

Appendix A

TDC and MMO Scoping Opinions



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Emma Andrews - Savills
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Please ask for Matthew Lang

Our Ref: 21/01165/EIASCO

2 September 2021

Dear Emma,

**TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2017:
REGULATION 15 SCOPING OPINION REQUEST**

APPLICATION NUMBER:	21/01165/EIASCO
PROPOSAL:	Managed realignment of coastal flood defences.
LOCATION:	Hamford Water, Little Oakley

This letter constitutes the District Council's Scoping Opinion in relation to an Environmental Impact Assessment that is to be undertaken for the above proposed development, and is made following the submission of your request under 15 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regs).

The Scoping Opinion outlines the matters that the District Council considers should be addressed by the Environmental Impact Assessment (EIA) and included within the Environmental Statement (ES) that is to be prepared to accompany the planning application.

The opinion has been prepared by Tendring District Council within the terms of its duty under the above Regulations. The purpose of scoping is to identify the matters which should be covered in the environmental information in support of an application for permission and, in particular, to identify the matters which are of most importance so that these can be addressed in an appropriate manner, in the environmental studies. This opinion has been informed by the contents of the submitted Managed Realignment at Little Oakley, Hamford Water Environmental Scoping Report and consultation comments (including those of the statutory consultees).

Notwithstanding attempts to be as comprehensive as possible, as provided by the Regulations, this opinion shall not preclude the Council from subsequently requiring the applicant to submit further information in connection with the planning application when it is submitted. The ES must be amended in the light of new issues and new information that might arise during the processing of the application. The scope of the EIA must be flexible enough to allow new issues which emerge during the course of the environmental studies, or as a result of proposal changes or through consultations, to be incorporated.

The Council is broadly satisfied with those Environmental Parameters Scoped in and Scoped out of the ES as detailed within Table 5.1 of the submitted Environmental Scoping Report. The Council also agrees with those areas likely to give rise to significant environmental issues, and being;

Chief Executive
Ian Davidson



- Estuarine and coastal hydrodynamics
- Marine and estuarine ecology
- Waterbirds and seabirds
- Terrestrial and freshwater ecology
- Archaeology and cultural heritage
- Tourism, recreation and local community
- Land drainage and coastal defence
- Information for the Habitats Regulations Assessment
- Cumulative Impact Assessment
- Water Framework Directive Compliance Assessment

I would however draw your attention to the following specific comments from consultees on areas within the Scoping Report;

Natural England

Natural England have reviewed the submitted Environmental scoping report (Royal Haskoning DHV, 21 June 2021) and note the scope and level of detail proposed for the environmental statement will draw heavily on the surveys and assessments undertaken in support of the 2003 Environmental Statement (ES) (Royal Haskoning), which supported an authorised planning permission application (03/1200/FUL) for the same scheme.

Supporting surveys and data

Natural England supports the undertaking of bespoke waterbird surveys for the overwintering period in 2021/2022 to help assess the current use of the realignment site and to augment the data gathered from the Wetland Bird Surveys (WeBS). However, they advise that a Phase 1 survey undertaken in spring 2021 is unlikely to sufficiently update the original 2003 ES and a full suite of surveys would be required to inform an EIA nearly 20 years later, or the applicant will need to demonstrate that the original data is still fit for purpose.

Hamford Water is a dynamic hydrological area and changes can be rapid and impactful. Whilst, the passage of nearly 20 years may not have changed the topography on the landward side of the project area, the hydrodynamics and sedimentological regimes could now differ on the seaward side. Data and assessments used to predict impacts from this project need to be robust, evidence based and current.

Natural England advise that water quality and suspended sediment concentrations should be scoped into the Environmental Statement and any likely impacts on interest features and supporting habitats should be considered, and should include any increase in pollution risks resulting from both construction and operational phases of the project.

Legislation has developed since the original application (e.g. People Over Wind Ruling by the Court of Justice of the European Union) and consideration needs to be given to the impact of these changes in the assessments being undertaken.

Compensatory measures vs planned realignment

Natural England note that the project includes compensation for the proposed Bathside Bay development, compensation for impacts on designated/supporting habitats within Hamford Water SAC/SPA/Ramsar/SSSI areas, and an additional area forming part of the 2010 Shoreline Management Plan. Clear identification of the percentage area forming compensation for Bathside Bay, impacts on designated habitat, and the area proposed for the epoch 2 realignment at Little Oakley should be made.

Coastal Path

The diversion of the Public Right of Way will impact the newly designated England Coast Path including any 'spreading room' areas. Consideration needs to be given to the impact on and from the diversion of the England Coast Path. This is likely to require separate consideration and revision of the associated England Coast Path Habitats Regulations Assessment. The Natural England Coastal Paths team will need to be involved in discussions.

Other Relevant Matters

In the recent 25 Year Environment Plan, the Government has committed to making sure the existing requirements for net gain for biodiversity in national planning policy are strengthened and the current trend of biodiversity loss is halted. This approach is likely to be supported by the forthcoming planning policy guidance. Currently most developments still result in biodiversity loss. Natural England therefore advises that each development reverse this trend and deliver net gains in biodiversity.

Natural England strongly recommends that this strategy achieves a net gain for biodiversity and we advise that a biodiversity metric is used that would be relevant to each local authority. This approach would ensure that your authority will have met its duties under Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 which states that 'Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.'

Royal Society for the Protection of Birds

The RSPB seeks assurance that the Environmental Impact Assessment (EIA) and Habitats Regulations Assessment (HRA) scoping will address the requirements for the compensation scheme at Little Oakley set out in "Deed relating to Bathside Bay Container Terminal, Little Oakley Managed Realignment and the Conservation (Natural Habitats & c) Regulations 1994" dated 15 October 2004 (between Harwich International Port Limited [HIPL], the Harwich Haven Authority, the Environment Agency and English Nature (now Natural England)).

The Deed (and associated Compensation, Mitigation and Monitoring Agreement [CMMA]) sets out the legal obligations in respect of the Little Oakley compensation site, including its aims, objectives, targets, timings of breach in relation to the impacts on Bathside Bay, monitoring and future management, as well as the establishment of an Advisory Group to be consulted by the regulators. Any proposal by HIPL to update the detailed objectives set out in the CMMA (section 3.2.3) would rely on the acquisition of up to date information in respect of the use of Bathside Bay by SPA/Ramsar waterbirds and only on the basis of advice by the Regulatory Group and Advisory Group. This could be relevant to the nature of any waterbird survey work required under the EIA and HRA.

