



**CAMPAIGN**

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## **Whitstable Beach Campaign response to Local Plan Consultation 2021.**

According to the consultation overview provided by CCC, one of the main goals of this current consultation is to:

‘seek to improve the **health and well being** of our communities’.

Within this heading, there are two specific sections that apply to the beach area in Whitstable including:

- ‘creating well designed building and **Public spaces**’
- ‘**to enhance and preserve our historic and natural environment**’.

In this document, we are recommending the protections that should be included in the new Local Plan that support these 2 headings in regard to Whitstable Beach and other coastal areas within the LPA.

We are including policies within the current NPPF and the newly adopted South East Inshore Marine Plan adopted June 2021 that now apply and support our recommendations.

### **Definition of beach within the Local Plan.**

Whilst it is wholly appropriate that the significance of beaches as Open Space is formally recognised in the draft document as ‘a category of open space in its own right’, in recognition of the valuable contribution it makes to leisure, recreation and the environment, we are concerned that the definition of a ‘beach’ within the current local plan has not been clearly conveyed.

It is logical to confirm that the extent of the ‘beach’ is as far as the Mean Low Water Mark (MLWM) thereby including the foreshore, as this is the seaward jurisdiction of the LPA. We are aware that the Open Space strategy from the May 2014 draft Local Plan summary only covered the area from ‘the toe of the beach to the base of the sea wall’, and feel this definition should be formally revised .

We are aware in a recent Supreme Court (Newhaven [2015] UKSC 7) the ‘beach’ included both the dry beach above the Mean High Water Mark (MHW) and the intertidal foreshore between the MHW and the Mean Low Water Mark(MLWM). The Local plan needs to clearly define the area referred to as ‘beach’.

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## 1. Local Green Space

We believe it is vital that the most used part of Whitstable's Town beach (which we would identify as the dry beach from the sea wall to the MHWM) has formal recognition and is designated 'Local Green Space', as defined in the NPPF at paragraph 102. During the last consultation, this was agreed by all members at full council with one abstention, but was not implemented.

This Local Plan invites review of LGS sites and we contend that Whitstable Town's dry beach soundly meets all of the 3 criteria set out in the NPPF. We detail below why we believe this to be the case in accordance with government guidance available.

Fundamentally, as stated in the Government guidance ([www.gov.co.uk](http://www.gov.co.uk)) on 'Open space, sports and recreation facilities, public rights of way and local green space' (para 009), Whitstable Town's dry beach should be designated Local Green Space because it is '**demonstrably special to the local community**'.

Furthermore, para 011 recognises that 'different types of designations are intended to achieve different purposes'. The current designations that apply to the dry beach, SSSI and RAMSAR, only address environmental issues not community concerns, so additional local community benefit would be gained by designation as LGS. (The SPA and MCZ designations only apply below the MHWM).

Since 2017, the value of open space provided by Whitstable Beach as a vital amenity to the Town and its visitors has only grown in importance, especially during the current pandemic as stated in the Canterbury Local Plan consultation document.

We continue to assert that the dry beach area of Whitstable Town Beach fulfils all 3 criteria set out in the NPPF: **8. Promoting health and safe communities**

### **Open space and recreation:**

#### **At Para 102:**

- a) *"Where the green space is in reasonably close proximity to the community it serves"*
- b) *"Where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife"*
- c). *"Where the green area concerned is local in character and is not an extensive tract of land"*.

**a) "Where the green space is in reasonably close proximity to the community it serves"**

This is incontrovertibly the case with Whitstable Town's dry beach. During the Town & Village Green Public Inquiry (TVG) held in 2016 and the recent public inquiry into the enforcement appeal involving the oyster farm development on parts of the foreshore, an enormous amount of unchallenged evidence was submitted demonstrating why Whitstable is where it is and what it is, because of its relationship with the beach and the sea. Historical evidence was presented dating back to 1287 when the first sea wall was built showing how the geography of the Town had evolved wholly around people's access to the beach. The numerous alleyways for which Whitstable is famous, all lead from the Town to the beach. Whitstable Town only exists because of its proximity to its beach and sea.

