
Planning Statement

Little Oakley Managed Realignment



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1. Hamford Water Realignment Planning Scheme – Drawing No. FP3

1. Introduction

1.1.1. This Planning Statement has been prepared on behalf of Hutchison Ports (UK) Limited ('HPUK'), to support a planning application that is submitted for Tendring District Council (hereafter 'TDC') to request full planning permission for the creation of intertidal habitat, consisting of mudflat, saltmarsh, sand and shingle, through the managed realignment of the seawall at Little Oakley, Hamford Water (in the Walton Backwaters).

1.1.2. This planning application relates to the proposed development of the Bathside Bay Container Terminal (hereafter 'BBCT'), pursuant to planning permission 10/00202/FUL, granted by TDC 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 the environmental assessment that was undertaken to support the above application 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.

1.1.3. In light of the above conclusion, a proposal was developed for the managed realignment of coastal flood defences at Little Oakley in the Walton Backwaters located to the south of the Stour and Orwell estuaries, approximately 2.6km from Bathside Bay and an application for planning permission was granted by the Secretary of State (reference 03/01200/FUL) (hereafter 'the 2006 permission'):

"Removal of vegetation, localised removal of topsoil, construction of a seawall, associated borrow dyke system and wave breaks and managed realignment of coastal flood defences by breaching of the existing seawall to create estuarine and coastal habitat comprised of approximately 76ha of intertidal mudflat, approximately 19ha of intertidal mudflat/saltmarsh transition, approximately 10ha of saltmarsh, approximately 5ha of sand and shingle and approximately 7ha of fresh/brackish water borrow dykes, together with associated engineering (including diversion of footpath), drainage and earthworks".

1.1.4. The 2006 permission expired in 2016. Therefore, there is a need to re-submit this planning application for the compensatory habitat, which is the subject of this planning application.

1.1.5. This Planning Statement provides the background to Little Oakley, Hamford Water, describes the application proposal and explains the planning context. Consideration is given to the principle of the development and the impact of the proposed development, which is assessed against the relevant development plan policies and other material considerations.

1.1.6. This Statement is structured under the following headings:

- Section 2 – Background and Context

- Section 3 – Application Proposal
- Section 4 – Planning Context
- Section 5 – Planning Assessment
- Section 6 – Planning Conditions and Obligations
- Section 7 – Conclusions

1.1.7. In the next section we set out the background and site context for this application.

2. Background and Context

2.1.1. In this section we set out the background to the planning application at Little Oakley.

2.2. Background

Bathside Bay Container Terminal

2.2.1. Bathside Bay is located in Harwich, Essex, to the north and west side of the settlement of Harwich. The Bay forms part of the estuarine environment and is located close to the confluence of the River Stour and River Orwell.

2.2.2. HPUK is the freehold owner of most of the aforementioned Bathside Bay site. HPUK previously identified the need for a new container port facility on the east coast to serve the growing container shipping industry. This led to proposals for a new container handling facility at Bathside Bay, which was identified as a suitable location capable of providing a major terminal for the import and export of container-based freight. The terminal is in addition and complementary to the container terminals at the Port of Felixstowe, also owned by HPUK.

The 2006 and 2013 BBCT Permissions

2.2.3. Under reference number 03/00600/FUL, planning permission was granted on appeal by the Secretary of State on 29 March 2006 (hereafter referred to as the '2006 BBCT permission') for:

"Reclamation of Bathside Bay and development to provide an operational container port; such works comprising:

- *Engineering and reclamation works including construction of a cofferdam and 1.4 km quay wharf;*
- *Construction of a concrete block paved container handling and stacking facility with 11 quayside cranes and 44 Rubber Tyre Gantry (RTG) cranes and associated workshop, customs control, Border Inspection Post and mess buildings, substations, fuelling station and mast and crane mounted lighting;*
- *Development of a 6.13 ha rail terminal with 3 rail gantry cranes and heavy duty container transfer area linked to existing rail facilities;*
- *Associated office building, logistics facility, car and HGV parking and driver facilities;*
- *Site works, including additional hardstanding, structural landscape and mounding, wetland buffer, access internal estate roads and perimeter fencing."*

2.2.4. Condition 1 of the 2006 permission required that the development be "...commenced before the expiration of 10 years from the date of the permission" (i.e. by 29 March 2016). Subsequent to this, a planning permission under reference number 10/00202/FUL was submitted and granted on 14 February 2013 (hereafter referred to as the '2013 BBCT permission') to extend the time limit of the 2006 permission, for:

“Application for replacement planning permission (in respect of planning permission 03/00600/FUL) subject to a new time limit (to 2021) for the reclamation of Bathside Bay and development to provide an operational container port; comprising:- Engineering and reclamation works including construction of a cofferdam and 1400 metre quay wall; Construction of a concrete block paved container handling and stacking facility with 11 quayside cranes and 44 Rubber Tyre Gantry (RTG) cranes and associated workshop, customs control, Border Inspection Post and mess buildings, substations, fuelling station and mast and crane mounted lighting; Development of a 6.13 ha rail terminal with 3 rail gantry cranes and heavy duty container area linked to existing rail facilities; Associated office buildings, logistics facility, car and HGV parking and driver facilities; Site works, including additional hardstanding, structural landscape and mounding, wetland buffer, internal estate roads and perimeter fencing”.

2.2.5. The extent of the approved development is shown on drawing H1001/02 (Rev A) (see Figure 1).

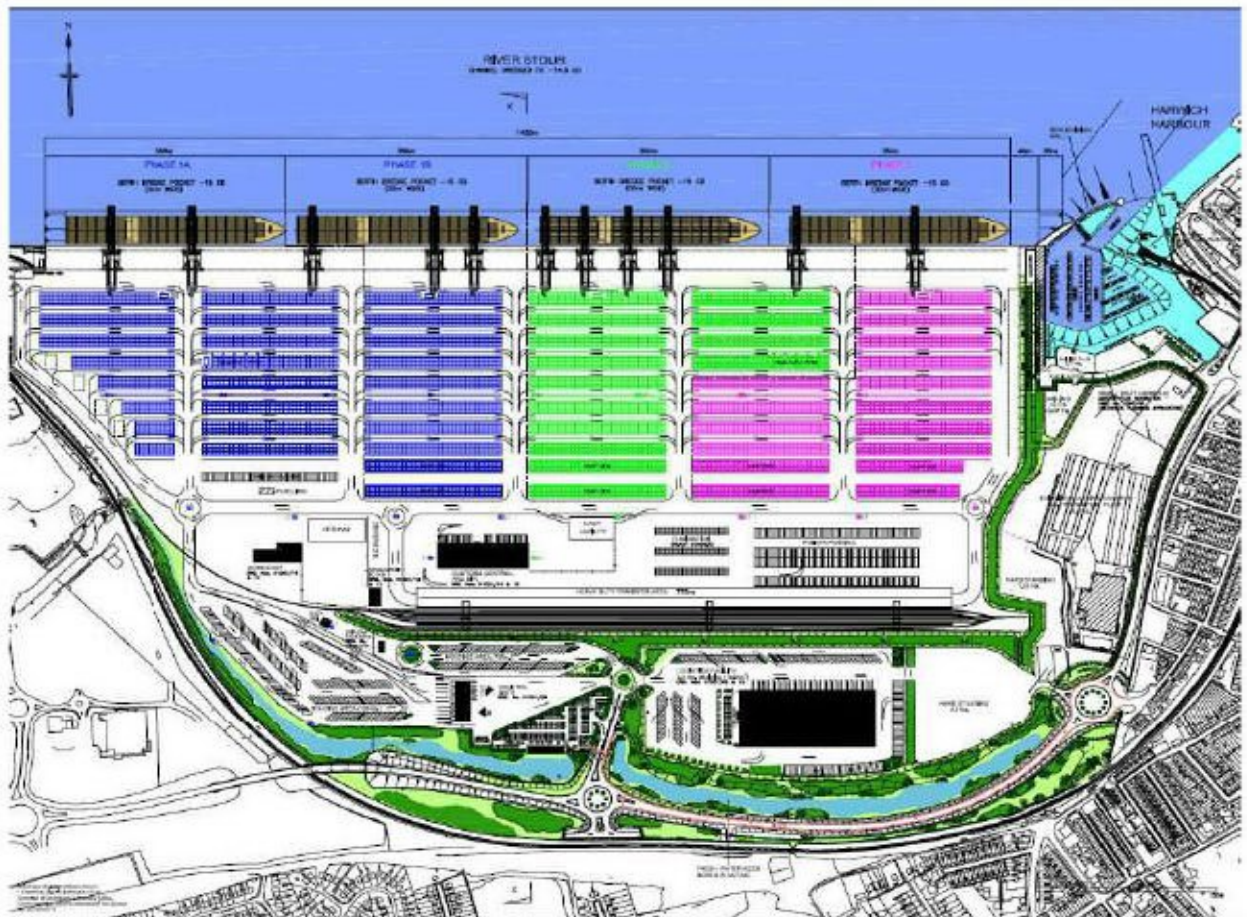


Figure 1: Consented Masterplan (extract from Drawing no. H1001/02 Rev A Overall Masterplan, HPUK)

- 2.2.6. Permission was granted subject to 54 planning conditions. Condition 1 of the extant permission requires that the development authorised would have to be implemented on or before 29 March 2021. The grant of the permission was unsuccessfully challenged by way of a judicial review filed in May 2013. Section 91(3B) of the Town and Country Planning Act 1990 provides for an extension of time limiting conditions by a year where the validity of a planning permission has been challenged in this way. Therefore, the requirement of Condition 1 is now that the development must be begun on or before 29 March 2022. It is HPUK's intention to implement this planning permission before the expiry date.
- 2.2.7. In relation to the 2013 BBCT permission, permissions were also granted for the following:
- Development of a small boat harbour comprising; construction of a cofferdam wall and breakwater; reclamation; sheltered moorings for boats and wave wall; slipway and boat storage and tender compounds; public viewing and seating areas; landscape mounds (TDC permission no. 10/00203/FUL)
 - Removal of vegetation, localised removal of topsoil, construction of a seawall, associated borrow dyke system and wave breaks and managed realignment of coastal flood defences by breaching of the existing seawall to create estuarine and coastal habitat comprised of approximately 76ha of intertidal mudflat, approximately 19ha of intertidal mudflat/saltmarsh transition, approximately 10ha of saltmarsh, approximately 5ha of sand and shingle and approximately 7ha of fresh/brackish water borrow dykes, together with associated engineering (including diversion of footpath), drainage and earthworks (TDC permission no. 03/01200/FUL). This planning application is a resubmission of that planning application.
 - Partial demolition of the long berthing arm attached to the listed Train Ferry Gantry and associated remedial works (TDC permission no. 10/00204/LBC).

