitat for the area under consideration.

Designated Landscapes and Landscape Character

5.36 Nationally Designated Landscapes:

As the development site is within the setting of the South Downs National Park, consideration should be given to the direct and indirect effects upon this designated landscape and in particular the effect upon its purpose for designation within the environmental impact assessment, as well as the content of the relevant management plan for the South Downs.

5.37 Landscape and Visual Impacts:

Natural England would wish to see details of local landscape character areas mapped at a scale appropriate to the development site as well as any relevant management plans or strategies pertaining to the area. The EIA should include assessments of visual effects on the surrounding area and landscape together with any physical effects of the development, such as changes in topography.

5.38 The EIA should include a full assessment of the potential impacts of the development on local landscape character using landscape assessment methodologies. We encourage the use of Landscape Character Assessment (LCA), based on the good practice guidelines produced jointly by the Landscape Institute and Institute of Environmental Assessment in 2013. LCA provides a sound basis for guiding, informing and understanding the ability of any location to accommodate change and to make positive proposals for conserving, enhancing or regenerating

character, as detailed proposals are developed.

- 5.39 Natural England supports the publication *Guidelines for Landscape and Visual Impact Assessment*, produced by the Landscape Institute and the Institute of Environmental Assessment and Management in 2013 (3rd edition). The methodology set out is almost universally used for landscape and visual impact assessment.
- 5.40 In order to foster high quality development that respects, maintains, or enhances, local landscape character and distinctiveness, Natural England encourages all new development to consider the character and distinctiveness of the area, with the siting and design of the proposed development reflecting local design characteristics and, wherever possible, using local materials. The Environmental Impact Assessment process should detail the measures to be taken to ensure the building design will be of a high standard, as well as detail of layout alternatives together with justification of the selected option in terms of landscape impact and benefit.
- 5.41 The assessment should also include the cumulative effect of the development with other relevant existing or proposed developments in the area. In this context Natural England advises that the cumulative impact assessment should include other proposals currently at Scoping stage. Due to the overlapping timescale of their progress through the planning system, cumulative impact of the proposed development with those proposals currently at Scoping stage would be likely to be a material consideration at the time of determination of the planning application.
- 5.42 The assessment should refer to the relevant National Character Areas which can be found on our website. Links for Landscape Character Assessment at a local level are also available on the same page.
- 5.43 Heritage Landscapes:
You should consider whether there is land in the area affected by the development which qualifies for conditional exemption from capital taxes on the grounds of outstanding scenic, scientific or historic interest. An up-to-date list may be obtained at www.hmrc.gov.uk/heritage/lbsearch.htm.

Access and Recreation

- 5.44 Natural England encourages any proposal to incorporate measures to help encourage people to access the countryside for quiet enjoyment. Measures such as reinstating existing footpaths together with the creation of new footpaths and bridleways are to be encouraged. Links to other green networks and, where appropriate, urban fringe areas should also be explored to help promote the creation of wider green infrastructure. Relevant aspects of local authority green infrastructure strategies should

be incorporated where appropriate.

- 5.45 The EIA should consider potential impacts on access land, public open land, rights of way and coastal access routes in the vicinity of the development. Consideration should also be given to the potential impacts on the adjacent/nearby England Coast Path National Trail. The National Trails website www.nationaltrail.co.uk provides information including contact details for the National Trail Officer. Appropriate mitigation measures should be incorporated for any adverse impacts. We also recommend reference to the relevant Right of Way Improvement Plans (ROWIP) to identify public rights of way within or adjacent to the proposed site that should be maintained or enhanced.

Air Quality

- 5.46 Air quality in the UK has improved over recent decades but air pollution remains a significant issue; for example over 97% of sensitive habitat area in England is predicted to exceed the critical loads for ecosystem protection from atmospheric nitrogen deposition (England Biodiversity Strategy, Defra 2011). A priority action in the England Biodiversity Strategy is to reduce air pollution impacts on biodiversity. The planning system plays a key role in determining the location of developments which may give rise to pollution, either directly or from traffic generation, and hence planning decisions can have a significant impact on the quality of air, water and land. The assessment should take account of the risks of air pollution and how these can be managed or reduced. Further information on air pollution impacts and the sensitivity of different habitats/designated sites can be found on the Air Pollution Information System (www.apis.ac.uk). Further information on air pollution modelling and assessment can be found on the Environment Agency website.