**b). "Where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its:**

- 1. beauty,**
- 2. historic significance,**
- 3. recreational value (including as a playing field),**
- 4. tranquillity or**
- 5. richness of its wildlife"**

The beach is Whitstable's defining landmark. Both currently and historically, it is special to the local community for all of the reasons listed in NPPF point b):

**1) Beauty:**

Whitstable is famous for its sunsets and its rare North West facing stretch of coastline offers the opportunity of uninterrupted sunsets across the water all year round. J.M.W Turner frequented this area due to the excellent light and views it offered. The Tate collection houses a number of works by the artist featuring views of the beach. Whitstable has its own face book page specifically devoted to the extraordinarily sunsets seen by residents and visitors see: <https://www.facebook.com/groups/whitstablesunsets>. During the recent public inquiry into the oyster farm development, 108 out of 243 residents specifically submitted comments referring to the importance of the visual amenity provided by Whitstable's Town beach. The headline image in the current Consultation Document titled the Historic and Natural Environment is a photograph of a sunset at Whitstable.

**2) Historic significance:**

An enormous amount of unchallenged evidence was submitted to the 2016 TVG Public Inquiry and the recent public inquiry into the enforcement appeal involving the oyster farm development from all parties demonstrating how the beach has been fundamental to the historic development of the town. The local Whitstable Museum in the town has a permanent display showing the historical significance of the beach; including the history of the sea walls starting circa 1287, the ship building industry along the beach that only ceased in 1985, the famous Tithe map of 1842 that shows

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how Whitstable has grown up around the beach, the various sailing clubs and events including promenading and sea bathing associated with the beach and sea.

It should be noted that the Museum display of 'Shipbuilding' shows 6 of the shipyards which can be identified in the direct vicinity of the proposed Local Green Space area, with slipways crossing the beach.

Additionally, we submitted to the 2016 TVG Public Inquiry a Kent County Council document titled '*Kent Historic Towns Survey Whitstable*' published in 2004. This document is a concise history of the development of the Town of Whitstable, with input from English Heritage, as an Archaeological Assessment Document for Kent County Council Heritage Conservation Group, Strategic Planning.

In the course of the 2016 Town Village Green (TVG) public inquiry, Whitstable Beach Campaign and Canterbury City Council presented evidence of unchallenged public recreational use of the beach and foreshore extending for more than 250 years. Whitstable Beach Campaign have also argued that there is a statutory right of public access under LPA(1925) section 193 in an urban district. Historically, West Beach formed part of the Manor of Whitstable, which was the historic heart of the Town dating back centuries.

Evidence was presented of the decline of the oyster fishing industry from the turn of the 19<sup>th</sup>/20<sup>th</sup> century and the demise of other sea faring industries such as shipbuilding during the course of the 20<sup>th</sup> century and of the growth of the use of the beach and foreshore for leisure and recreational pursuits. We consider that the evidence submitted to both public inquiries, the 2016 TVG and recent Oyster farm inquiry, shows co-existing use of the beach and foreshore for leisure and industrial uses into the early decades of the 20<sup>th</sup> century, but that dominant or exclusive use of the beach and foreshore for purposes of leisure and recreation prevails until current times.

### **3) Recreational value:**

Unchallenged evidence was submitted to the 2016 TVG Public Inquiry detailing the extensive range of recreational pastimes undertaken by over 400 local residents. (Please see 3 charts attached appendix 1,2 and 3) These three charts show the enormous range of recreational use by witnesses, by others as seen by witnesses and the period over which residents have used the beach for recreational purposes, some back to pre 1930.

### **4) Tranquillity:**

The extensive recreational use of the beach by over 400 witnesses as listed above, includes numerous activities that speak to the tranquil nature of Whitstable Beach e.g. sitting enjoying the view, watching sunsets, bird watching, star gazing and meditating.

At the recent public inquiry significant consideration was given to the importance of maintaining the natural environment and preserving the tranquillity to most suitably

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support its designated bird species.

Currently, Canterbury City Council is a participant in the North Kent Strategic Access Management and Monitoring Strategy (SAMMS), which seeks to identify measures to mitigate the disturbance to birds caused by an increase in visitor numbers.

Protecting this area as a designated Local Green space and therefore reducing the potential conflict of further development would contribute directly to the objectives of the SAMMS project.

#### **5) Richness of wildlife:**

During the recent public inquiry into the enforcement appeal involving the oyster farm development on parts of the foreshore, a substantive part of the Canterbury City Council case was based on the importance of the numerous wildlife protections afforded to Whitstable beach and foreshore area due to the internationally important populations of wild fowl and waders. It is part of the Thanet Coastal SSSI, and also has SPA, RAMSAR and MCZ designations.