Environment Agency

Flood Defences

The works will involve breaching defences maintained by the Environment Agency. The Environment Agency need confirmation that they will no longer be expected to maintain those defences and that the Environment Agency will not maintain any defences/structures/main river watercourse channels created by the managed realignment. Confirmation that the landowner is in agreement with the changes to our maintenance regime is also required, if this is not Harwich International Port Ltd.

The Environment Agency would need to be provided with detail of the layout of the managed realignment site, as well evidence that these works will not increase flood risk to others.

Drainage

It would appear the realignment will likely split the drainage of Foulton Hall Ditch between Southall Sluice and Strachen Sluice, which may affect and interrupt drainage during and after construction. Details are given on page 24 of the report, but we would need clarification of how the applicant intends to manage the issues that may be caused during and after construction for instance are they going to modify the watercourses sluices or build a new one.

Environmental Permitting

In accordance with The Environmental Permitting (England and Wales) (Amendment) (No.2) Regulations 2016, Schedule 25, Part 1, these works may require a Flood Risk Activity Permit. The applicant should apply for a Bespoke Flood Risk Activity Permit. Information about Flood Risk Activity Permits, and application forms, can be found here; <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits>. Please submit these forms, or any questions about a FRAP at this location to

Ecology

The realignment scheme has potential to deliver replacement habitat for Bathside Bay but care should be taken to ensure that any habitats that are created are sustainable for the long term. Whilst it is understood that existing levels have to be worked with and mudflat is the largest habitat to be replaced there is great scope to deliver niche habitats for rarer species here too with little additional cost. Shingle habitat is being proposed to be incorporated near the new seawall on the west side and it would be a great opportunity to design this in a way that provides ideal habitat for terns and other shingle nesting bird species. Care would have to be taken to avoid disturbance of rare species in this new proposed replacement habitat. Further erosion should be avoided and gentle gradients will make seawalls much more sustainable and much less likely to exacerbate erosive forces and ricochet the damaging energy elsewhere. Whilst new footpath users will want some wide views of new habitat this should be designed carefully to prevent unnecessary visual disturbance to birds on the new intertidal area.

Council's Trees and Landscaping Officer

The Environmental Scoping Report submitted in relation to the managed realignment of coastal defences and habitat creation appears to make provision for the future and detailed consideration of all landscaping and associated impacts of the development proposal on the existing local landscape character and varied habitats.

Historic England

It is for the local authority to determine whether an EIA should be prepared for the proposed development. Historic England considers the historic environment to represent a potentially significant issue in EIA terms, and we recommend the historic environment should be 'scoped in' to their assessment. We consider that the results of the assessment exercise should result in a specific Cultural Heritage chapter of the ES.

Historic England Advice

The proposed application site covers a large area of agricultural land to the southeast of the village of Little Oakley and to the south of Upper Dovercourt. The development has the potential to impact upon both designated and non-designated heritage assets and we have noted the development is potentially within the setting of one scheduled monument, to the east of the scheduled monument known as 'Heavy Anti-aircraft gunsite 350m north east of Little Oakley Hall' (LEN: 1019486).

There is also one Grade II* listed building within 2km of the centre of the application site (St Mary's House, LEN: 1112098) as well as seven Grade II buildings within 2km of the centre of the site.

The EIA Regulations 2017 require EIAs to identify, describe and assess in an appropriate manner the direct and indirect significant effects of the proposed development. The assessment will need to be carried out in accordance with established policy and guidance, including the National Planning Policy Framework (NPPF), the Planning Practice Guidance and Historic England's Good Practice Advice.

The impact of the proposed development on the setting and significance of the designated heritage assets will require a robust assessment. A detailed heritage impact assessment will be required to support the application - to assess the significance of heritage assets, their settings and the contribution their settings make to the significance, and to assess the impact of the proposed works on the significance of the designated heritage assets.

Whilst standardised EIA matrices are considered in some planning practices to be useful tools, we consider the analysis of setting (and the impact upon it) as a matter of qualitative and expert judgement which cannot be achieved solely by use of systematic matrices or scoring systems. Historic England therefore recommends that these should be in an appendix and seen only as material to support a clearly expressed and non-technical narrative argument within the cultural heritage chapter.

The EIA should use the ideas of benefit, harm and loss (as described in NPPF) to set out 'what matters and why' in terms of the heritage assets' significance and setting, together with the effects of the development upon them.

We recommend the LVIA provide heritage specific viewpoints with both photographs and photomontages that illustrate the ES and support the results of the heritage assessment - with regards to the key designated assets mention above. We recommend the key viewpoints for analysis are agreed with stakeholders in advance. If these are to be presented in the Landscape and Visual chapter, then the assessment needs to be clearly set out and cross referenced with the heritage chapter.

The setting of heritage assets is not however just restricted to visual impacts and other factors should also be considered in particular noise, light, traffic and assessments. Where relevant, the cultural heritage should also be cross-referenced to other relevant chapters, and we advise that all supporting technical heritage information (e.g. deskbased assessments, reports etc.) are included as appendices.

Given the designated heritage assets within close proximity of the proposed site, we would welcome further discussions with the applicant in order to refine the approach to the scope of the EIA, to the assessment, enhancements and mitigation. Likewise, the local Conservation Officer will need to be consulted in relation to the built environment.

We also note the potential impact on non-designated heritage assets within the redline boundary, which includes the remains of at least ten 'red hills', which are the remains of Bronze Age, Iron Age and/or Roman salt-making sites along the coastal zone.

These have not been the subject of previous systematic archaeological investigation. We would also recommend that any assessments include the potential for deposits of palaeoenvironmental interest to be preserved. If present, remains could be preserved, such as plant macrofossils, insect remains, pollen, diatoms and foraminifera, which provide information about the landscape and environment, and how this may have changed over time.

It is noted that the proposed development would result in some areas of the site being inundated. The impact that this may have on archaeological deposits should be considered as the flooding could impact the soil chemistry and, therefore, the preservation conditions of the archaeological deposits and remains. The effects are likely to be site specific and relate to the geology, topography, the composition

of the archaeological deposits (aquifers vs aquitards), the composition of the archaeological remains and frequency of inundation (i.e. periodic or sustained).

We strongly recommend that the applicant involve the District Council's specialist advisers on archaeological matters and we recognise that they are best placed to provide advice on non-designated heritage assets and to give advice on how the proposal can be tailored to avoid and minimise potential adverse impacts on the historic environment, and of any required mitigation measures. We would welcome the opportunity to provide advice and guidance relating to the archaeological assessment and proposed mitigation measures.