Climate Change Adaptation

- 5.47 The England Biodiversity Strategy published by Defra establishes principles for the consideration of biodiversity and the effects of climate change. The ES should reflect these principles and identify how the development's effects on the natural environment will be influenced by climate change, and how ecological networks will be maintained. The NPPF requires that the planning system should contribute to the enhancement of the natural environment 'by establishing coherent ecological networks that are more resilient to current and future pressures' (NPPF Para 174), which should be demonstrated through the ES.

Contribution to local environmental initiatives and priorities

- 5.48 In keeping with the Draft Brighton & Hove City Plan Part 2, this development should safeguard or contribute to the existing multifunctional network of Green Infrastructure and where possible seek to enhance:
- The South Downs Way Ahead Nature Improvement Area

- Protected and notable species and habitats
- Ancient woodland
- Aged/veteran trees
- Protected trees
- The city's national elm collection
- Designated sites of importance to nature conservation

Cumulative and in-combination effects

- 5.49 A full consideration of the implications of the whole scheme should be included in the ES. All supporting infrastructure should be included within the assessment.
- 5.50 The ES should include an impact assessment to identify, describe and evaluate the effects that are likely to result from the project in combination with other projects and activities that are being, have been or will be carried out. The following types of projects should be included in such an assessment, (subject to available information):
- existing completed projects;
 - approved but uncompleted projects;
 - ongoing activities;
 - plans or projects for which an application has been made and which are under consideration by the consenting authorities; and
 - plans and projects which are reasonably foreseeable, i.e. projects for which an application has not yet been submitted, but which are likely to progress before completion of the development and for which sufficient information is available to assess the likelihood of cumulative and in-combination effects.

Heritage, Townscape and Visual Impact Assessment

Heritage Officer response:

- 5.51 With regard to section 6.5, Madeira Terrace and the Banjo Groyne should be included in the list in 6.5.4, also the Palace Pier is not in close proximity but it should be assessed due to potential impact on its setting. Regarding viewpoints (para 6.5.15) the previously requested ones should be added – Black Rock Car Park and similar position above that on Madeira Drive (rendered image).
- 5.52 A Tall Buildings Statement will be required as part of the application submissions, which should be referenced within this part of the ES if not included in the ES. The Tall Buildings Statement should also include references to this chapter of the ES.

SDNPA (South Downs National Park Authority) response:

- 5.53 I have looked at the proposed list of viewpoints for assessment in the SDNP. I can confirm that the range of views is comprehensive. I note the intention is to do either wireline or rendered images from all of the views

selected. This is to be welcomed as it will provide a thorough assessment of potential visual impacts.

- 5.54 South Downs National Park is a designated International Dark Skies Reserve, therefore the effects of the development (artificial lighting) on the SDNPA and on nighttime views from the SDNPA should be scoped into the EIA.

Marine and Coastal Environment

- 5.55 The Environment Agency (EA) notes that effects on marine water quality will be covered in the water resources and flood risk chapter of the Environmental Statement. Depending on the extent of any coastal works the EA would expect this section to include reference to compliance with the Water Framework Directive.

- 5.56 The MMO are yet to provide comment on the Scoping Report as they are required to provide their own Scoping Opinion as requested by you under the Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2017. The MMO Scoping Opinion should be taken into account in the preparation of the Environmental Statement. The MMO have provided the Council with their consultee responses on the Scoping Report received to date, which are as follows:

- 5.57 Maritime and Coastguard Agency:

As the works will fall within the cofferdam then impact on the safety of navigation is likely to be minimal. Brighton Marina (Premier Marinas) are the Statutory Harbour Authority for the marina area and the duty holder under the Port Marine Safety Code. Where navigation matters are concerned, approval/agreement of the Harbour Master should be sought so that appropriate safety measures can be agreed.