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- 2.2.8. The effect of the 2013 BBCT permission is to place a number of substantial obligations on HPUK to mitigate or compensate for adverse effects, which it must satisfy in order to implement the Bathside Bay Container Terminal consent. One such obligation is for the creation of compensatory habitats to support waterbird populations impacted through the loss of the intertidal habitats at Bathside Bay, which is the subject of this planning application.
- 2.2.9. One of the key findings of the environmental assessment that was undertaken to support the above BBCT permission 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 relevant legislation at the time (The Conservation (Natural Habitats &c) Regulations 1994), 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.
- 2.2.10. In October 2001, HPUK submitted an application to the Department for Transport (DfT) (formerly the DTLR) (Ports Division) to undertake tidal works within Bathside Bay, Stour Estuary. In conjunction with this application, the Harwich Haven Authority (HHA) submitted an application the DTLR to deepen and widen the approach channel to Bathside Bay and to dispose of the dredged arisings.

- 2.2.11. In summary, the proposed tidal works comprised the reclamation of approximately 65ha of intertidal area (above CD) and the dredging of approximately 4ha of intertidal in the Gas House Creek area to accommodate small craft moorings. The channel would be dredged to a depth of -14.5m CD, from a depth of -9.0m CD, with a depth of -15m CD in the berthing area adjacent to the quay face. It is proposed to dispose of the silt and clay at an offshore disposal site and to utilise all of the dredged gravel for reclamation purposes.
- 2.2.12. In support of the 2006 permission, Royal HaskoningDHV undertook a process to identify the most appropriate and suitable site for the compensatory works required. In order to focus the selection of areas where managed realignment could successfully compensate for the loss of Bathside Bay, four key parameters for the habitat replacement were identified as being important. These parameters were the geographic location; type of habitat; sustainability; and timing and uncertainty.
- 2.2.13. A number of other factors were also important considerations that were taken into account when selecting a suitable site for compensation. In summary, the main factors were the:
- Level of disturbance experienced by the site;
 - Physical characteristics;
 - Likelihood of the site to freeze during cold weather;
 - Likely nature of biological communities that would colonise the area;
 - Existing land uses and infrastructure; and
 - Amount of engineering that would be needed to create a functioning site.
- 2.2.14. Based on the above considerations, the 138ha Little Oakley site, on the northern shore of Hamford Water, was identified as the most suitable site for the creation of compensatory habitat for the loss of Bathside Bay.
- 2.2.15. Three options were considered for the location of the breach in the existing coastal flood defence to create the realignment site, with "Breach B (Coastal Breach)" recommended as the preferred option for undertaking managed realignment. The conclusion was reached based on the type of and area of habitat that would be created under each of the different breaching scenarios and comparison of the predicted impacts during both the construction and operational phases.
- 2.2.16. A proposal was subsequently developed for the managed realignment of coastal flood defences at the Little Oakley site and an application for planning permission was granted by TDC (app ref: 03/01200/FUL) for the following:
- "Removal of vegetation, localised removal of topsoil, construction of a seawall, associated borrow dyke system and wave breaks and managed realignment of coastal flood defences by breaching of the existing seawall to create estuarine and coastal habitat comprised of approximately 76ha of intertidal mudflat, approximately 19ha of intertidal mudflat/saltmarsh transition, approximately 10ha of saltmarsh, approximately 5ha of sand and shingle and approximately 7ha of fresh/brackish water borrow dykes, together with associated engineering (including diversion of footpath), drainage and earthworks".*
- 2.2.17. The 2006 permission expired in 2016. Therefore, there is a need to re-submit this planning application for the compensatory habitat, which is the subject of this planning application.

2.3. Site Context and Surrounding Area

- 2.3.1. The site has an area of 138ha located approximately 2.5km to the south of the Stour and Orwell estuaries. The location of the proposed managed realignment site is shown in Figures 2 and 3. It comprises a low-lying area which is crossed by a relict creek delineated by counter walls. To the north-west, the land rises towards Little Oakley Hall. To the south, the realignment site is delineated by a seawall beyond which are the mudflats and saltmarshes of the Walton Backwaters. Hamford Water is the navigation channel at the mouth of the Walton Backwaters and is adjacent to the proposed realignment site (see Figures 2 and 3). The boundary of the Hamford Water SPA runs along the borrow dyke behind the existing seawall.
- 2.3.2. The subject area is defined by considering the area that would be directly affected within the footprint of creation of the new defences, by the tidal inundation resulting from managed realignment of the flood defences and the area that may be indirectly affected due to changes in the hydrodynamic and sediment regimes. Broadly, therefore, the subject area comprises the Walton Backwaters, the coastline adjacent to it and an area of low-lying land located on the northern shore of the Walton Backwaters (see Figures 2 and 3).
- 2.3.3. In addition, the subject area comprises the area over which other indirect impacts associated with the proposed scheme may occur.



Figure's 2 and 3: Map and aerial view of site

- 2.3.4. The subject area is characterised by two distinctive landscape types, 'Open Farmland' and 'Estuarine Areas'. Drainage and embankment construction between the post-medieval period to the present reclaimed what would have been intertidal land, allowing intensive arable farming to occur. The farmland culture in this area is therefore considered to be historic to recent rather than ancient. In order to protect the reclaimed farmland from coastal flooding, seawalls (earth embankments with concrete block protection) have been constructed around the estuary.
- 2.3.5. The land that lies behind the seawall within the area is largely arable land and not designated under any legislation for nature conservation. The land surrounding Hamford Water is low-lying open countryside and the landscape character can be described as coastal/estuarine. The main land use is agricultural with a

few residential buildings. The seawall fronting the proposed realignment site is unusual in that there is a stretch of concrete wall linking in with the older earth embankment seawalls on either site.

2.4. Site Designations

2.4.1. Parts of the site and its surroundings are designated as follows:

- Coastal Protection Belt
- Special Protection Area (SPA)
- Special Area of Conservation (SAC)
- Ramsar Site
- Site of Special Scientific Interest (SSSI)
- National Nature Reserve (NNR)

2.4.2. The site lies within Flood Risk Zone 3 and benefits from flood defences. It does not contain any statutory or locally listed buildings. An online search indicates that there are no trees with protection orders on the site.

2.4.3. The site also lies in the proposed Safeguarding Zone for Bramble Island. This is a Hazardous Substance Site which lies to the south east of Great Oakley and to the South West of Harwich. The hazardous substance site located at Bramble Island to the south east of Great Oakley and south west of Harwich is surrounded by a safeguarded area, within which certain proposals for development will be subject to consultation with the operator of the site. According to their website, EPC-UK (the operator) provide a 'total solution' for the supply, handling, storage, testing and disposal of explosives, weapon systems and section 5 goods. They transport, store, test, dispose and demilitarise explosive products; both military ordnance and civil items. EPC-UK handle specific hazardous materials, including fireworks, Time Expired Pyrotechnics (TEPs), bulk explosives and demilitarised complex weapon systems. EPC-UK's technical and management teams work together at Bramble Island. The site also operates licensed processing facilities and storage amenities, capable of retaining up to 500 tonnes of HT1, and 210 tonnes of HT3 & HT4.

2.4.4. The next section describes the application.

3. Application Proposal

3.1.1. This section describes the application proposal and content of the application submission.

3.2. Application Proposal

3.2.1. Full planning permission is sought from TDC for: *“Removal of vegetation, localised removal of topsoil, construction of a seawall, associated borrow dyke system and wave breaks and managed realignment of coastal flood defences by breaching of the existing seawall to create estuarine and coastal habitat comprised of approximately 76ha of intertidal mudflat, approximately 19ha of intertidal mudflat/saltmarsh transition, approximately 10ha of saltmarsh, approximately 5ha of sand and shingle and approximately 7ha of fresh/brackish water borrow dykes, together with associated engineering (including diversion of footpath), drainage and earthworks”*

3.2.2. Further details of the proposal are provided in Section 2 of the accompanying Environmental Statement. In summary, the proposed scheme (illustrated in Figure 4) will involve constructing new seawall inland of the existing seawall and creating a breach in the existing seawall along the open coast at the mouth of a former creek system in order to allow tidal inundation of current agricultural land.