We consider the historic environment to represent a potentially significant issue in EIA terms, and we would recommend the need for further work to support the publication of an ES. Consequently, a detailed assessment will be necessary to fully consider the impact on the historic environment. This should include assessments of how the proposed development may alter the preservation conditions of archaeological deposits.

Essex County Council Place Services – Archaeology

The proposed application for managed realignment follows an earlier application from 2003 for which a Desk Based Assessment and walkover survey was completed. There are a number of recorded archaeological sites on the HER within the proposed site boundary and surrounding area and the area was identified within the 2003 DBA as one of high archaeological potential. The site is known to contain multi-period archaeological remains, many of which will be impacted upon by the proposed development. The archaeological remains known to exist within the site boundary reflect the changing nature of the coastal zone and its use as a resource since prehistoric times and also human exploitation and manipulation over time until the postmedieval periods when the areas were reclaimed. Many elements of this history are likely to be preserved below ground and include the existing sea wall. The DBA and walkover survey concluded that at the time of the survey the character, extent, condition, and in some cases the precise location, of the archaeological remains within the scheme could not be defined without further field evaluation.

The application proposes to submit a DBA in support of the application to assess the potential impacts of the proposal. The DBA will need to be updated and will need to be supported by further assessment of the known, and unknown archaeological remains that lie within the site boundary. An air photo and LIDAR assessment would facilitate more accurate determination of the location of any features identified as cropmarks, in addition a geophysical survey suited to the soils would be able to locate any red hills that are not visible as above ground features. Both these techniques, in conjunction, would allow more accurate identification of the location and extent of known archaeological features and identification of any unknown features such as agricultural buildings, sea walls and counterwalls, and possible prehistoric sites.

A programme of targeted trial trench evaluation may be required based on the results of the AP survey and geophysical survey to establish the nature and complexity of the surviving archaeological deposits. This evaluation would enable due consideration to be given to the archaeological implications and would lead to proposals for preservation in situ and/or the need for further investigation

The impact of the scheme on these features would need to be considered in terms of inundation and waterlogging of archaeological sites, this would need to be considered on a monument by monument basis as each will have varying responses to the proposed change of environmental conditions.

The following would be recommended for inclusion with the EIA application:

Desk Based Assessment, Aerial Photographic Assessment and Geophysics Survey with targeted trial trench evaluation.

Marine Management Organisation

Marine Licensing

Works activities taking place below the mean high water mark may require a marine licence in accordance with the Marine and Coastal Access Act (MCAA) 2009.

Such activities include the construction, alteration or improvement of any works, dredging, or a deposit or removal of a substance or object below the mean high water springs mark or in any tidal river to the extent of the tidal influence.

A wildlife licence is also required for activities that that would affect a UK or European protected marine species.

Environmental Impact Assessment

With respect to projects that require a marine licence the EIA Directive (codified in Directive 2011/92/EU) is transposed into UK law by the Marine Works (Environmental Impact Assessment) Regulations 2007 (the MWR), as amended. Before a marine licence can be granted for projects that require EIA, MMO must ensure that applications for a marine licence are compliant with the MWR.

If this consultation request relates to a project capable of falling within either set of EIA regulations, then it is advised that the applicant submit a request directly to the MMO to ensure any requirements under the MWR are considered adequately at the following link

Marine Planning

Under the Marine and Coastal Access Act 2009 ch.4, 58, public authorities must make decisions in accordance with marine policy documents and if it takes a decision that is against these policies it must state its reasons. MMO as such are responsible for implementing the relevant Marine Plans for their area, through existing regulatory and decision-making processes.

Marine plans will inform and guide decision makers on development in marine and coastal areas. Proposals should conform with all relevant policies, taking account of economic, environmental and social considerations. Marine plans are a statutory consideration for public authorities with decision making functions.

At its landward extent, a marine plan will apply up to the mean high water springs mark, which includes the tidal extent of any rivers. As marine plan boundaries extend up to the level of the mean high water spring tides mark, there will be an overlap with terrestrial plans which generally extend to the mean low water springs mark.

A map showing how England's waters have been split into 6 marine plan areas is available on our website. For further information on how to apply the marine plans please visit our Explore Marine Plans service.

Planning documents for areas with a coastal influence may wish to make reference to the MMO's licensing requirements and any relevant marine plans to ensure that necessary regulations are adhered to. All public authorities taking authorisation or enforcement decisions that affect or might affect the UK marine area must do so in accordance with the Marine and Coastal Access Act and the UK Marine Policy Statement unless relevant considerations indicate otherwise. Local authorities may also wish to refer to our online guidance and the Planning Advisory Service soundness self-assessment checklist. If you wish to contact your local marine planning officer you can find their details on our gov.uk page.

Essex County Council Highways

- This project would indeed impact on the England Coast Path which at this location follows FP19 Little Oakley along the top of the seawall. However, when the government approved the ECP scheme they knew that the route would have to adapt over time.

- Therefore, their main concern would be that the new footpath route was put in place and opened for public use before the existing one is closed off. In fact this will have to happen for use of the TCPA not to be invalid. To that end dealing with the PROW should be one of the first things they do once planning is in place.

- They understand that there may need to be short periods during the construction phase when no footpath route was available around the site but can we seek to ensure that any such periods are kept to an absolute minimum?

- The ECP and connection to the Essex Way are very important to the PROW team and this elevates the PROW above the ordinary.

- The PROW team process TCPA orders for TDC so the logistics should be there to effect that without too much issue once planning permission is secured.

More clarification is needed on how construction traffic is going to gain access to the site. A Construction Traffic Management Plan should accompany the planning application which would report upon the following:

- Construction vehicles access arrangements, vehicle routing strategy, mitigation measures to be implemented (i.e. coordination and control of vehicle arrivals and departures, wheel washing, signage), locations of construction compound areas.

- In addition and prior to the commencement of any work on the site a joint inspection of the route to be used by construction vehicles should be carried out by the applicant and the Highway Authority, to include photographic evidence. The route should then be inspected again, after completion of the development, and any damage to the highway resulting from traffic movements generated by the application site should be repaired to an acceptable standard and at no cost to the Highway Authority.

- Plus, clarification on any temporary traffic management proposals required during the construction phase; such as: temporary road and/or PROW closures; temporary two-way/ three-way traffic signal requirements this can form part of the Construction Traffic Management Plan.

- Should a temporary construction access be required from the public highway, visibility splay details will be required together with swept path analysis drawings for construction traffic entering and leaving site.

General Environmental Statement Content/Appropriate Assessment

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.