- 5.58 CEFAS (Centre for Environment Fisheries & Aquaculture Science) Fisheries advice:

The scoping report does not clearly define the nature of the proposed marine works relevant to this application. The EIA should describe which elements of the marine construction have already been consented under existing marine licences, and which elements are being applied for under the new marine licence.

- 5.59 For example; in Section 6.4.22, the potential impacts of the construction phase include '*re-suspension of sediment during piling and dredging*', but I was unable to establish where or when dredging would be undertaken, or the proposed volumes to be dredged, anywhere within the scoping report. This may already be consented under an existing marine licence which Cefas Fisheries Advisors have not been consulted on.

- 5.60 It is unclear if some of the piling works are already permitted under existing marine licences. The number and location of piles in the intertidal and subtidal marine environment for the new application should be provided clearly in a figure, and the size of piles, installation methods for each pile type, and duration of piling events should be described.
- 5.61 In Section 6.4.21, one of the potential impacts described is the possibility that sea water heat pumps may be proposed for inclusion in the proposed development, which will result in cold waste water being pumped back into the harbour through a 200mm diameter pipe. This information should be included earlier on in the description of the Project Development chapter.
- 5.62 If sea water heat pumps are included in the project, then the impacts of impingement and entrainment of fish, and fish eggs and larvae should be assessed (and other aquatic organisms), as should the impacts of cold waste water discharges into the marine environment. Predicted volumes of discharged waste water should be presented together with supporting evidence or modelling of how the waste water will mix with the receiving waters of the harbour.
- 5.63 Impacts to aquatic ecology have been scoped in to the EIA for the construction and operational phases. The term 'aquatic ecology' covers all fish receptors, so is adequate for a scoping report.
- 5.64 For EIA purposes, sensitive fish receptors relevant to the Brighton area should be identified on a species basis, and assessed as such, where appropriate. For example; the waters off the coast of Brighton are considered a nursery ground for thornback ray, undulate ray, and whiting, a high intensity spawning ground for sole, and a spawning ground for cod, plaice and sandeel (Ellis *et al.* 2012).
- 5.65 For the EIA, sensitive fish receptor species should be identified and assessed against the following impacts;
- Underwater noise and vibration during the construction stage
 - Increased suspended sediment concentrations, and subsequent settlement on benthic/fish habitats
 - Loss of benthic/fish habitat
 - Lighting during construction and operational phases
 - Impingement/Entrainment of fish and their eggs and larvae (if sea water heat pumps are included in the development)
- 5.66 The preliminary ecological appraisal does not have a section on fish, so I am unable to determine whether an accurate environmental baseline for fish has been established / will be presented in the ES. The only fish that has been identified as present in the vicinity of the site is the short-snouted seahorse. I would expect the EIA to include a desk-based review

of fish species found in the study area, together with an acknowledgement of any spawning and nursery grounds relevant to the development. This information can be found in Coull *et al.* (1998) and Ellis *et al.* (2012).

- 5.67 Concerning the assessment of the likelihood and significance of potential impacts from the proposed works, as stated in points 12 to 16, clarification is needed on the following; whether dredging is to take place, number of piles and installation methods, details of seawater intake pipe and cold-water discharge (if included in the project). It is difficult to assess the likelihood and significance of the potential impacts without this information.
- 5.68 For the EIA mitigation proposals, as a minimum, I would expect the applicant to adhere to standard mitigation practices for reducing the impacts of noise and vibration on fish, such as the 'soft-start' procedures on commencement of piling, using vibro-piling wherever possible, piling during low tide or in dry conditions if possible.
- 5.69 If dredging is to be undertaken, the applicant should consider ways to reduce the impacts of increased sedimentation such as; the use of a closed bucket dredger, the use of silt curtains, or dredging during certain tidal states.
- 5.70 Modelling of the impacts of underwater noise and vibration from construction activities, such as piling, is not proposed for the EIA. Instead, desk-based calculations will be used to estimate sound exposure. Given the location of the project, and scale of the development, I agree that this seems reasonable. I defer to my colleague in the underwater noise team for further comments on the requirement for underwater noise modelling in respect of fish and marine mammals.
- 5.71 The proposed approach to the assessment of potential cumulative and inter-related impacts does not include details of other marine developments in the area that are in the planning or consented stages, or those that are currently under construction e.g. offshore windfarms, coastal developments, aggregate dredging, fishing etc. Consequently, it is currently unclear whether the assessment of cumulative and inter-related impacts to fish will be adequate.
- 5.72 In summary, the scoping report does not adequately define the construction activities proposed for this marine licence application. For the EIA relevant fish receptor species for the Brighton area must be identified and assessed against all potential impacts relating to the construction and operations of the development.
- 5.73 CEFAS (Centre for Environment Fisheries & Aquaculture Science) Marine Benthic Ecology advice:

My comments pertain to the conservation and health of marine benthic invertebrate communities and do not include any reference to other ecological components (e.g., saltmarsh, birds, fish, mammals) or other physical (e.g., morphology, bathymetry) or chemical (sediment or water quality) aspects of the environment.

- 5.74 The report, in association with the accompanying documents, presents sufficient, albeit minimal, information regarding the proposed construction project. A before-after visualisation figure would be beneficial in this respect to provide the reader with a more informed insight as to what is being proposed.
- 5.75 A phase I habitat survey was recently undertaken for this application, together with a desk-based assessment of the habitats in the zone of influence. This latter assessment also comprised an appraisal of the relevant statutory and non-statutory designations of species and habitats. This approach is apposite for the scoping assessment.
- 5.76 This habitat survey approach does not, and is not intended to, provide an assessment of the presence of species or habitats (designated or otherwise) of aquatic invertebrates, either intertidally or subtidally. I would propose that consideration is given to the need for a field-based benthic survey as part of the EIA process. This survey will aid the assessment of likely significant impacts as part of the EIA process by, for example, assessing whether any of the qualifying features of the MCZ are present in the zone of influence.
- 5.77 CEFAS Underwater Noise Response:
For the relevant Marine and Coastal Environment baseline, including the underwater soundscape, (see comments to question 4 below), reference is made to the following report: 'SubAcoustech Environmental Ltd. (2014) Measurement of underwater noise during vibropiling operations, Brighton Marina. Report No. E469IR0205'. The report also states that "*for the purposes of the marine soundscape assessment, scoping suggests that a full underwater sound propagation model is not required. Therefore, a desk-based calculation will be made of the estimated underwater sound exposure to a range of potential biological receptors. This will be based on estimated sound sources for the construction methods proposed*". In my opinion, this approach is reasonable.
- 5.78 It is proposed to scope out underwater noise during the operational phase, as such noise will be minimal for this type of development (para 6.4.25-26). I agree that this approach is reasonable.
- 5.79 CEFAS Coastal Process Response:
Section 6.6.13 of the Scoping Report suggests that the development will

affect coastal processes by affecting sediment transport and morphology on outer beaches, and sedimentation and waves within the harbour area. The latter seems more likely and most proposed measures seem to address this problem, but the applicant has not provided detail on the first of these (though 6.6.19 contradicts it slightly). Nevertheless, coastal processes and wave climate are scoped in, so should be addressed in the ES. I therefore suggest more recent data is acquired to support the EIA (for example from the South East Regional Coastal Monitoring Programme that includes a variety of products: Aerial Photography, Topographical Surveying, LiDAR), as well as the geomorphological - oceanographic baseline/state of the area and its surroundings information which is referred to below.