The beach also supports the yellow horned sea poppy and sea kale both of which are protected under the Wildlife and Countryside Act (1981).

Again, as stated above, currently Canterbury City Council's participation in the North Kent Strategic Access Management and Monitoring Strategy (SAMMS), recognises the importance of the area's wildlife and seeks to identify measures to mitigate the disturbance to birds caused by an increase in visitor numbers.

Under the NPPF section 15 'Conserving and enhancing the natural environment', paragraph 174 states: 'Planning policies and decisions should contribute to and enhance the natural and local environment' and specifies at c) by '*maintaining the character of the undeveloped coast, while improving public access to it where appropriate*'.

***c). "Where the green area concerned is local in character and is not an extensive tract of land".***

#### ***Local in character:***

It is the beach that absolutely defines the character of Whitstable and historically always has. Again, the same argument applies as does concerning the beach's proximity to the Town and its historic significance. It is, almost uniquely, an urban beach, which has always served the local community and is responsible for its economic, architectural and social development.

#### ***Not an extensive tract of land:***

Our interpretation of an "extensive tract of land" would be a National Park, or something similar, which clearly is not the case here as the land in question, the dry beach, is only approximately 4 hectares.

It would be hard to make a case for the beach being anything other than Local Green Space as defined in the National Planning Policy Framework.

## **2. Removal of permitted development rights**

Whitstable's Town Beach and foreshore should be further protected by removal of permitted development rights, thereby ensuring any future development of this vital local amenity is subjected to full planning application process and relevant consultations before any development that would remove areas of this vital amenity from public access.

Whitstable Beach is increasingly being threatened by continuing development pressures. These developments have been resisted by the community and the Local Authority at the expense of huge time, effort and cost.

The existing Article 4 direction is currently limited to 'gates, fences, wall or other means of enclosure'. The direction should be extended to include any proposed development of the beach area.

## **3. The South East Inshore Marine Plan was formally adopted in July 2021**

Since the current LP was adopted, there is now an obligation on the LPA to recognise and incorporate the policies included within the South East Inshore Marine Plan adopted June 2021. The boundary of the SE Inshore Marine Plan is the high water mark, therefore, there is an 'overlap' of governance applying from the Mean High Water Mark over the foreshore to the Mean Low Water Mark.

There are 45 Marine Plan policies which apply to the beach and foreshore below the MHWM and which the LPA should incorporate into its future planning. These include:

### **SE-CO-1 Co-existence**

Proposals that optimise the use of space and incorporate opportunities for co-existence and co-operation with existing activities will be supported.

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### **SE-HER-1 Heritage asset**

Proposals that demonstrate they will conserve and enhance the significance of heritage assets will be supported.

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### **SE-SCP-1 Seascape & landscape**

Proposals should ensure they are compatible with their surroundings and should not have a significant adverse impact on the character and visual resource of the seascape and landscape of the area.

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The location, scale and design of proposals should take account of the character, quality and distinctiveness of the seascape and landscape.

### **SE-ML-1 Marine litter**

Public authorities must make adequate provision for the prevention, re-use, recycling and disposal of waste to reduce and prevent marine litter.

Public authorities should aspire to undertake measures to remove marine litter within their jurisdiction.

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### **SE-ML-2 Marine litter**

Proposals that facilitate waste re-use or recycling to reduce or remove marine litter will be supported.

Proposals that could potentially increase the amount of marine litter in the marine plan area must include measures to, in order of preference:

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### **SE-ACC-1 Access**

Proposals demonstrating appropriate enhanced and inclusive public access to and within the marine area, including the provision of services for tourism and recreation activities, will be supported.

Proposals that may have significant adverse impacts on public access should demonstrate that they will in order of preference: a) avoid; b) minimise; c) mitigate adverse impacts so they are no longer significant.

### **SE-TR-1 Tourism & recreation**

Proposals that promote or facilitate sustainable tourism and recreation activities, or that create appropriate opportunities to expand or diversify the current use of facilities, should be supported.

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### **SE-SOC-1 Social**

Those bringing forward proposals should consider and demonstrate how their development shall enhance public knowledge, understanding, appreciation and enjoyment of the marine environment as part of (the design of) the proposal.

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### **SE-MPA-1 Marine protected area**

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Proposals that support the objectives of marine protected areas and the ecological coherence of the marine protected area network will be supported.