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.

The ES should thoroughly assess the potential for the proposal to affect designated sites. Internationally designated sites (e.g. designated Special Areas of Conservation (SAC) and Special Protection Areas (SPA)) fall within the scope of the Conservation of Habitats and Species Regulations 2017 (as amended). In addition paragraph 176 of the National Planning Policy Framework requires that potential Special Protection Areas, possible Special Areas of Conservation, listed or proposed Ramsar sites, and any site identified as being necessary to compensate for adverse impacts on classified, potential or possible SPAs, SACs and Ramsar sites be treated in the same way as classified sites.

Under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) an appropriate assessment needs to be undertaken in respect of any plan or project which is (a) likely to have a significant effect on a European site (either alone or in combination with other plans or projects) and (b) not directly connected with or necessary to the management of the site.

Further information on the special interest features, their conservation objectives, and any relevant conservation advice packages for designated sites is available on the website <https://designatedsites.naturalengland.org.uk/>

The ES should include a full assessment of the direct and indirect effects of the development on the features of special interest within these sites, and should identify such mitigation measures as may be required in order to avoid, minimise or reduce any adverse significant effects.

The development site is within the following designated nature conservation sites:

- Hamford Water SSSI, Hamford Water SAC, Hamford Water SPA, Hamford Water Ramsar.
- Further information on the SSSIs and their special interest features can be found at <https://magic.defra.gov.uk/>.

I hope you find the information above helpful, however if you have any queries please contact me.

Yours sincerely

Matthew Lang
Planning Officer



Marine
Management
Organisation

Scoping Opinion

**Marine Works (Environmental Impact Assessment) Regulations
2007 (as amended) (“the Regulations”)**

Title: Little Oakley managed realignment

Applicant: Harwich International Port Ltd

MMO Reference: EIA/2022/00024

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1. Proposal

Little Oakley managed realignment

1.1 Project Background

Harwich International Port Ltd is intending to progress with the development of a container terminal facility at Bathside Bay (Bathside Bay Container Terminal (BBCT)) in the lower Stour estuary, Essex, pursuant to planning permission 10/00202/FUL, granted by Tendring District Council in February 2013. This planning permission authorises the reclamation of Bathside Bay and the construction and subsequent operation of a new 122ha deep sea container port facility (1.4km length quay) with associated rail terminal and buildings.

One of the key findings of previously conducted environmental assessments was that the BBCT would be likely to have an adverse effect on the integrity of the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar site. Consequently, in line with The Conservation of Habitats and Species Regulations 2017 (as amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019), compensatory measures were required. Due to the nature of the habitat that would be lost at Bathside Bay, and the magnitude of this loss, the only feasible method of creating compensatory habitat was considered to be managed realignment of coastal flood defences.

Thus, a proposal was developed for the managed realignment of coastal flood defences at Little Oakley in the Walton Backwaters ('the proposed scheme') located to the south of the Stour and Orwell Estuaries, approximately 2.6 km from Bathside Bay.

2. Location

The site covers a large area of agricultural land to the southeast of the village of Little Oakley and to the south of Upper Dovercourt. The location of the Scheme is displayed in Figure 1 below.

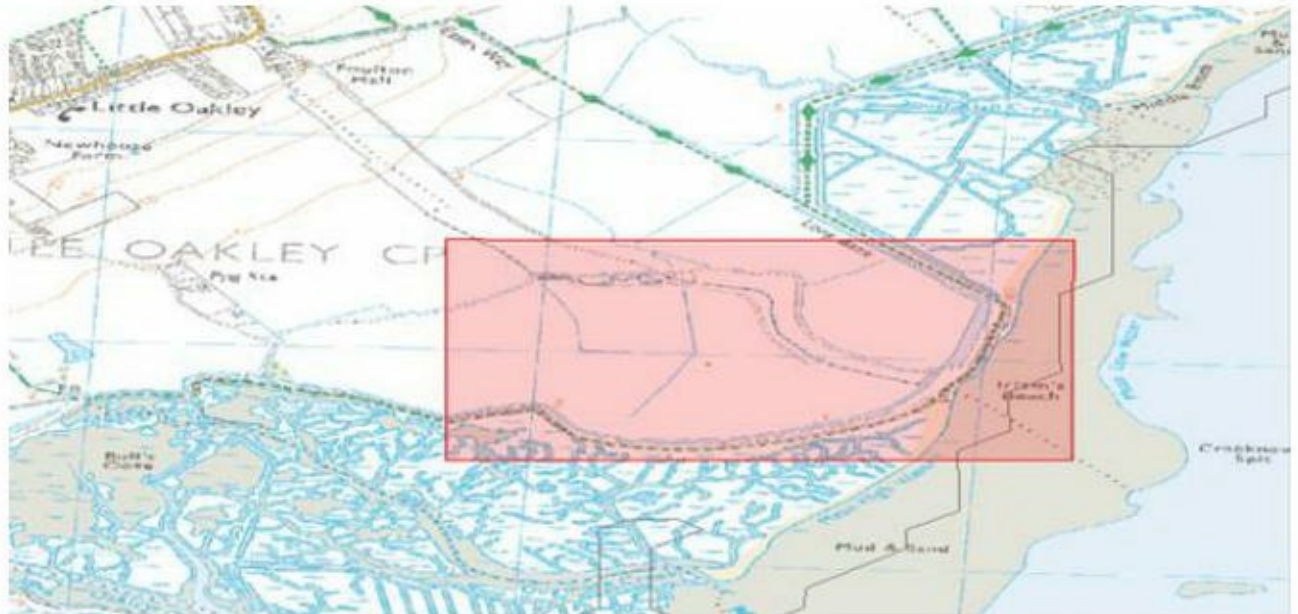


Figure 1: Site map showing the location and extent of the Little Oakley managed realignment

3. Environmental Impact Assessment (EIA)

The Marine Works (Environmental Impact Assessment) Regulations 2007 (“the Regulations”) transposed Council Directive 2011/92/EU (as amended) into UK law for marine licence applications. The regulations aim to protect the environment and the quality of life by ensuring that projects which are likely to have significant environmental effects by virtue of their nature, size or location are subject to an EIA before permission is granted.

Pursuant to regulation 5 of the Regulations, the proposed works constitute an EIA development under Schedule A2 (69) of The Marine Works EIA Regulations 2007 (as amended) (“the Regulations”), specifically:

Schedule A2, paragraph 69: ‘Coastal work to combat erosion and maritime works capable of altering the coast through the construction of, for example, dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works’.