- 5.80 The Scoping Report states that the construction phase is unlikely to cause significant changes (6.6.14) – this statement should be supported (i.e., by outlining what construction processes are expected and what assessments have been made to assess their impact). For example, dredging of the harbour area is mentioned as having an impact during the construction phase (Section 6.4.22).
- 5.81 In the scoping report, Section 6.2.2, the area is suggested to have minor level of associated Greenhouse Gas (GHG) emissions but there is no mention of the evidence on that. Please state how this is supported.
- 5.82 I believe that more information regarding the geomorphological-oceanographic baseline/state of the area and its surroundings, should be included. I suggest the following:
- the latest geological map from British Geological Society in Section 8.1 of the Geotechnical and Geoenvironmental Desk Study;
 - though the geological/geomorphological evolution of the area is described in Section 8.2 of the Geotechnical and Geoenvironmental Desk Study, I suggest the applicant to update this information from more recent studies: http://www.channelcoast.org/southeast/survey_programme_schedule/4dMU11.pdf; http://www.channelcoast.org/southeast/survey_programme_schedule/LSE_PhaseII_Proposed_July2017.pdf; http://www.scopac.org.uk/scopac_sedimentdb/bchy/index.htm
 - regarding cliff erosion - retreat rates, I would advise the applicant to look at SCOPAC's work and research publications such as Parente, L., Revellino, P., Guerriero, L., Grelle, G. and Guadagno, F. (2015). *Estimating cliff-recession rate from LiDAR data, East Sussex coastline, South East England*. (Rendiconti online della Società Geologica Italiana. 35. 220-223. 10.3301/ROL.2015.105.) and (Gilham, J.M. (2018), *Developing a probabilistic recession model through characterisation and quantification of the erosion of chalk sea cliffs in Brighton* (PhD Thesis, University of Sussex, UK);

- a bathymetric map should also be included to show any topographical changes in the nearshore zone of the coast and within the harbour, ideally before construction of the scheme and the current state;
 - regarding the wave state, I suggest the applicant to include information from *in-situ* data (Channel Coastal Observatory or MetOffice). These datasets could be added in a new sub-Section “Hydrodynamics” in Section 8 in the Geotechnical and Geoenvironmental Desk Study. In the new section, the applicant should also include more details regarding the tidal conditions (no need for the Hydrology Subsection if this is done).
 - initial numerical modelling in the area for waves and sediment transport has been mentioned in Section 6.6.24. I propose that information and graphs should be included and referred in the document.
- 5.83 In the Geotechnical and Geoenvironmental Desk Study page 65, Drawing No 004 P0, please include a referenced published geology.
- 5.84 In the Geotechnical and Geoenvironmental Desk Study, Section 15.1 at the Ground Investigations a Ground Penetrating Radar Survey could also be used to check the stability of the structure. Also, if previous T98 Coastal Asset Surveys (Environment Agency’s Condition Assessment Manual (T98)) are available please include them as evidence of the current conditions of the assets.
- 5.85 In the Scoping Report, at Sections 6.4.22 and 6.6.13 there is mention of the dredging regime but there is no mention on how this is or will be monitored. However, the applicant states that pending the approval of the planning application, mitigation measures as a result of construction assessment will be included in the ES with a Construction Environmental Management Plan. As this information is not included in the provided documents, I cannot offer further advice at the present time.
- 5.86 Regarding sediment quality, in Section 6.6.15 the applicant notes consideration of impact and mitigation measures for sediment/water quality will be covered in the Water Resources and Flood Risk ES Chapter. As there is no further information on that, I cannot offer advice at this time.
- 5.87 The applicant states that HR Wallingford ARTEMIS model will be used for the EIA. However, no information is provided on why the specific model has been selected or how it will be validated and there is no mention of the calibration of these models for the area under examination. I advise the applicant to consider installing a wave – pressure – level logger to use for the validation of the modelling results. Furthermore, there is no mention of the bathymetry and the wind/wave data that will be used as input. I would advise the applicant to provide these sources.