3.2.3. The construction phase of the proposed managed realignment scheme will comprise the following main elements:

- Stripping of vegetation from within the site.
- Removal of topsoil from selected areas of the site and its temporary storage to the north of the site.
- Construction of seawalls at the same crest height as the existing seawall and associated borrow dykes that would form part of the future land drainage system.
- Some localised deepening and widening of the former creek system within the site.
- Construction of wave breaks inside the site immediately adjacent to the breach.
- Diversion of the public footpath that runs along the existing seawall to around the perimeter of the realignment site. An application for this diversion is due to be submitted shortly.
- Breaching of the existing seawall.
- Pumping of dredged sediments into the realignment site.
- Placement of dredged sand and shingle.

3.2.4. It is proposed that the breach width will be of the order of 70m wide in order to maintain tidal current speeds below 1.5m/s and thereby reduce the potential for scour at the breach. Scour is the erosion of bed material that can be caused by changes in water flow (e.g. around the base of a new structure or due to increased current speeds through a constricted channel or opening) and can lead to undermining and destabilisation of structures (in this case, the exposed ends of the seawall) and loss or degradation of sedimentary habitats.

- 3.2.5. A small channel in the order 2m to 5m wide and at a level of approximately 0.5m below the main level of the breach) will be excavated to aid drainage. The breach of the seawall will require the diversion of the public footpath which runs along the top of the current sea wall. This will be diverted via a footpath diversion order. No works are proposed seaward of the breach as the discharge into and out of the realignment site should rapidly form a channel.

- 3.2.6. In terms of the operational phase, and as outlined previously, the total area of the proposed realignment site will be approximately 138ha. During the operational phase, the habitats within the realignment site and the borrow dykes outside of the site would be expected to develop as indicated in Figure 4 (a clearer plan can be found in Appendix 1. Viewing platforms are also proposed.

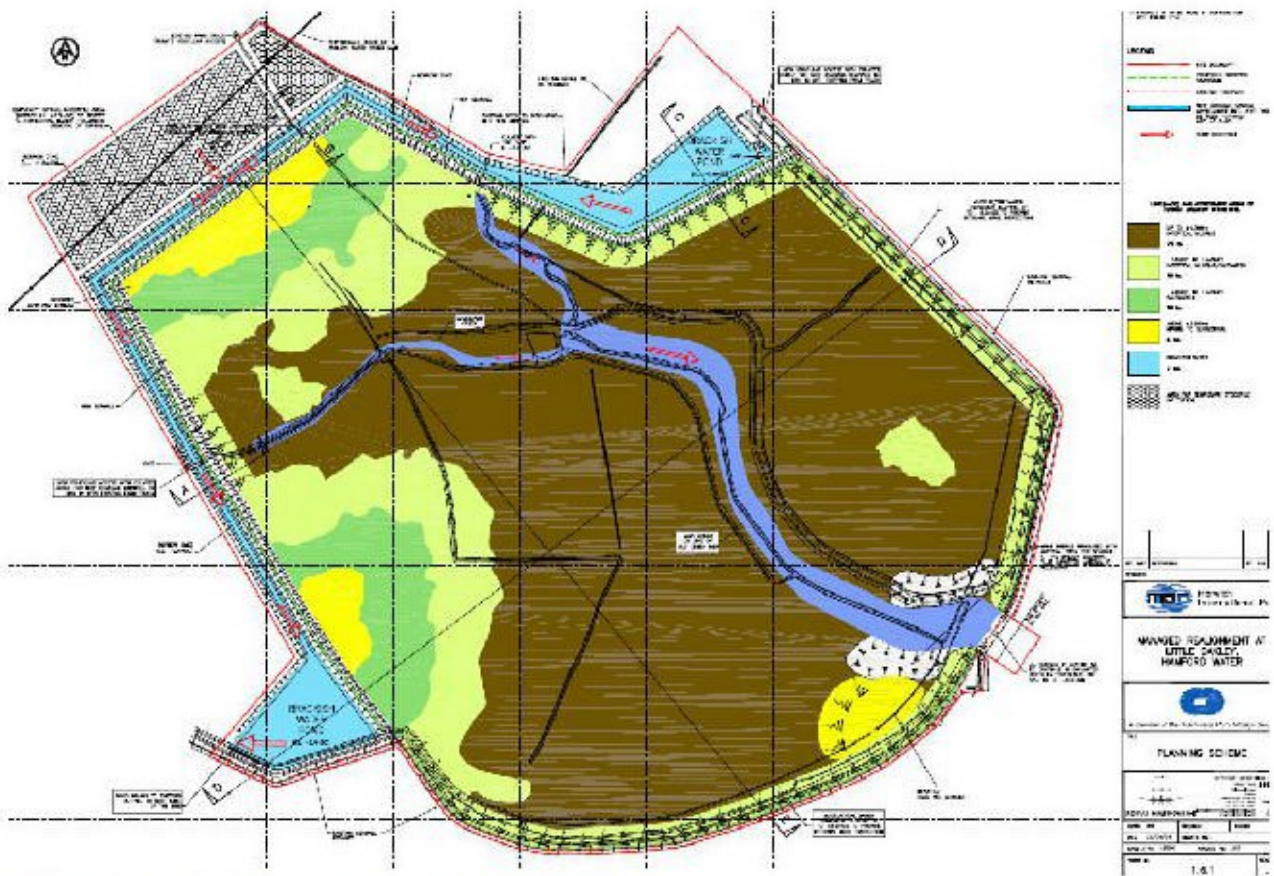


Figure 4: Hamford Water Realignment Planning Scheme

- 3.2.7. The estimation of the areas of different types of habitat that would be expected to develop is largely based on the topography within the site and how this relates to tidal levels following inundation of the site. For the majority of the site, minimal earthworks are proposed (e.g. stripping of vegetation only) and, therefore, the natural levels within the site dictate the nature of the habitat that is expected to develop.
- 3.2.8. However, in certain parts of the site, where levels are naturally elevated, removal of topsoil is proposed. The purpose of this is to locally lower the level of the site in order to encourage mudflat development rather than the establishment of (too much) saltmarsh and to provide material for the seawall within the site. As a by-product of the works, it is proposed that some of the topsoil would be used in landscaping works at Bathside Bay (under permission 10/00202/FUL) and Small Boat Harbour (under permission 10/00203/FUL).
- 3.2.9. In terms of the programme, the construction phase is expected to have a maximum duration of 18 months. The construction works would be undertaken from spring to late autumn with the works spanning two summer seasons. No works would be undertaken during the winter period because the ground conditions would be too soft.

3.3. Application Content

- 3.3.1. The application comprises the following information.

3.3.2. Application Documents and Drawings

Document	Author
Application Form	Savills
Ownership Certificate	Savills
Application Fee	HPUK
Red Line Plan – FP1, 1:10000 @ A3	HPUK
Context Plan – FP2, 1:20000 @ A3	HPUK
Planning Scheme – FP3, 1:2500 @ A1	RHDHV
Proposed Seawall and Site Sections – FP4, 1:2500 @ A1	RHDHV
Viewing platforms, locations and general arrangement - H1001/49 - 1:100, 1:5000. 1:50 @ A1	HPUK
Hamford Water Topographical Survey Sheet 1 of 4 – 54/3630 SHT 1, 1:1000 @ A0	HPUK
Hamford Water Topographical Survey Sheet 2 of 4 – 54/3630 SHT 2, 1:1000 @ A0	HPUK
Hamford Water Topographical Survey Sheet 3 of 4 – 54/3630 SHT 3, 1:1000 @ A0	HPUK
Hamford Water Topographical Survey Sheet 4 of 4 – 54/3630 SHT 4, 1:1000 @ A0	HPUK
Environmental Statement	RHDHV
Environmental Statement - Non Technical Summary	RHDHV
Design and Access Statement	RHDHV
Planning Statement (including Statement of Community Involvement)	Savills

3.4. Statement of Community Involvement

- 3.4.1. HPUK have engaged in pre-application discussions with TDC and other local stakeholders.
- 3.4.2. During the preparation of the Environmental Statement, engagement has been undertaken with statutory and non-statutory consultees, as summarised below:

- A meeting was held Little Oakley Parish Council where plans were shared.
- Contact was also made with Hamford View and the neighbouring farmer who owns the access track.
- As part of engagement under the Discretionary Advice Service (DAS), a meeting was also held with Natural England in September 2021 to discuss the project, the approach to surveying and modelling to inform the ES and various other matters raised by Natural England in its advice to TDC and the MMO (as part of the environmental scoping process).
- A request for a sediment quality sampling plan request was submitted to the Marine Management Organisation (MMO) in September 2021 (SAM/2021/00057).
- A meeting was held with Historic England and the historic environment advisor to TDC (Place Services) in September 2021. The meeting discussed the approach to be taken to update the baseline information within the ES.
- Discussions with the RSPB and Essex Wildlife Trust to provide an overview of the proposals and how they relate to the BBCT and small boat harbour applications.

3.4.3. A summary of all comments received through the consultation process and the scoping exercise, including a description of how these comments are addressed, is provided in Table 5.1 of the Environmental Statement.

3.4.4. The next section provides the planning context for the site.

4. Planning Context

4.1. Planning History

- 4.1.1. The site has previously had the benefit of planning permission for the creation of intertidal habitat.
- 4.1.2. Planning permission 03/01200/FUL was approved by the Secretary of State for the same development that is proposed for this application. The description of the development is as follows, which matches the description of the proposed development:

"Removal of vegetation, localised removal of topsoil, construction of a seawall, associated borrow dyke system and wave breaks and managed realignment of coastal flood defences by breaching of the existing seawall to create estuarine and coastal habitat comprised of approximately 76ha of intertidal mudflat, approximately 19ha of intertidal mudflat/saltmarsh transition, approximately 10ha of saltmarsh, approximately 5ha of sand and shingle and approximately 7ha of fresh/brackish water borrow dykes, together with associated engineering (including diversion of footpath), drainage and earthworks."