Therefore, the application required for the proposed works for a marine licence under Part 4 of the Marine and Coastal Access Act 2009 (“the Act”) will be accompanied by an Environmental Statement (“ES”).

4. Scoping Opinion

Pursuant of regulation 13 of the Regulations, Harwich International Port Ltd has requested a Scoping Opinion from the MMO. In so doing a Scoping Report entitled "Hamford Realignment Scoping Report" has been submitted to the MMO for review.

The MMO agrees with the topics outlined in the scoping request and in addition, we outline and advise that the following aspects be considered further during the EIA and must be included in any resulting ES.

- Habitats Directive / Wild Birds Directive
- Other Nature Conservation
- Benthic Ecology
- Coastal Processes
- Seascape / Landscape
- Fish Ecology and Fisheries
- Shellfish
- Archaeology / Cultural Heritage
- Navigation / Other Users of the Sea
- Air Quality & Climate
- Water Quality
- Seabed / Land / Soil Quality
- Population and Human Health
- Cumulative Impacts & In-Combination Impacts
- Risk of Major Accidents and Disasters Relevant to the Project (including those caused by Climate Change)
- Mitigation

4.1 Conservation of Habitats and Species Regulations 2017

4.1.1 The development site is within the following designated nature conservation sites:

- Hamford Water Special Area of Conservation (SAC)
- Hamford Water Special Protection Area (SPA)
- Hamford Water Ramsar

4.1.2 Under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) an appropriate assessment needs to be undertaken in respect of any plan or project which is (a) likely to have a significant effect on a European site (either alone or in combination with other plans or projects) and (b) not directly connected with or necessary to the management of the site.

4.1.3 Further information on the special interest features, their conservation objectives, and any relevant conservation advice packages for designated sites is available on Natural England's website <https://designatedsites.naturalengland.org.uk/>

- 4.1.4 The ES must include a full assessment of the direct and indirect effects of the development on the features of special interest within these sites and must identify such mitigation measures as may be required in order to avoid, minimise, or reduce any adverse significant effects. To this end, the MMO recommend the applicant make use of Natural England's European site conservation objectives, available at the following link: <http://publications.naturalengland.org.uk/category/6490068894089216>
- 4.1.5 Further to the above, MMO advise that the following measures may be recommended by Natural England to avoid or prevent significant adverse effects from some of the impacts discussed above:
- Works to take place April to September (inclusive);
 - Works during the overwintering bird season to be avoided.
- 4.1.6 Further information regarding the HRA process and when mitigation can be considered is available on the MMO's website, please find a link provided below: <https://www.gov.uk/guidance/marine-licensing-impact-assessments#habitats-regulations-assessment>. The website outlines the information required in a marine licence application.
- 4.1.7 MMO considers this development has the potential to adversely affect populations of breeding and non-breeding birds. MMO, therefore, recommends that a detailed assessment of the impacts of this proposal on these protected species, accompanies any subsequent marine licence application. In order to provide this information, there may be a requirement for surveys to be carried out at appropriate times of the year. Surveys must always be carried out by suitably qualified and, where necessary, licensed consultants. Further information is included in Natural England's standing advice <https://www.gov.uk/guidance/protected-species-how-to-review-planning-applications> on protected sites and species <https://www.gov.uk/topic/planning-development/protected-sites-species>

4.2 Other Nature Conservation

- 4.2.1 The information supplied suggests that the proposed development is located within/ partly within or has the potential for adverse effects on the following designated nature conservation sites or designated landscapes:
- Hamford Water Site of Special Scientific Interest (SSSI)
 - Hamford Water National Nature Reserve

Site of Special Scientific Interest (SSSI)

- 4.2.2 Further information on the location of the SSSI and its special interest features can be found using Natural England's interactive mapping tool, MAGiC maps. Please find a link provided here for convenience: www.magic.gov.uk. The ES must include a full assessment of the direct and indirect effects of the development on the features of special interest within

Hamford Water SSSI and must identify such mitigation measures as may be required in order to avoid, minimise, or reduce any adverse significant effects.

- 4.2.3 Further information on the special interest features, the conservation objectives, and relevant conservation advice packages for designated sites is available on Natural England's website <https://designatedsites.naturalengland.org.uk>.

Marine Conservation Zones (MCZ)

- 4.2.4 MMO can confirm there are no MCZs within the development site.

Regionally and Locally Important Sites

- 4.2.5 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 ES must therefore include an assessment of the likely impacts on the wildlife and geodiversity interests of such sites. The assessment must 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.

Protected Species - Wildlife and Countryside Act 1981 (as amended)

- 4.2.6 The ES must assess the impact of all phases of the proposal on protected species (for example, pinnipeds (seals), cetaceans (including dolphins, porpoises whales), fish (including seahorses, sharks, and skates), marine turtles, birds, marine invertebrates, bats, etc.). Information on the relevant legislation protecting these species can be reviewed on the following link: <https://www.gov.uk/government/publications/protected-marine-species>.
- 4.2.7 Please note that 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 must be sought from appropriate local biological record centres, nature conservation organisations, NBN Atlas, groups, and individuals; and consideration must 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.
- 4.2.8 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 must 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.

4.2.9 In order to provide this information, there may be a requirement for a survey at a particular time of year. Surveys must 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 available at: <https://www.gov.uk/guidance/protected-species-how-to-review-planning-applications>

Habitats and Species of Principal Importance

4.2.10 The ES must 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>.

4.2.11 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'. MMO therefore advises that survey, impact assessment and mitigation proposals for Habitats and Species of Principal Importance must be included in the ES. Consideration must also be given to those species and habitats included in the relevant Local BAP.

4.2.12 MMO 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 must be carried out at appropriate times in the year, to establish whether any scarce or priority species are present. The Environmental Statement must 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.

4.2.13 The MMO broadly agree with the scoping report in regard to biodiversity. The MMO feel it is possible that water vole and reasonable numbers of breeding birds could use this site including any reed bed habitat. Therefore, the MMO would wish to see full surveys and mitigation for these in any subsequent plans. The MMO would want the loss of all key habitats such as reed bed,

brackish ditches and ponds, sand and shingle beaches, hedges and scrub compensated for in the scheme.

- 4.2.14 MMO recommend that the Applicant considers opportunities for habitat creation and/or enhancement. 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.
- 4.2.15 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.