- 5.88 Desk-based assessment is proposed, with no new surveys. This is likely to be sufficient but, as suggested in the report, an updated sediment contamination analysis is appropriate, given the development of the harbour.
- 5.89 For coastal processes effects within the harbour, wave modelling is a typical evidence base and given the enclosed nature of the harbour and the limited capacity for other effects on wider coastal processes, desk-based assessment appears to be appropriate as a first assessment for impacts on the surrounding area (if any possible effect on the surrounding area is identified, other assessments may need to follow).
- 5.90 I advise the applicant to include data from the South East Coastal Monitoring Programme, as there are survey units within the Marina and its surroundings. Survey units are 4dMU10, 4dMU11 and 4dMU12. Data should include topographic changes from RTK-GPS, LiDAR (most current 2014-2015) and Aerial Photography (most current 2016).
- 5.91 In section 6.2.3 of the scoping report, the applicant suggests that if UKCP18 data is available climate change projections will be adapted accordingly in the ES (and not UKCP09 currently used). Please advise if Table 6.2 Climate Parameters in Section 6.2.7 will also be updated.
- 5.92 CEFAS Dredging and Disposal response:
With regards to my remit on dredging and disposal activities the details of the project are not currently clear. It is not clear if there will be any capital dredging or increase in maintenance dredging. The scoping report does not adequately define the construction activities proposed for this marine licence application. There is an indication (through the impact definition of "*Re-suspension of sediment during piling and dredging*") that dredging is required although this is not described in any detail.
- 5.93 Presuming there will be no dredging and disposal the scope is (with regards to sediment quality) sufficient in my opinion. If dredging is required, the scope may not be sufficient.
- 5.94 In section 6.4.22: "*Re-suspension of sediment during piling and dredging*" is detailed as a potential effect. However, it is not clear if this includes potential resuspension of contaminated sediment. This should be clarified in the ES (although from section 6.6 it is clear that contaminated sediments are scoped into the assessment).
- 5.95 In section 6.6.13 the "*disturbance of in-situ contaminated sediments*" is noted as a potential impact and in section 6.6.18 it is noted that sediment quality is scoped into the assessment. This is appropriate (however the degree of sediment disturbance/movement is not defined – see comment in first para above). Should disposal at sea be required, the effects of

suspended sediment and contaminated sediment should be assessed at the dredging sites and disposal locations.

- 5.96 I note in section 6.6.10 there is reference to a sediment survey in 2004 and comment that newer samples may be required. The applicant may wish to take note of the existing maintenance dredging licence under L/2015/00024 and the supporting analysis. This data may be utilised in the assessment, however, should dredging and subsequent disposal at sea be required, current samples of the precise area to be dredged will be required (under OSPAR and London Protocol obligations). The requirement for samples for dredging activities can be supported via the MMO's sample plan advice process.
- 5.97 Water quality is scoped into the assessment in chapter 6.10. I note the inclusion of "*Impact of piling works on ground water and potential for allowing resuspension of contaminants into the marine waters.*" This is appropriate, although any dredging requirement should be clarified.
- 5.98 Effects on sediment quality appear to have been scoped into the assessment for construction only. This may be appropriate; however, it is not clear if ongoing maintenance dredging will be required following construction. If maintenance dredging will be required sediment quality impacts at the dredging and disposal site should be assessed in the ES.

Lighting

- 5.99 Lighting needs to be scoped-in using industry guidance, such as the Institution of Lighting Professionals (ILP) Guidance Notes for the Reduction of Obtrusive Light. There is a mix of commercial, public space and residential lighting and the overall impact can be viewed from long distances, as well as from the newly created adjacent residential units.
- 5.100 The impact of artificial lighting on nighttime skies, and on views from the SDNP and heritage assets also needs to be assessed.

Dust

- 5.101 Dust should also be included in construction impacts. The dust control is included in air quality, but should also be part of the Construction Environment Management Plan and the practical controls spelt out.

Noise and Vibration

- 5.102 Vibration monitoring for the nearest business to the planned piling should be scoped-in (in the report it says it is scoped-out, but later says 'vibration risks will be assessed'). The experience of the previous phase was that monitoring was useful; we had complaints from as far away as Sussex Square from householders who felt the piling was causing damage to their property and could be felt in basements. It was helpful to be able to show

the level of vibration from the construction activities.