- 4.1.3. This planning permission expired on 29 March 2016. The resubmission of this planning application is as a result of the expiry of the previous planning permission.
- 4.1.4. Subsequently, and in relation to this planning application, an EIA Scoping Opinion Request (app ref: 21/01165/EIASCO) for the "Managed realignment of coastal flood defences" was submitted to the Council seeking confirmation of the matters that should be included within the Environmental Statement accompanying this planning application. In addition, a request for a scoping opinion was also submitted to the MMO (app ref: EIA/2021/00024). Responses to these Requests were received from the Council and the MMO in 2 September 2021 and 10 September respectively (see Environmental Statement).

4.2. Legislative Context

- 4.2.1. Under Section 55 of the Town and Country Planning Act 1990 ("Meaning of "development" and "new development"), development is defined as "*the carrying out of building, engineering, mining or other operation in, on, over or under land, or the making of any material change in the use of any building or other land*". Therefore, it is considered that all of the elements of the scheme that meet this definition require planning permission. Part 4 of the Marine and Coastal Access Act 2009, as amended¹, provides a framework for the marine licensing system for those 'licensable marine activities' undertaken within the UK marine area below Mean High Water Springs (MHWS). The proposed scheme includes an element of works, the breach of the sea wall and the excavation of a creek through the foreshore at the location of the seawall breach, that would be undertaken below MHWS, therefore, a marine licence will be required. The MMO is the regulatory authority for marine licensing in English inshore and offshore waters.
- 4.2.2. The requirement for Environmental Impact Assessment (EIA) is established by the European Directive 2011/92/EU, as amended by 2014/52/EU (the EIA Directive). The EIA Directive is transposed into UK law

¹ Amended by the Marine and Coastal Access Act 2009 (Amendment) Regulations 2011

by the Town and Country Planning (EIA) Regulations 2017 (as amended²) and the Marine Works (EIA) Regulations 2007 (as amended³).

- 4.2.3. Given the nature of the proposed scheme, an EIA is considered to be required under the following Schedule 2 category of the EIA Directive:

10 (k) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works.

- 4.2.4. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended⁴) (the 'Habitats Regulations') defines the procedure for the assessment of the implications of plans or projects on protected sites (Special Areas of Conservation (SAC) and Special Protection Areas (SPA)).

- 4.2.5. Changes to the Habitats Regulations have been implemented by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. The key changes are the creation of a 'National Site Network' (NSN) (which no longer forms part of the EU Natura 2000 network) and the establishment of management objectives for the NSN. The network objectives are to:

- Maintain or, where appropriate, restore habitats and species listed in Annexes I and II of the Habitats Directive to a favourable conservation status; and,
- Contribute to ensuring, in their area of distribution, the survival and reproduction of wild birds and securing compliance with the overarching aims of the Wild Birds Directive.

- 4.2.6. Whilst Ramsar sites do not form part of the NSN, they are subject to the same protections as SACs and SPAs. The seawall and foreshore at the proposed scheme are within the Hamford Water Ramsar site.

- 4.2.7. Should the proposed scheme, either alone or in combination with other plans or projects, be deemed to have a Likely Significant Effect (LSE) on an SAC, SPA or Ramsar site (or significant effects cannot be categorically excluded), then, in accordance with Regulation 63(1) of the Habitats Regulations, the Competent Authority(s) (i.e. TDC and the MMO) must undertake an 'Appropriate Assessment' (AA) of potential adverse effects, with input from the statutory nature conservation body (i.e. Natural England).

- 4.2.8. The footprint of the proposed scheme is partially within the Hamford Water SPA and Ramsar site. the boundary of the Hamford Water SAC extends to the inner face of the existing coastal flood defence within parts of the proposed realignment site.

- 4.2.9. A shadow HRA has been undertaken for the proposed scheme, which is provided at Chapter 17 of the accompanying ES. This is summarised below in Section 5.3.

² Amended by the Town and Country Planning (EIA) (Amendment) Regulations 2019

³ Amended by the Marine Works (EIA) (Amendment) Regulations 2017

⁴ As amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019

- 4.2.10. Under the terms of the Wildlife and Countryside Act 1981, as amended⁵, any elements of the proposed scheme within, or adjacent to, a Site of Special Scientific Interest (SSSI) require consent from the Competent Authority. Consent is normally included in TDC's overall advice regarding the requirement for HRA under the Habitats Regulations (where SSSIs underpin the NSN sites).
- 4.2.11. Parts of the seawall and foreshore within the proposed scheme footprint are located within the Hamford Water SSSI, which underpins the Hamford Water SPA and SAC. An assessment of potential impacts on the SSSI is provided in the accompanying ES. This is summarised below in Section 5.3.
- 4.2.12. The Marine and Coastal Access Act 2009 allows for the designation of Marine Conservation Zones (MCZs), which are designated to protect nationally important marine wildlife, habitats, geology and geomorphology in England and Wales. Section 126 of the MCAA places specific duties on the MMO relating to MCZs and marine licence decision-making, including undertaking an assessment of the potential impacts of a development on the interest features of an MCZ. However, there are no MCZs within the study area for the proposed scheme (the nearest, Blackwater, Crouch, Roach and Colne Estuaries, is over 20km to the south), therefore an MCZ assessment is not required and has not been included in this ES.
- 4.2.13. The Countryside and Rights of Way Act 2000 (CRoW 2000) adds further and more recent legislation to the National Parks and Access to the Countryside Act 1949. It provides for better management of Areas of Outstanding Natural Beauty (AONBs). AONBs are protected by law because of their special landscape qualities, wildlife, geology and geography. In terms of landscape and scenery, they are equal to National Parks. The proposed scheme is not located within an AONB. The nearest, Suffolk Coast & Heaths AONB is located approximately 4km to the north and has not been included in this ES, with further details as to why it has not been included in Section 5.3.
- 4.2.14. The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017, as amended⁶, transpose the Water Framework Directive (WFD) (2000/60/EC) into UK and Welsh law. These regulations provide for the implementation process of the WFD from designation of all surface waters (rivers, lakes, transitional (estuarine) and coastal waters and groundwater) as waterbodies through to achieving good ecological status by 2027. The Environment Agency (EA) is the responsible authority for WFD compliance in England. The WFD applies to a distance of 1nm offshore.
- 4.2.15. The WFD specifies the factors, referred to as quality elements, which must be used in determining the ecological status or ecological potential and the surface water chemical status of a surface waterbody. The proposed scheme is located within, or in close proximity to, the following WFD waterbodies:
- Harwich Approaches coastal water body (GB650503190000) and
 - Hamford Water coastal water body (GB680503713700).
- 4.2.16. A WFD compliance assessment has been undertaken on the proposed scheme and is provided at Chapter 18 of the accompanying ES. This is summarised below in Section 5.3.

⁵ As amended by Schedule 9 to the Countryside and Rights of Way Act 2000

⁶ As amended by the Floods and Water (Amendment etc.) (EU Exit) Regulations 2019

- 4.2.17. The Waste Framework Directive (2008/98/EC) sets out the general rules applying to all categories of waste, a key objective of which is to provide measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste. The proposed scheme has the potential to generate waste during the construction and operation phases; this would be dealt with through standard site waste management planning. No unusual wastes would arise in terms of types of waste or quantity and so this matter is not considered further in the accompanying ES or this statement.
- 4.2.18. The Environment Act 2021 has received Royal Assent which highlights that all developments should deliver a 10% net gain in Biodiversity. However, this requirement is not expected to become mandatory until Autumn 2023.

4.3. National Policy

The National Planning Policy Framework (July 2021)

- 4.3.1. The NPPF highlights that the purpose of the planning system is to contribute to the achievement of sustainable development, which was a term that was also referred to in the Government's Planning Policy Statement 1 (PPS1): Delivering Sustainable Development, published on 31 January 2005, which pre-dated the original 2006 permission. Sustainable development was the core principle underpinning PPS1, and set out overarching planning policies on the delivery of sustainable development through the planning system which were fully considered and addressed in the determination of the original 2006 permission.
- 4.3.2. NPPF paragraph 8 states that achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):
- a) an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
 - b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and
 - c) an environmental objective – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.
- 4.3.3. Given the links of this planning application to the BBCT development, NPPF paragraph 81 is relevant as it states that "*significant weight*" should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

- 4.3.4. In terms of grounds conditions, pollution and climate change, NPPF paragraph 183 states that planning decisions should ensure that a site is suitable for its proposed uses taking into account of ground conditions and any risks arising from land instability and contamination. This corresponds with NPPF paragraph 185, which highlights that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. NPPF paragraph 152 states that the planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change.
- 4.3.5. NPPF paragraph 174 states that planning policies and decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
- 4.3.6. In terms of heritage, NPPF paragraph 199 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

4.4. Development Plan Policy

- 4.4.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990 require that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. In granting the 2006 permission, the Secretary of State concluded (recognising the agreement on the planning conditions and the suite of other agreements and obligations entered into) that the compensatory habitat would accord with the development plan at that time.
- 4.4.2. For the purposes of the this application, the development plan comprises:
- Tendring District Local Plan (2007)
 - North Essex Authorities' Shared Strategic Section 1 Plan (2021)

- 4.4.3. The Tendring District Local Plan 2007 is under review and the emerging replacement plan called the 'Tendring District Local Plan 2013-2033 and Beyond – Publication Draft' (2017) has been submitted for examination. Main Modifications to the Plan have been proposed and a consultation was held to comment on these Modifications until 31 August 2021. NPPF paragraph 48 states that local planning authorities may give weight to relevant policies in emerging plans subject to the stage of preparation of the emerging plan, extent to which there are unresolved objections to relevant policies and the degree of consistency of the relevant policies with the Framework. The emerging Plan is considered to hold material weight in planning decisions, although the Tendring District Local Plan (2007) remains the adopted Plan for the purpose of Section 38(6) of the Planning and Compulsory Purchase Act 2004.