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### **SE-MPA-2 Marine protected areas**

Proposals that enhance a marine protected area's ability to adapt to climate change, enhancing the resilience of the marine protected area network, will be supported.

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### **SE-MPA-3 Marine protected areas**

Where statutory advice states that a marine protected area site condition is deteriorating or that features are moving or changing due to climate change, a suitable boundary change to ensure continued protection of the site and coherence of the overall network should be considered.

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### **SE-MPA-4 Marine protected area**

Proposals that may have significant adverse impacts on designated geodiversity must demonstrate that they will, in order of preference: a) avoid; b) minimise; c) mitigate adverse impacts so they are no longer significant.

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### **SE-BIO-1 Biodiversity**

Proposals that enhance the distribution of priority habitats and priority species will be supported.

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### **SE-BIO-2 Biodiversity**

Proposals that enhance or facilitate native species or habitat adaptation or connectivity, or native species migration, will be supported.

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### **SE-BIO-3 Biodiversity**

Proposals that conserve, restore or enhance coastal habitats, where important in their own right and/or for ecosystem functioning and provision of ecosystem services, will be supported.

Proposals must take account of the space required for coastal habitats, where important in their own right and/or for ecosystem functioning and provision of ecosystem services,

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#### **SE-INNS-1 Invasive non-native species**

Proposals that reduce the risk of introduction and/or spread of invasive non-native species should be supported.

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#### **SE-INNS-2 Invasive non-native species**

Public authorities with functions to manage activities that could potentially introduce, transport or spread invasive non-native species should implement adequate biosecurity measures to avoid or minimise the risk of introducing, transporting or spreading invasive non-native species.

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All of these policies require that any proposals affecting areas of Whitstable Beach from the Mean High Water Mark over the foreshore to the Mean Low Water Mark must in order of priority seek to avoid, minimise or mitigate impact on the area.

#### **4. Marine and Coastal Access Act 2009**

The Coastal Path from Iwade to Whitstable has now been approved and is in the process of being implemented. The long distance coastal path and margin now incorporates Whitstable Town beach including the foreshore area. This Government initiative recognises the importance of public access to our beaches and foreshore. It is, therefore, appropriate that this is acknowledged and supported by the Local Plan, by, as stated previously, further protecting the designated path and margin by affording Local Green Space designation, removing permitted development rights by extending the Article 4 direction to include any proposed development of the beach area.

#### **5. Management Agreement**

Lastly, the recent Public Inquiry into the oyster trestle development has raised significant issues affecting residents in relation to public safety, litter (including marine litter) and access to the marine area by the public for sports and recreational use.

A Navigational Risk Assessment carried out by the MMO in 2019 highlighted the lack of any formal process for reporting accidents or incidents in the Whitstable Beach area and also recommended that further assessment should be carried out to considered non- navigational activities such as health and safety (including swimming) and environmental impacts.

WBC carried out a survey in 2020 in which 164 members of the public reported having had an accident or incident involving the oyster farm and yet there is no formal process for the public to report incidents.

Additionally, there is an active voluntary beach clean group in Whitstable that collects significant amounts of litter, including marine litter generated by 2 commercial oyster farms in the vicinity and partially within the LPA. The South East Inshore Marine Plan policies require both the LPA and MMO to implement arrangements that avoid, minimise or mitigate these issues.

We, therefore, recommend the LPA seek to enter into a Management Agreement with the land owner, in order that issues that affect public access, recreational use, public safety, and environmental impacts, including litter, affecting the Whitstable beach area have a formal process by which these issues can be addressed.

The South East Inshore Marine Plan policies require the MMO and the LPA to work together so that Government marine policies can be implemented at a local level and, thereby, effectively managed.

We also attach the 'Review of the Legal Responsibility for Beach Safety' (appendix 4), a consultant report carried out on behalf of the Maritime and Coastguard Agency (January 2019) in the aftermath of the Camber Sands drowning tragedies. This report addresses issues and identifies the overlaps and gaps in responsibility and regulation that we believe the LPA should take into account for the length of its accessible and urbanised coastline which falls within the Canterbury Local Plan.

Signed

Paul McNally

24.8.21

Appendices :

Appendix 1, Whitstable Beach Recreational use by witnesses.pdf

Appendix 2, Whitstable Beach, Recreational use by others.pdf.pdf

Appendix 3 Whitstable Beach, Period of use by witnesses

Appendix 4 Review of the Legal Responsibility for Beach Safety