- 5.103 The CEMP should include a requirement to apply for permits to make noise (section 61) for each of the construction phases on each block. The CEMP to include a communications strategy for the local and wider community (commercial and residential), previously there was some role confusion about whether the client or construction company took charge of this and this led to problems that could have been avoided had role boundaries been established at the outset. Getting the piling mitigation right is most important, as this along with demolition this is likely to be the noisiest work. Recognition of the characteristics of the site – e.g. very disruptive works not to take place during high season, that works need to stop due to high winds/tides more frequently in the winter, should be accounted for.
- 5.104 Noise from construction is said to be ‘not significant [with] ..appropriate mitigation’. My experience of phase 1 was that the noise, especially due to piling was very significant, even with mitigation. The noise’ monitoring points shown at 2 & 3 are acceptable, but point 1 should be moved to the western edge of the site closest to the shoreline. Complaints about piling noise were received from a widespread area, including Kemp Town during phase 1.
- 5.105 Noise from the sea and wind will contribute to the background levels, is not included and appears to particularly effect the western edge of the site. Previously the piling had to stop when inland winds carried the noise too far afield. Therefore, the statement that ‘sensitive receptors are likely to be in the immediate vicinity of the proposed development...confined to the commercial and residential properties on the Boardwalk’ is incorrect. Unattended monitoring was effective and achievable on phase 1. The main noise sources listed should also include sound from the sea and wind, as well as the possibility of construction breaks due to tides that are incompatible with some construction activities. Account of the night bus route directly to the north of the residential buildings proposed should be assessed.
- 5.106 ProPG Planning & Noise: New Residential Development (May 2017) will also be useful in designing to optimise the noise environment in new housing schemes.

Socio-Economics

- 5.107 The assessment should include analysis of baseline and development impact on affordable housing, community facilities and open space, play space and sport facilities, taking into account local and national policies and guidance (including SPGBH9 and SPGBH15) on these matters.

Traffic and Transport

- 5.108 The scoping report lists a set of specific junctions to be assessed to establish a baseline for 2018 flows – as modelling work is yet to be fully completed, we need assurance that other junctions will be modelled if impacted by the proposed development flows as per standard BHCC TA advice of a 5% or 30 vehicle per arm/lane increase at junctions. This links to previous pre-app advice that stated that limitation of the zone of influence to 1km is not necessarily realistic and may need to be extended.
- 5.109 We do not agree that the 30% threshold for assessment of impacts is acceptable at sensitive locations. As all vehicular trips generated by the proposed development must pass through the urban area, which we consider to be sensitive, we recommend that this is reduced to 10% and should include junctions.
- 5.110 We agree that construction traffic flows need to be included, and these will also need to consider the impact on affected junctions.

Water Resources and Flood Risk

- 5.111 Flood risk and disasters has been scoped out to be included within the Flood Risk Assessment. The EA would expect some acknowledgement of the flood risk and potential measures to be taken within the EIA scoping report, in order to be able to make some comment at this stage.
- 5.112 The EA further comments that parameters such as sea-level rise have been scoped out of the document, to be included in other key planning documents, therefore they have insufficient information on these issues to be able to make a comment at this stage. They would expect to see some acknowledgement of the risk and measures taken for these relevant parameters within the EIA, to be able to make some comments.

Wind Microclimate

The wind assessment should include analysis of wind speeds at balconies and roof terraces, as well as at ground level.

Health Impact Assessment

- 5.114 Although it is proposed for this to be covered by a Rapid HIA separate to the Environmental Statement, BHCC's Health & Adult Social Care (Public Health team) have provided advice on the scope of this as follows:
- 5.115 A Rapid HIA would be acceptable to Public Health for this proposal so long as it includes the baseline data around the health impact on the local population. This should include answers to the key questions for consideration and why these are important, included in pages 10-21 of the London Healthy Urban Planning Checklist.
<https://www.healthyurbandevelopment.nhs.uk/wp->

content/uploads/2017/05/Healthy-Urban-Planning-Checklist-3rd-edition-April-2017.pdf

- 5.116 The impact assessment should also reflect engagement between the developer and the CCG (Care Commissioning Group) to quantify the implications for local healthcare (including GPs) demand. In practice this may be a summary of specific work between the developer and the CCG. Hugo Luck would be the relevant contact at the CCG: hugo.luck@nhs.net.
- 5.117 Although the term "rapid" is used in the context of this type of HIA, it does not mean that a very brief response would be acceptable. It needs to be a robust estimate of the health impacts of the development on the local population, as well as the wider determinants of health (e.g. education, employment). The methodology for this would include presenting the evidence for any positive or negative impacts on health that might result from this development. It is only "rapid" in the sense that it is not as extensive as a comprehensive HIA which would include more qualitative data obtained through public and stakeholder consultations.

Planning Manager

P. Vile

Date

31/1/19