4.3 Benthic Ecology

- 4.3.1 The description of the benthic ecology baseline is very brief with no figures or maps presented regarding how the various receptors/habitats relate to the location of the scheme and the breach location. However, this is considered adequate for the scoping report as it serves to support the conclusion of the need to scope in this receptor group.
- 4.3.2 The data principally used to inform the baseline are somewhat historic (2003). While it is indicated that the baseline situation for the ES will be updated using publicly available data, the report does not imply that should such data sources not be sufficient, targeted surveys may be considered.
- 4.3.3 A suite of suitable data and literature sources should be reviewed to conduct a baseline assessment of the marine benthic species and habitats in the immediate vicinity of the project. MMO consider these, taken together, to form an adequate description of the baseline from which the scoping exercise can be conducted. MMO notes that, the brief baseline provided for the benthic ecology refers to the presence of both horse mussel and blue mussels. Currently it is not possible to ascertain whether the locations of these are potentially going to be affected by the indirect impacts of the scheme. Should it transpire that these are potentially impacted, it will be necessary to understand whether these species are present as 'beds'. Horse mussel and blue mussel beds are UK BAP Priority Habitats.
- 4.3.4 As part of the ES, the MMO would anticipate that there will be reference to how the indirect effects (hydrodynamic effects) of the proposed scheme may potentially interact with the various benthic ecology receptors, specifically in relation to the presence of horse mussels and blue mussels

4.4 Coastal Processes

- 4.4.1 The potential impacts for the coastal hydrodynamics to be considered within the ES include conversions of intertidal to subtidal habitat, interruption of sediment drift. From previous environmental studies there is predicted to be no significant impact on saltmarsh/creek systems within protected sites.
- 4.4.2 The scoping report proposes that the numerical modelling undertaken to inform the 2003 ES will be used to inform this assessment. The reasoning is that no additional works were undertaken within the realignment site that could have altered topography since the modelling was undertaken. Inundation and morphological development of the site, and potential effects on the hydrodynamic and sedimentological regimes and longshore sediment transport will be as predicted in the 2003 ES. This is a reasonable suggestion and will need to be validated against up-to-date bathymetric datasets to inform the ES assessment.
- 4.4.3 Section 5 summarises which topics have been scoped into the EIA. Estuarine and coastal hydrodynamics impacts have been scoped in to the EIA and the MMO agree with this conclusion.
- 4.4.4 There is sufficient evidence as expected for a scoping opinion, with a baseline evidence supplied from the 2003 approved application.
- 4.4.5 Data sources are not explicitly stated within Section 4.2.1 outlining the existing coastal and estuarine environment, so the reader is unsure whether it was desk-based or from the 2003 application evidence base as mentioned throughout the report. The data provided is sufficient but better clarity on the source would improve this section.
- 4.4.6 It is stated that there will be potential cumulative impacts with two projects in Section 4.12. There has been no mention of inter-related impacts between physical and biological environment (so far) this should be considered within the EIA process.
- 4.4.7 MMO note that no specific mitigation measures have been included regarding coastal processes. MMO has no further comment on this at this stage.
- 4.4.8 MMO has consulted on the scoping report and received the following advice from the Environment Agency (EA).
- 4.4.9 The ES should provide details of the layout of the managed realignment site and evidence that these works will not increase flood risk to others. These issues should be considered in regard to any future permit application and a flood risk assessment should also be submitted to support this development.
- 4.4.10 The scoping report does not contain any detail on future maintenance responsibility of the existing defences which will be affected by these works. Confirmation on who will be maintaining the new defences is required. Clarification on how land drainage will be managed is also required.

4.4.11 The scope indications the realignment will likely split the drainage of Foulton Hall ditch between Southall Sluice and Strachen Sluice, which may affect and interrupt drainage during and after construction. Details are given on page 24 of the plan, but it should be clarified how the applicant intends to manage the issues that may be caused during and after construction. It is unclear if you are going to modify the watercourses' sluices or build a new one.

4.5 Seascape / Landscape

4.5.1 MMO 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 must include assessments of visual effects on the surrounding area and landscape together with any physical effects of the development, such as changes in topography.

4.5.2 The EIA must include a full assessment of the potential impacts of the development on local landscape character using landscape/seascape assessment methodologies <https://www.gov.uk/guidance/landscape-and-seascape-character-assessments>. MMO encourage the use of Landscape and Seascape Character Assessment (LCA/SCA), based on the good practice guidelines produced jointly by the Landscape Institute and Institute of Environmental Assessment in 2013. LCA/SCA 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.

4.5.3 MMO recommends 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.

4.5.4 In order to foster high quality development that respects, maintains, or enhances, local landscape/ seascape character and distinctiveness, MMO 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 EIA process must 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.

4.5.5 The assessment must also include the cumulative effect of the development with other relevant existing or proposed developments in the area. In this context MMO advises that the cumulative impact assessment must 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.

- 4.5.6 The assessment should refer to the relevant National Character Areas which can be found on our website. Links for Landscape/ Seascape Character Assessment at a local level are also available on the same page. <https://www.gov.uk/government/publications/seascape-assessments-for-north-east-north-west-south-east-south-west-marine-plan-areas-mmo1134>
- <https://data.gov.uk/dataset/3fed3362-2279-4645-8aafc6b431c94485/mmo1037-marine-character-areas>

4.6 Fish Ecology and Fisheries

- 4.6.1 The Scoping Report has identified that commercial fisheries will be scoped out of further assessment in the ES. As the works will be small in scale and entail habitat creation on land and at the shoreline, the MMO is content there will be little effect on commercial fin-fisheries and are therefore content for this receptor group to be scoped out.
- 4.6.2 In addition, the MMO note that the potential impacts to water quality and fish will be scoped out of the EIA but will be assessed in the WFD compliance assessment. Due to the small scale of the proposed works and the nature of the managed realignment (habitat creation) the MMO is content for fish to be scoped out of the EIA.
- 4.6.3 The MMO expect the applicant to briefly assess the fish species present in the vicinity of the works and any potential overlap of the proposed construction with the timing of spawning seasons of fish species present as part of the WFD compliance assessment.
- 4.6.4 The Scoping Report has stated that the construction phase is expected to have a maximum duration of 18 months, with works being undertaken from spring to late autumn, spanning two summer seasons. However, the report has not provided the exact dates (e.g., months) of the proposed works in order to identify any potential overlap with the timing of spawning seasons of fish species found in the vicinity of the works.
- 4.6.5 The Scoping Report has not specified the fisheries resources (evidence base) that will be used to identify the fin-fish species found in the vicinity of the works. The MMO recommend that applicant utilises Coull et. al (1998) and Ellis et al. (2012) to identify these species in the WFD compliance assessment.
- 4.6.6 Underwater noise can have a range of negative effects on marine wildlife, including disturbance or displacement, physiological stress, masking of biologically important sounds (e.g., for communication, predator/prey detection), auditory injury, and in extreme cases, direct or indirect mortality. The EIA should clearly detail the construction works that will be taking place

within the marine/aquatic environment, including any noise generating activities, as well as information on the duration of activities and the proposed construction hours. The information the MMO would expect to see in the ES, for example, is as follows:

- Consideration of all the proposed activities that will generate underwater noise (e.g., vessel activity);
- The duration and timing of any marine works (such as the months of the year and anticipated number of days);
- The proposed construction daily working hours;
- The proposed methodology;
- Confirmed locations of the proposed activities.