Tendring District Local Plan (2007)

- 4.4.4. Tendring District Council (TDC) adopted the Tendring District Local Plan on 11 December 2007 covering the period up to 2011.

Compensatory Habitat - Managed Realignment of Hamford Water in Little Oakley

- 4.4.5. Policy HAR1 'Bathside Bay' explicitly refers to the Hamford Water Realignment. There is a site specific allocation that identifies Bathside Bay as a strategic employment site. It notes permission at that time was recently granted, but not yet implemented, for the development of 122 Ha of land at Bathside Bay for the expansion of the existing container port facilities. There is recognition in the supporting text that it also includes the creation of a small boat harbour in the vicinity of Gas House Creek **and the creation of a compensatory habitat through the managed realignment of Hamford Water at Little Oakley.**

- 4.4.6. In terms of Managed Realignment in particular, Policy COM35 'Managed Realignment' states that proposals for alternative "soft" or "natural" engineering methods of sea defence, including managed realignment and foreshore recharge will be encouraged where appropriate to ensure sustainable flood management. Schemes should be designed so as to maximise nature conservation benefits with respect to local landscape impact considerations. Access to and along the coastline will be maintained by ensuring that public rights of way affected by managed re-alignment are diverted by formal Public Path Orders to the 'new coastline' in order to maintain recreational access along the coastline in accordance with the aims of the Essex Heritage Coastal Trail. The protection of sites of archaeological importance will also be an important consideration. In providing managed realignment areas which are located in or adjacent to international sites, new access arrangements must not increase the nature or degree of accessibility to the international sites such that it will increase physical or non-physical disturbance to designated international features, or otherwise adversely affect site integrity. Proposals should ensure that areas of newly designated / created SAC is at least the same as the original habitat, taking into account any land take required by new access infrastructure (i.e paths).

Bathside Bay Container Terminal

- 4.4.7. Given the planning application is linked to BBCT, other policies that relate to BBCT's development are material to the determination of this planning application. The BBCT area lies within the Harwich settlement boundary where there is a presumption in favour of development (Policy QL1 'Spatial Strategy' of the Tendring District Local Plan (2007)). The spatial strategy for Tendring follows established national and regional principles for sustainable development. Most new development will therefore be concentrated at

the larger urban areas of Clacton and Harwich, where accessibility to employment, shops, and other facilities and services is maximised, and there is a choice of means of transport. These towns also contain the largest supply of previously developed land, for use in general preference to greenfield sites.

- 4.4.8. Policy HAR1 refers to Policy QL5 'Economic Development and Strategic Development Sites' of the Tendring District Local Plan (2007). The policy allocates Bathside Bay for development in order to encourage the growth of the local economy. It allocates Bathside Bay (122 hectares) as an extension to Harwich International Port – for the development of a deep water quayside, container handling area, rail terminal, logistics facility and associated infrastructure. This corresponds with Policy HAR16 'Port Development' of the Tendring District Local Plan (2007), which states that the Council will support proposals for the upgrading of on-site port facilities at Harwich International Port.
- 4.4.9. In addition to the above, Policy HAR10 'Water-Based Recreation and Marina Development' of the Tendring District Local Plan (2007) states that proposals for a small boat harbour in the vicinity of Gas House Creek as part of the Bathside Bay development will be permitted subject to compliance with other relevant policies within the Local Plan. The detailed design and use of materials associated with this development must respect its location within the Harwich Conservation Area.
- 4.4.10. Additionally, Policy QL6 'Urban Regeneration Areas' of the Tendring District Local Plan (2007) identifies Harwich and Dovercourt Town Centres as being one of the Councils main regeneration areas where permission will be granted for development that reinforces and/or enhances the function, character and appearance of the areas. Development should contribute towards regeneration and renewal. This policy links to Policy HAR4a 'Harwich Master Plan'. This states that proposals for new development in the Harwich Conservation Area and Urban Regeneration Area will be considered against the relevant provisions of the Harwich Master Plan. The Master Plan will also be used to guide and influence decisions on the enhancement of the Conservation Area and the need to carry out further improvements to the public realm. Whilst old documents, the 'Regeneration of Old Harwich' (2005) and 'Harwich Quayside Design Statement' (2007) documents are material considerations.
- 4.4.11. Policy QL6 'Urban Regeneration Areas' also links to Policy HAR12 'Dovercourt Town Centre Regeneration Area'. With respect to Dovercourt Town Centre, the policy states that within the defined regeneration area, covering parts of the town centre, appropriate mixed-use development (including residential use) will be encouraged in order to bring about the repair and restoration of historic buildings. There is a relevant Masterplan called 'Dovercourt Masterplan Revisited' that was prepared in April 2019, which refers to Bathside Bay. It states that the Council are looking to improve connections and linkages from the town centre to Bathside Bay, through landscaping and improvements to pathways and access routes.

Biodiversity, Ecology and Environmental Impacts

- 4.4.12. Policy QL11 'Environmental Impacts and Compatibility of Uses' states that all new development should be compatible with surrounding land uses and minimise any adverse environmental impacts. Its scale and nature should be appropriate, it should not have a damaging impact on local amenity, should not damage environmental and historic assets, should not cause negative pollution impacts and should be safe. This corresponds with Policies EN6 'Biodiversity', EN6a 'Protected Species' and EN6b 'Habitat Creation' all of which seek to protect and enhance local biodiversity habitats.

- 4.4.13. Policies EN11a 'Protection of International Sites: European Sites and Ramsar Sites', EN11b 'Protection of National Sites: Sites of Special Scientific Interest, National Nature Reserves, Nature Conservation Review sites, Geological Conservation Review sites' and EN11c 'Protection of Local Sites: Local Nature Reserves, County Wildlife Sites, Regionally Important Geological/Geomorphological Sites' are the relevant protection policies for SPA, SAC, Ramsar, SSSI, National Nature Reserve and Wildlife Sites.

Landscape Visual Character

- 4.4.14. Policy QL9 'Design of New Development' states that all new development should make a positive contribution to the quality of the local environment and protect or enhance local character. This corresponds with Policy EN1 'Landscape Character' which states that the quality of the district's landscape and its distinctive local character will be protected and, where possible, enhanced. Any development which would significantly harm landscape character or quality will not be permitted.

Archaeology and Heritage

- 4.4.15. Policy EN23 'Development within the Proximity of a Listed Building' states that proposals for development that would adversely affect the setting of a Listed Building, including group value and long distance views will not be permitted. Policy EN29 'Archaeology' states that development will not be permitted where the Council considers that it will adversely affect nationally important archaeological sites and their setting. Permission will be refused where development proposals do not satisfactorily protect archaeological remains of local importance. Policy EN17 'Conservation Areas' aims to protect the character of conservation areas.

Rural Regeneration and Agricultural Land

- 4.4.16. Policy QL7 'Rural Regeneration' states that regeneration in rural areas will be encouraged by permitting appropriate rural diversification schemes and by permitting development that maintains and/or improves access to rural communities, the countryside and coast; and protects and/or enhances landscape character and biodiversity. Planning permission will not be granted for proposals that would adversely affect the vitality or viability of village centres or lead to the material loss of Best and Most Versatile Agricultural Land, existing local services, community facilities or employment sites. This policy is similar to Policy EN4 'Protection of the Best and Most Versatile Agricultural Land', which states that where development of agricultural land is unavoidable, areas of poorer quality agricultural land should be used in preference to that of higher quality agricultural land, except where other sustainability considerations suggest otherwise. Development will not be permitted on the best and most versatile land (namely land classified as grades 1, 2 or 3a as defined by the Agricultural Land Classification) unless special justification can be shown.

Transport and Safety

- 4.4.17. Policy QL2 'Promoting Transport Choice' of the Tendring District Local Plan (2007) highlights that all new development proposals should be located and designed to avoid reliance on the use of the private car and promote travel choice other than in exceptional circumstances. Permission will not be granted for development if it is not accessible by a choice of means of transport. This policy is referenced in Policy 'QL10 'Designing New Development to Meet Functional Needs', which states that all new development should meet functional needs, should be able to be safely accommodated by the highway network, should

be safe and should reflect the hierarchy of transport users in Policy QL2 'Promoting Transport Choice'. Corresponding with Policy 'QL10 'Designing New Development to Meet Functional Needs', Policy COM1 'Access for All' states that development involving buildings or spaces to which the public will have access as visitors, customers or employees will not be permitted if the design and layout does not provide safe and convenient access for people of all abilities.

- 4.4.18. Policies TR1a 'Development Affecting Highways', TR1 'Transport Assessment', TR2 'Travel Plans', TR4 Safeguarding and Improving Public Rights of Ways' all seek to ensure that development is sustainable in traffic terms and do not negatively impact highways and public rights of ways.
- 4.4.19. In terms of safety generally, Policy COM2 'Community Safety' states that all new development shall contribute to a safe and secure environment.

Coastal Erosion, Flood Risk and Protection and Drainage

- 4.4.20. Given the sites location within the Coastal Protection Belt, Policy EN3 'Coastal Protection Belt' is particularly relevant. New development which does not have a compelling functional need to be located in the Coastal Protection Belt, as defined on the Proposals Map, will not be permitted. The onus will be on the applicant to prove such a need, by showing that by reason of its critical operational requirements the development cannot be located outside the Coastal Protection Belt. Even where a compelling functional need is demonstrated, the development should not significantly harm the landscape character and quality of the undeveloped coastline.
- 4.4.21. Policy QL3 'Minimising and Managing Flood Risk' states that the Council will ensure that flood risk is taken into account at all stages in the planning process, to avoid inappropriate development in areas at risk of flooding. Development will only be permitted in areas of flood risk when there are no reasonably available sites in areas of lower flood risk and the benefits of development outweigh the risks of flooding. Policy COM32 'Sea Defences' states that in order to maintain and enhance the interests of marine and coastal habitats the District Council will where appropriate, require the use of soft engineering sea defences such as wider and deeper beaches or the rehabilitation of salt marshes, as a means of sea defence, rather than the installation of or raising of sea walls or other hard defences. Planning permission will not be granted for development, which would adversely affect the integrity of tidal or fluvial defences, unless the removal or alteration to those defences is necessary to achieve the purpose of the development. Policy COM33 'Flood Protection' similarly looks to minimise the effects of flooding (tidal flooding in particular) by stating that permission will be refused for development on land to the seaward side of sea defences, including the siting of temporary structures such as holiday chalets and caravans. On land between the first line of sea defence and the main defence, the siting of temporary structures may be permitted following consultation with the Environment Agency. Policy COM34 'Unstable Land' states that permission will not be granted for development proposals and proposed changes of use of land along the coast where there is a significant likelihood of instability occurring on the land during the life expectancy of the development.
- 4.4.22. With respect to drainage, Policy EN13 'Sustainable Drainage Systems' highlights that development proposals should incorporate measures for the conservation and sustainable use of water and should implement sustainable drainage measures.

Pollution and Contaminated Land

- 4.4.23. Policy COM19 'Contaminated Land' states that unless appropriate remedial measures are included, planning permission will not be granted for development, which is either proposed to be located on, or is affected by ground that is known to be contaminated and identified on the Contaminated Land Register and/or land that is known to have accommodated potentially polluting uses.
- 4.4.24. Policies COM20 'Air Pollution/Air Quality', COM21 'Light Pollution', Policy COM22 'Noise Pollution' and COM23 'General Pollution' seek to ensure that new development will not have a significant adverse impact on the surrounding area in terms of pollution.

Tendring District Local Plan 2013-2033 and Beyond Section 1 North Essex Authorities' Shared Strategic Section 1 Plan (2021)

Sustainable Development

- 4.4.25. Policy SP1 'Presumption in Favour of Sustainable Development' states that when considering development proposals the Local Planning Authorities will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. Development that complies with the Plan will be approved without delay, unless material considerations indicate otherwise.

Bathside Bay Container Terminal

- 4.4.26. There is no explicit reference to Bathside Bay in the Section 1 Local Plan but there is recognition in Paragraph 1.18 of the Spatial Portrait to Harwich International Port. It recognises that it handles container ships and freight transport to and from the rest of the UK and that Harwich is also one of the major UK ports for ferry and cruise departures.
- 4.4.27. Policy SP3 'Spatial Strategy for North Essex' states that existing settlements will be the principal focus for additional growth across the North Essex Authorities area within the Local Plan period. Development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role both within each individual district and, where relevant, across the wider strategic area. Beyond the main settlements the authorities will support diversification of the rural economy and conservation and enhancement of the natural environment.
- 4.4.28. Policy SP5 'Employment' states a strong, sustainable and diverse economy will be promoted across North Essex with the local planning authorities pursuing a flexible approach to economic sectors showing growth potential across the Plan period.

Design

- 4.4.29. Policy SP7 'Place Shaping Principles' states that all new development must meet high standards of urban and architectural design. All new development should reflect place shaping principles such as improving biodiversity, protecting local heritage, be sustainable in terms of transport, protect amenity, respond to the local character of the area.

Infrastructure & Connectivity

- 4.4.30. Policy SP6 'Infrastructure and Connectivity' states that all development must be supported by the provision of the infrastructure, services and facilities that are identified to serve the needs arising from the development. It states that the Council will look to promote sustainable modes of transport.

Tendring District Local Plan 2013-2033 and Beyond – Proposed Modifications to Section 2 (2021)

Bathside Bay Container Terminal and Little Oakley

- 4.4.31. Whilst the emerging Section 2 plan does not have a specific policy relevant to this application or the Bathside Bay Container Terminal development, the plan's supporting text does reference and carry over the weight given to the importance of the development from the adopted Local Plan. Paragraph 6.10.18 of the emerging Local Plan in particular, which relates to the Harwich Old Town Priority Area for Regeneration and is in the supporting text for Policy PP 14 'Priority Areas for Regeneration', states that the regeneration should maximise the opportunity offered by 'Freeport' status and the proposals for expansion at Harwich International Port and Bathside Bay.
- 4.4.32. Whilst the site is outside any settlement boundaries, highlighted by Policies SPL 1 'Managing Growth' and SPL 2 'Settlement Development Boundaries', there is reference to the development in paragraph 7.4.3, which supports emerging Policy PPL 4 'Biodiversity and Geodiversity', the Council will only grant planning permission where there would be no adverse effects on biodiversity (including any mitigation), unless there is considered to be an overriding public interest (such as the port expansion at Bathside Bay, Harwich) – in which case a compensatory habitat must be provided.

Tourism

- 4.4.33. Policy PP 8 'Tourism' states that to attract visitors to the Tendring District and support economic growth in tourism, the Council will generally support proposals that would help to improve the tourism appeal of the District to visitors.

Sustainable Design

- 4.4.34. Policy SPL 3 'Sustainable Design' states that all new development (including changes of use) should make a positive contribution to the quality of the local environment and protect or enhance local character. The design and layout of the development should maintain or enhance important existing site features of landscape, ecological, heritage or amenity value. Additional traffic should be safely accommodated, health and safety should be incorporated in any design and there should be no negative pollution impacts. Construction impacts should also be mitigated adequately.

Green Infrastructure and Open Space

- 4.4.35. Policy HP 3 'Green Infrastructure' states that green infrastructure will be used as a way of adapting to, and mitigating the effects of, climate change, through the management and enhancement of existing spaces and habitats and the creation of new spaces and habitats, helping to provide shade during higher temperatures, flood mitigation and benefits to biodiversity, along with increased access. This policy is referenced in Policy HP 5 'Open Space, Sports and Recreation Facilities', which states that new development must be designed to include, protect and enhance the green infrastructure network. The

Council will work with partners to maintain, expand and improve the quality and accessibility of public open space.

Environment

- 4.4.36. Emerging Policy PPL 1 'Development and Flood Risk' introduces a requirement that all new development within Flood Zones 2 and 3 must not result in a net loss of flood storage capacity, unless there is compensation on site or, if not possible, adjacent off site capacity. Where possible opportunities should be sought to achieve an increase in floodplain storage. Further, all major development proposals should now consider the potential for new Blue and Green Infrastructure to help mitigate potential flood risk and include such Green Infrastructure, where appropriate. This corresponds with Policy PPL 5 'Water Conservation, Drainage and Sewerage', which states that all new development must make adequate provision for drainage and sewerage and should include Sustainable Drainage Systems (SuDS) as a means of reducing flood risk, improving water quality, enhancing the Green Infrastructure network and providing amenity and biodiversity benefits.
- 4.4.37. Emerging Policy PPL 2 'Coastal Protection Belt' states that the Council will require applicants to demonstrate that any development proposals will be safe over their planned lifetime. The Council will take an 'adaptive approach' to coastal protection, where required, having regard to an assessment of the impact of coastal change and consideration of any applicable Shoreline Management Plan.
- 4.4.38. As referenced above in paragraph 4.4.32, emerging Policy PPL 4 'Biodiversity and Geodiversity' states that Sites designated for their international, European and national importance to nature conservation: including Ramsar sites; Special Protection Areas (SPAs); Special Areas of Conservation (SACs); Marine Conservation Zones (MCZs); National Nature Reserves (NNRs); and Sites of Special Scientific Interest (SSSIs) will be protected from development likely to have an adverse effect on their integrity.

Landscape

- 4.4.39. The emerging plan introduces new guidance for rural applications in Policy PPL 3 'The Rural Landscape', which states the Council will protect the rural landscape and refuse planning permission for any proposed development which would cause overriding harm to its character or appearance, including to:
- a) estuaries, rivers and undeveloped coast;
 - b) skylines and prominent views including ridge-tops and plateau edges;
 - c) traditional buildings and the settings of settlements;
 - d) native hedgerows, trees and woodlands; and
 - e) protected lanes, other rural lanes, bridleways and footpaths.

Archaeology and Heritage

- 4.4.40. Emerging Policy PPL 7 'Archaeology' states that proposals for new development affecting a heritage asset of archaeological importance or its setting will only be permitted where it will protect or where appropriate

enhance the significance of the asset. Emerging Policies PPL 8 'Conservation Areas' and PPL 9 'Listed Buildings' aim to protect and enhance conservation areas and listed buildings as heritage assets.

Safeguarding of Bramble Island

- 4.4.41. Emerging Policy PPL 15 'Safeguarding of Hazardous Substance Site, South East of Great Oakley/South West of Harwich' states that the hazardous substance site located at Bramble Island to the south east of Great Oakley and south west of Harwich is surrounded by a safeguarded area, within which certain proposals for development will be subject to consultation with the operator of the site. This may result in restrictions being imposed or planning permission being refused, if safety issues arise or the development could materially affect the proper functioning of the hazardous substance site.