4.6.7 Consideration should also be given to sensitive times of year (i.e., migratory, or spawning seasons) when construction activities may be taking place.

4.7 Archaeology / Cultural Heritage

4.7.1 The development has the potential to impact upon both designated and non-designated heritage assets and the MMO has noted the development is potentially within the setting of one scheduled monument, to the east of the scheduled monument known as 'Heavy Anti-aircraft gunsite 350m north east of Little Oakley Hall' (LEN: 1019486). There is also one Grade II* listed building within 2km of the centre of the application site (St Mary's House, LEN: 1112098) as well as seven Grade II buildings within 2km of the centre of the site.

4.7.2 EIA must identify, describe, and assess in an appropriate manner the direct and indirect significant effects of the proposed development. The assessment will need to be carried out in accordance with established policy and guidance, including the National Planning Policy Framework (NPPF), the Planning Practice Guidance and Historic England's Good Practice Advice.

4.7.3 The impact of the proposed development on the setting and significance of the designated heritage assets will require a robust assessment. A detail heritage impact assessment will be required to support the application - to assess the significance of heritage assets, their settings, and the contribution their settings make to the significance, and to assess the impact of the proposed works on the significance of the designated heritage assets.

4.7.4 Whilst standardised EIA matrices are considered in some planning practices to be useful tools, the analysis of setting (and the impact upon it) is a matter of qualitative and expert judgement which cannot be achieved solely by use of systematic matrices or scoring systems. The MMO therefore recommends that these should be in an appendix and seen only as material to support a clearly expressed and non-technical narrative argument within the cultural heritage chapter. The EIA should use the ideas of benefit, harm, and loss (as described in NPPF) to set out 'what matters and why' in terms of the heritage assets' significance and setting, together with the effects of the development upon them.

- 4.7.5 It is important that the assessment is designed to ensure that all impacts are fully understood. Section drawings and techniques such as photomontages are a useful part of this.
- 4.7.6 The assessment must also take account of the potential impact which associated activities (such as construction, servicing and maintenance, and associated traffic) might have upon perceptions, understanding and appreciation of the heritage assets in the area. The assessment must also consider, where appropriate, the likelihood of alterations to drainage patterns that might lead to in situ decomposition or destruction of below ground archaeological remains and deposits and can also lead to subsidence of buildings and monuments.
- 4.7.7 MMO also note the potential impact on non-designated heritage assets within the redline boundary, which includes the remains of at least ten 'red hills', which are the remains of Bronze Age, Iron Age and/or Roman salt-making sites along the coastal zone. These have not been the subject of previous systematic archaeological investigation.
- 4.7.8 MMO also recommend that any assessments include the potential for deposits of palaeoenvironmental interest to be preserved. If present, remains could be preserved, such as plant macrofossils, insect remains, pollen, diatoms, and foraminifera, which provide information about the landscape and environment, and how this may have changed over time.
- 4.7.9 It is noted that the proposed development would result in some areas of the site being inundated. The impact that this may have on archaeological deposits should be considered as the flooding could impact the soil chemistry and, therefore, the preservation conditions of the archaeological deposits and remains. The effects are likely to be site specific and relate to the geology, topography, the composition of the archaeological deposits (aquifers vs aquitards), the composition of the archaeological remains and frequency of inundation (i.e., periodic or sustained).
- 4.7.10 MMO strongly recommend that you involve the Conservation Officer of Tendering District Council and the archaeological staff at Essex County Council Place Services in the development of this assessment. They are best placed to advise on: local historic environment issues and priorities; how the proposal can be tailored to avoid and minimise potential adverse impacts on the historic environment; the nature and design of any required mitigation measures; and opportunities for securing wider benefits for the future conservation and management of heritage assets.

4.8 Navigation / Other Users of the Sea

- 4.8.1 A detailed methodology should be produced to ensure safety of navigation can be assessed. It is likely the MMO would condition the need for notification to other marine users.

- 4.8.2 At this stage of the project, the MMO have no serious concerns regarding navigational safety. Further consideration will be given once plans have been finalised and an application for a marine licence is made.
- 4.8.3 A detailed methodology must be produced to ensure safety of navigation can be assessed. If a marine licence were granted, it is likely the MMO would condition the need for notification to other marine users (e.g., Notice to Mariners).

Access and Recreation

- 4.8.4 MMO 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/blue infrastructure. Relevant aspects of local authority green/blue infrastructure strategies should be incorporated where appropriate.

Rights of Way, Access land, Coastal access, and National Trails

- 4.8.5 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 National Trails. 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.

England Coast Path

- 4.8.6 The England Coast Path (ECP) is a new National Trail that will extend around all of England's coast with an associated margin of land predominantly seawards of this, for the public to access and enjoy. Natural England takes great care in considering the interests of both land owners/ occupiers and users of the England Coast Path, aiming to strike a fair balance when working to open a new stretch. We follow an approach set out in the approved Coastal Access Scheme and all proposals have to be approved by the Secretary of State. We would encourage any proposed development to include appropriate provision for the England Coast Path to maximise the benefits this can bring to the area. We suggest that the development includes provision for a walking or multi-user route, where practicable and safe. This should not be to the detriment of nature conservation, historic environment, landscape character or affect natural coastal change. Consideration for how best this could be achieved should be made within the Environmental Statement. As part of the development of the ECP a 'coastal margin' is being identified. The margin includes all land between the trail and the sea. It may also extend inland from the trail if:

- it's a type of coastal land identified in the Countryside and Rights of Way Act 2000 (CROW Act), such as beach, dune, or cliff
- there are existing access rights under section 15 of the CROW Act
- Natural England and the landowner agree to follow a clear physical feature landward of the trail Maps for sections of the ECP and further proposals for adoption are available here: <https://www.gov.uk/government/collections/england-coast-path-improving-public-access-to-the-coast>

4.9 Shellfisheries

- 4.9.1 The MMO consider the evidence used to inform the commercial fisheries section (for shellfish) is appropriate.
- 4.9.2 Data sources used for the scoping report stage are sufficient and is consistent with that submitted for operations of a similar nature.
- 4.9.3 The MMO acknowledge (Table 5.1) that commercial fisheries will be scoped out. The MMO agrees with this as the proposed works appear to be upon salt marsh and land. The MMO therefore consider that the commercial potting fleet will not be affected and nor should the oyster cultivation work within Hamford Waters.