Sustainable Transport and Accessibility

- 4.4.42. Emerging Policy CP 1 'Sustainable Transport and Accessibility' states that proposals for new development must be sustainable in terms of transport and accessibility and therefore should include and encourage opportunities for access to sustainable modes of transport, including walking, cycling and public transport, which corresponds with emerging Policy CP 2 'Improving the Transport Network' that states that Proposals for new development which contribute to the provision of a safe and efficient transport network that offers a range of sustainable transport choices will be supported. Major development proposals should include measures to prioritise cycle and pedestrian movements, including access to public transport.

4.5. Environmental Statement (ref: PC2519-RHD-ZZ-XX-RP-Z-0001, status: S0/P01.01)

- 4.5.1. An Environmental Statement has been prepared by RHDHV to support the application for planning application and marine licence, in accordance with the requirements of the Town and Country Planning (EIA) Regulations 2017 (as amended) and the Marine Works Regulations 2007 (as amended), respectively.
- 4.5.2. A scoping report was submitted to TDC and the MMO to determine the issues this ES should address on the 30th June 2021. Scoping Opinions were received from TDC (21/01165/EIASCO) and the MMO (EIA/2022/00024) on 2 September 2021 and 17 September 2021 respectively.

5. Planning Assessment

5.1.1. In this section, we assess the application proposal in the context of the planning context provided in earlier sections of this Statement.

5.2. Principle of Development

Bathside Bay Container Terminal and Little Oakley Management Realignment Scheme

5.2.1. There is in-principle support for the proposed realignment at Little Oakley, as it is directly associated with the construction of the Bathside Bay Container Terminal and the Small Boat Harbour and represents compensation for the loss of intertidal habitats within the reclamation area. As such it is considered that the proposed scheme will preserve, protect and improve intertidal biodiversity, consistent with the requirements and aims of the National Policy Statement (NPS) for Ports published by Government in January 2012 (Department for Transport, 2012) as considered in the accompanying ES. The Bathside Bay Container Terminal and Small Boat Harbour developments, and the economic benefits associated with the schemes, are strongly supported by NPPF Paragraphs 8 and 81, the Council's adopted Policies HAR 1 'Bathside Bay', QL1 'Spatial Strategy', QL5 'Economic Development and Strategic Development Sites', HAR16 'Port Development', HAR10 'Water-Based Recreation and Marina Development', QL6 'Urban Regeneration Areas, HAR4a 'Harwich Master Plan', HAR12 'Dovercourt Town Centre Regeneration Area', SP1 'Presumption in Favour of Sustainable Development', SP3 'Spatial Strategy for North Essex', SP5 'Employment' and emerging Policy PP 14 'Priority Areas for Regeneration'.

5.2.2. In terms of the Little Oakley Managed Realignment site in particular, whilst it is noted that the site does not lie within a settlement boundary as identified by adopted Policy QL1 'Spatial Strategy' and emerging Policies SPL 1 'Managing Growth' and SPL 2 'Settlement Development Boundaries', there is clear in-principle support for the site being used for compensatory habitat, with Policy HAR1 'Bathside Bay' explicitly refers to the development. There is recognition in the supporting text that the Bathside Bay development includes the creation of a compensatory habitat through the managed realignment of Hamford Water at Little Oakley. The emerging Local Plan also explicitly refers to the Little Oakley Managed Realignment site, insofar that it there is reference to the development in paragraph 7.4.3, which supports emerging Policy PPL 4 'Biodiversity and Geodiversity'. This states that the Council will only grant planning permission in sites with biodiversity interest, where there would be no adverse effects on biodiversity (including any mitigation), unless there is considered to be an overriding public interest (such as the port expansion at Bathside Bay, Harwich) – in which case a compensatory habitat must be provided. This development is the aforementioned compensatory habitat that 'must be provided', as specified by the Council.

Managed Realignment

5.2.3. Policy COM35 'Managed Realignment' is relevant. The supporting text to the policy refers to the Shoreline Management Plan (SMP). The proposed scheme lies within the Essex and South Suffolk SMP2, Management Unit B – Hamford Water. At Little Oakley (PDZ B2) it is identified in the SMP that the defences are under pressure from coastal change and a landward realignment would create a more sustainable situation by reducing the pressure from the channels on the defences and moving towards a more natural estuary with increase of tidal prism and intertidal area. The proposed scheme is included within the SMP within Epoch 2 (2026-2066) and therefore aligns with the SMP.

- 5.2.4. The scheme has been developed to ensure that flooding is sustainably managed. In respect of Flood Risk, Drainage and Coastal Defences (Section 14), the ES and the FRA accompanying this application contain a summary of the site parameters, consultees and flood risk to the site for each source requiring consideration under the NPPF. The reports conclude that the primary source of flood risk to the site post-development will be tidal, but the scheme will provide significant benefits to flora and fauna. Assessed risks to tidal flooding, fluvial flooding, surface water flooding, groundwater flooding and from sewer sources is low and given that the proposed development is 'Water Compatible' and for a managed realignment scheme, no specific mitigation measures are considered necessary. There will be negligible change to flood risk elsewhere as a result of the proposed development.
- 5.2.5. The proposed scheme involves the creation of a new sea wall and the breaching of the old sea wall in order to create intertidal mudflat and saltmarsh habitat. The new sea wall will be constructed at the same height of the current sea wall, in line with Environment Agency guidance. The sea wall is further protected against by the establishment of intertidal habitats which would also provide against storms and any waves or surges of water, providing a buffer between the coastal waters and the sea wall. Therefore, the risk of any potential impacts to the terrestrial habitats and human population behind the sea walls is reduced and the proposed scheme is considered to provide better protection from flooding and storms than the current defence.
- 5.2.6. In terms of impacts on the landscape and nature conservation benefits, the principal reason for the scheme is to provide compensatory and suitable habitat and to provide a net gain in biodiversity. In terms of the landscape, the change in landscape character from open farmland to estuarine as a result of the proposed scheme is predicted to have an impact of moderate beneficial significance.
- 5.2.7. In terms of access, the only public access into the site is via the public footpath, which is existing and is proposed to be diverted away from the international site. Other accesses into the site are private and will be used for sporadic maintenance of the site only and to provide access to parties who already have existing legal rights of pedestrian and vehicular access. It is therefore not considered that the proposed access arrangements will adversely impact the international site.
- 5.2.8. On the basis of the above, it is considered that the scheme is compliant with Policy COM35 'Managed Realignment'.

5.3. Environmental Statement

- 5.3.1. The ES prepared by Royal HaskoningDHV which accompanies this planning application provides:
- a detailed description of the proposed scheme, including details of the construction methodology, anticipated programme and the consideration of alternatives (Section 2)
 - an outline the relevant legislation, planning policy and consenting requirements that have been taken into consideration whilst undertaking the EIA and producing the ES (Section 3)
 - a description of the approach taken to the EIA, Cumulative Impact Assessment (CIA), Habitats Regulations Assessment (HRA) and Water Framework Directive (WFD) compliance assessment (Section 4)

- an overview of the consultation undertaken to date, including details of the EIA Scoping Opinions provided by TDC and the MMO (Section 5)
- technical assessments of the potential impacts of the proposed scheme on those topics scoped in for assessment, including describing the nature of the existing (baseline) environment for the respective topics, assessment of the potential impacts that could arise during the construction and operation of the proposed scheme and, where appropriate and practicable, mitigation measures (Sections 6 to 15)
- consideration of potential cumulative impacts when regarding the proposed scheme alongside other plans or projects that may spatially or temporally overlap (Section 16)
- the shadow HRA (Section 17)
- the WFD compliance assessment for the proposed scheme (Section 18)
- discussion of the effectiveness of the scheme as compensation (Section 19)
- the proposed approach to management and monitoring once the scheme is complete (Section 20), and
- the data sources used to inform the preparation of the ES (Section 21)

Coastal and Estuarine Processes, Water and Sediment Quality and Tourism, Recreation and Local Community

- 5.3.2. The findings of the technical assessments on the potential impacts of the proposed scheme on each scoped topic are summarised at the end of each topic chapter and are not repeated here. However, in respect of Coastal and Estuarine Processes (Section 6), Water and Sediment Quality (Section 7) and Tourism, Recreation and Local Community (Section 13) none, negligible or no significant impacts are concluded and no mitigation is considered necessary.
- 5.3.3. The scheme has a requirement to be in this location in order for it to provide the necessary compensatory habitat for BBCT, which has been previously approved by the Council. The proposed scheme will realign the coastline, transform rural farmland to intertidal mudflats and saltmarsh, maintain the open character of the coastline and provide enhanced flood protection to the surrounding area. The scheme is also safe and secure, as it is not located on unstable land, will not have an impact on coastal erosion and, as outlined above, aligns with the Shoreline Management Plan.
- 5.3.4. In terms of tourism, recreation and the local community, the scheme will not have an impact as it maintains accesses for the public (via an application to divert the existing footpath) and for parties who already have existing legal rights of pedestrian and vehicular access. Viewing platforms looking into the site are proposed, which will enable the public to view the habitats, which will be a benefit. In addition, there is an intent to provide appropriate public and community access to the new reserve, which will be of additional benefit to the local community.

- 5.3.5. With respect to agricultural land, it is understood that the Council looks to protect the best and most versatile agricultural land. It is not considered that the site is located on land with high soil quality. In any event, even if the scheme was to be located on best and most versatile agricultural land, given that the scheme is a compensatory habitat for BBCT, special justification of its development can be shown.
- 5.3.6. On the basis that the scheme will be safe, and that no mitigation is necessary in terms of Coastal and Estuarine Processes, Water and Sediment Quality and Tourism, Recreation and Local Community, it is considered that the scheme is compliant with the NPPF, emerging Policies PPL 2 'Coastal Protection Belt Policy, PPL 3 'The Rural Landscape', SPL 3 'Sustainable Design', PP 8 'Tourism' and adopted Policies COM34 'Unstable Land', QL11 'Environmental Impacts and Compatibility of Uses', QL9 'Design of New Development', QL7 'Rural Regeneration', EN4 'Protection of the Best and Most Versatile Agricultural Land', QL10 'Designing New Development to Meet Functional Needs', COM2 'Community Safety', EN3 'Coastal Protection Belt' and COM35 'Managed Realignment'.