4.10 Air Quality & Climate

- 4.10.1 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) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69446/pb13583-biodiversity-strategy-2020-111111.pdf. 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 must 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.
- 4.10.2 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.

4.11 Water Quality

- 4.11.1 The ES should include information on the sediment quality and potential for any effects on water quality through suspension of contaminated sediments. The EIA should also consider whether increased suspended sediment concentrations resulting are likely to impact upon the interest features and supporting habitats of the designated sites as listed above.
- 4.11.2 The ES should consider whether there will be an increase in the pollution risk as a result of the construction or operation of the development.
- 4.11.3 For activities in the marine environment up to 1 nautical mile out at sea, a Water Framework Directive (WFD) assessment is required as part of any application. The ES should draw upon and report on the WFD assessment considering the impact the proposed activity may have on the immediate water body and any linked water bodies. Further guidance on WFD assessments is available here: <https://www.gov.uk/guidance/water-framework-directive-assessment-estuarine-and-coastal-waters>

4.12 Seabed / Land / Soil Quality

- 4.12.1 The scoping report states that construction activities will include the pumping of dredged sediments into the realignment site, and the placement of dredged sand and shingle, but it is unclear where this dredged material is being sourced from. The MMO recommend that the applicant clarifies this within the Environmental Statement (ES), including the volume of material to be dredged and deposited.
- 4.12.2 In addition, the report does not mention the need for a disposal site to be designated, whereas in the MMO's opinion the works described will require the area to be designated as a disposal site for OSPAR and London Convention / London Protocol reporting purposes given it is for the use of dredged material and the site will be below Mean High-Water Springs.
- 4.12.3 The report lists the potential impacts of sediment quality during the construction phase as "increase in suspended sediment following removal of the sea wall". Whilst this is accurate, it has failed to identify additional impacts, such as the potential disturbance of contaminated material leading to the release of contaminants into the water column.
- 4.12.4 The report concludes that sediment quality will be scoped out of the Environmental Impact Assessment (EIA). The MMO does not agree with this conclusion, as insufficient evidence has been provided at this stage to support such a conclusion.
- 4.12.5 The scoping report mentions that the assessment was based on marine ecology surveys undertaken in 2003, at which time 5 stations were sampled for analysis of contaminants. However, as far as the MMO have been able to

determine the details of this sampling (including the location and depths of samples, and the details of the laboratory undertaking the analyses), and the results of the analyses have not been provided for review.

- 4.12.6 In addition, according to OSPAR guidelines, the 2003 samples would no longer be considered timely, as sampling of sediment from proposed dredge areas is recommended every 3 – 5 years, and the samples in question were analysed 18 years ago.
- 4.12.7 The MMO therefore recommend you undertake new sampling, following consultation with the MMO (and Cefas), to determine the suitability of the dredged material for disposal. This should include samples from both the proposed dredge site and the deposit site.
- 4.12.8 In addition, the report references Environmental Quality Standards (EQS) for Maximum Allowable Concentrations (MAC), however does not mention the Cefas Action Levels, which should be considered if the material is to be deposited below Mean High Water Springs.

4.13 Population and Human Health

- 4.13.1 The MMO note that there is no mention of human health receptors within the main Scoping Report. Table 5.1 within the summary states that human health, noise, and air quality have been scoped out because “Due to the remote location of the proposed scheme and the small-scale and short-term nature of the works significant adverse effects are not anticipated”.
- 4.13.2 The MMO note that the placement of dredged sediments and sand and shingle, and reuse of stripped topsoil within the sea wall and within the Bathside Bay development are proposed, but that there is no mention of chemical assessment for human health purposes. We note that within the Water Quality Assessment it is stated that both the Harwich Approaches Coastal Waters, in which the breach of the sea wall will occur, and the Hamford Water Coastal Water body, approximately 1km from the breach, fail chemical quality assessments for estuarine waters for mercury and polychlorinated biphenyls (PCB).
- 4.13.3 The MMO recommend that there is a brief discussion of human health receptors and why it is appropriate to exclude them from further consideration, and that there is a brief discussion of potential localised impacts to air quality during construction, and how these will be mitigated by the use of, for instance a Construction Environmental Management Plan.
- 4.13.4 The MMO recommend that a brief statement is included regarding the chemical assessment of any topsoil or dredged sediments that will be accessible to human receptors as part of the works on this scheme or elsewhere.
- 4.13.5 The scoping report does not identify any aspects to be scoped out of the assessment for population and human health.

4.13.6 The MMO advise that the traffic and transport assessment must also be consider the impact from all land-based transport.

4.14 Cumulative Impacts & In-Combination Impacts

4.14.1 A full consideration of the implications of the whole scheme should be included in the ES. All supporting infrastructures should be included within the assessment. 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.

4.15 Risk of Major Accidents and Disasters Relevant to the Project (including those caused by Climate Change)

4.15.1 The MMO expect to see a robust and comprehensive assessment of risk of major accidents and disasters relevant to the Project.

4.15.2 Assessment of accidents should: identify all potential hazards in relation to construction, operation, and decommissioning; include an assessment of the risks posed; and identify risk management measures and contingency actions that will be employed in the event of an accident in order to mitigate effects.

Conclusion

The Scoping Report does not cover, in detail aspects of the project which must be included to better understand the impacts the project may have on the topics covered by the report.

The topics highlighted in this scoping opinion must be assessed during the EIA process and the outcome of these assessments **must** be documented in the ES in support of the marine licence application and any associated planning application(s). This statement, however, must not necessarily be seen as a definitive list of all EIA requirements. Given the scale and programme of these planned works other work may prove necessary.

Your sincerely,



Mr Emmanuel Mulenga
Marine Licensing Case Officer



17 September 2021

References

Ellis, J.R., Milligan, S.P., Readdy, L., Taylor, N. and Brown, M.J. 2012. Spawning and nursery grounds of selected fish species in UK waters. Sci. Ser. Tech. Rep., Cefas Lowestoft, 147: 56 pp.