Biodiversity and Ecology

- 5.3.7. In respect of biodiversity and ecology, in terms of Marine and Coastal Ecology (Section 8), no significant impacts are concluded. With the exception of temporary minor adverse impacts after mitigation on marine mammals from the seawall breach and from scour, the creation of approximately 105ha of intertidal area represents an impact of major beneficial significance on the benthic infauna resource and on saltmarsh and moderate to major beneficial significance on sand and shingle habitat. In respect of Ornithological Interest (Section 9), impacts of minor adverse significance during construction are contrasted with the impact of major and moderate beneficial significance from the creation of the new intertidal habitat and new roosting areas.
- 5.3.8. In respect of Terrestrial and Freshwater Ecology (Section 10), the construction phase would have an impact (after mitigation) of minor to moderate adverse significance on vegetation associated with the seawalls and borrow dykes and on protected species, but that during the operational phase, there would be a beneficial effect in terms of development of the vegetation of seawalls and borrow dykes.
- 5.3.9. On the basis that there will be a net gain in biodiversity provided (albeit not mandatory at this moment in time this net gain is over 10% as required by the Environment Act that received Royal Assent), that the scheme provides a habitat compensation area for BBCT and will have a beneficial ecological impact, the scheme is considered to comply with NPPF Paragraph 174, emerging Policies SPL 3 'Sustainable Design', PPL 4 'Biodiversity and Geodiversity', HP 3 'Green Infrastructure' and HP 5 'Open Space, Sports and Recreation Facilities' and adopted Policies SP7 'Place Shaping Principles', QL7 'Rural Regeneration', QL11 'Environmental Impacts and Compatibility of Uses', EN6 'Biodiversity', EN6a 'Protected Species', EN6b 'Habitat Creation', EN11a 'Protection of International Sites: European Sites and Ramsar Sites', EN11b 'Protection of National Sites: Sites of Special Scientific Interest, National Nature Reserves, Nature Conservation Review sites, Geological Conservation Review sites', EN11c 'Protection of Local Sites: Local Nature Reserves, County Wildlife Sites, Regionally Important Geological/Geomorphological Sites' and COM35 'Managed Realignment'.

Landscape and Visual Character

- 5.3.10. In respect of Landscape and Visual Character (Section 11) the change in landscape character from open farmland to estuarine as a result of the proposed scheme is predicted to have an impact of moderate beneficial significance, the impact on footpath users is one of minor adverse significance (this impact is not possible to mitigate as the seawall has been designed to balance the need to screen waterfowl within the compensation site from disturbance due to movement along the seawall and maintaining views) and there will be negligible significance in the change in appearance from the arable field with hedgerows to expanse of mud.
- 5.3.11. Given the distance away and the beneficial change in the landscape character, the scheme is not considered to have a negative impact on the nearest AONB.
- 5.3.12. On the basis that the scheme will enhance the coastline and restore the natural intertidal habitat, in line with the surrounding intertidal habitats adjacent and will respect and will protect and enhance the rural landscape, it is our opinion that the scheme complies with the NPPF, emerging Policies PPL 3 'The Rural Landscape' and SPL 3 'Sustainable Design' and adopted Policies SP7 'Place Shaping Principles' QL7 'Rural Regeneration', EN1 'Landscape Character', QL9 'Design of New Development' and QL11 'Environmental Impacts and Compatibility of Uses'.

Archaeology and Heritage

- 5.3.13. In terms of Archaeology and Heritage (Section 12), it is concluded that the proposed managed realignment will have no impact on the setting and significance of listed buildings and conservation areas and will not negatively impact local archaeology. As such, the existing designated and non-designated heritage interests located both within the site and in the surrounding area will remain protected and no further mitigation is required.
- 5.3.14. On the basis that the scheme will not significantly affect the historic character of the area, as it will create intertidal habitats which will be similar to those present either side of the proposed scheme, and will not affect nor harm archaeological remains, nearby listed buildings and conservation areas, it is our opinion that the scheme is compliant with the NPPF, emerging Policies PPL 7 'Archaeology', PPL 8 'Conservation Areas' and PPL 9 'Listed Buildings' and SPL 3 'Sustainable Design' and adopted Policies SP7 'Place Shaping Principles', Policy EN23 'Development within the Proximity of a Listed Building', Policy COM35 'Managed Realignment', Policy QL11 'Environmental Impacts and Compatibility of Uses', Policy EN17 'Conservation Areas', Policy EN29 'Archaeology' and Policy QL9 'Design of New Development'.

Flood Risk, Drainage and Coastal Defences

- 5.3.15. In respect of Flood Risk, Drainage and Coastal Defences (Section 14), the ES and the FRA accompanying this application contain a summary of the site parameters, consultees and flood risk to the site for each source requiring consideration under the NPPF. The reports conclude that the primary source of flood risk to the site post-development will be tidal, but the scheme will provide significant benefits to flora and fauna. Assessed risks to tidal flooding, fluvial flooding, surface water flooding, groundwater flooding and from sewer sources is low and given that the proposed development is 'Water Compatible' and for a managed realignment scheme, no specific mitigation measures are considered necessary. There will be negligible change to flood risk elsewhere as a result of the proposed development.

- 5.3.16. In addition, the ES, in respect of Accidents and Disasters (Section 15), states that the risk of any potential impacts to the terrestrial habitats and human population behind the sea walls is reduced and the proposed scheme is considered to provide better flood risk protection than the current defence, improving overall safety in the area. As the site is located within Flood Zone 3 and is for a 'Water Compatible' development, sequential and exception tests are not required.
- 5.3.17. In terms of drainage, the ES notes that the proposed scheme will not introduce the need for drainage or sewage strategies, that there will no effect on land drainage during the construction stage and outlines a number of measures which will ensure that the scheme will be acceptable in terms of its impact on drainage during the operation stage.
- 5.3.18. With respect to coastal and sea defences, the scheme involves the creation of a new sea wall and the breaching of the old sea wall in order to create intertidal mudflat and saltmarsh habitat within. Given the existing site context, where sea walls are used as an engineering sea defence, it is considered that the installation of a new sea wall to connect to the old sea wall is acceptable. In terms of the impact of the scheme on the standard of coastal defence during construction, there is no impact on the standard of defence during the construction stage and operationally there will be a minor beneficial significance on the structural integrity of the existing seawall as a result of the realignment scheme and the consequent requirement to maintain the seawall.
- 5.3.19. On the basis of the above and the conclusions of the ES and the FRA, the scheme complies with the NPPF, adopted Policies COM35 'Managed Realignment', QL3 'Minimising and Managing Flood Risk', EN13 'Sustainable Drainage Systems', COM32 'Sea Defences', COM33 'Flood Protection', QL10 'Designing New Development to Meet Functional Needs', QL11 'Environmental Impacts and Compatibility of Uses', COM1 'Access for All', SP 7 'Place Shaping Principles, and QL9 'Design of New Development' and emerging policies PPL 1 'Development and Flood Risk', PPL 5 'Water Conservation', SPL 3 'Sustainable Design' and HP 3 'Green Infrastructure'.

Cumulative Environmental Impacts

- 5.3.20. The assessment of the significance of the potential cumulative environmental impacts that may arise from the proposed scheme and those projects or developments screened in for further assessment (Section 16) concludes that there will be no overlap of cumulative impacts nor pathway for cumulative effects Cumulative Impact Assessment.

Habitats Regulations Assessment

- 5.3.21. A 'shadow' HRA for the proposed scheme based on the latest legislation, guidance and baseline is provided at Chapter 17 of ES. It is designed to provide the necessary information for TDC and MMO, as the competent authorities, to undertake their obligations under the Habitats Regulations. In respect of the Hamford Water SPA (applicable also to the Ramsar site) the screening exercise concludes no likely significant effects, but in respect of the Hamford Water SAC that likely significant effects on Fisher's estuarine moth from loss of supporting habitat cannot be excluded and that the project must be taken forward for appropriate assessment. However, the 'shadow' HRA concludes that with the mitigation measures in place as recommended in the ES, there will be no adverse effect on site integrity as a result of the proposed scheme.

Water Framework Directive Compliance Assessment

- 5.3.22. At Chapter 18 of ES, Royal HaskoningDHV conclude that the proposed scheme is not anticipated to cause a non-temporary effect on WFD parameters within the Harwich Approaches coastal water body, and will not, therefore, cause a deterioration in status of this water body.

Effectiveness of the Scheme as Compensation and Proposed Management and Monitoring.

- 5.3.23. At Chapters 19 and 20 of ES Royal HaskoningDHV conclude that, subject to delivery of the realignment scheme at the earliest opportunity, this proposal to create approximately 105ha of intertidal area as opposed to the 69ha that would be lost at Bathside Bay would provide an effective scheme of compensation and effective management and monitoring proposals for the realignment site and the foreshore adjacent to the site in line with Natural England's 'check list' for compensatory measure projects (NE, 2021b).

5.4. Impact on Transport and Highways

- 5.4.1. The requirement to provide a Construction Traffic Management Plan (CTMP) to mitigate the transport and highways impacts of the scheme, was agreed in consultation with Essex County Council at the scoping opinion stage of the development.

- 5.4.2. A CTMP (Appendix E of the ES) has been prepared to support the planning application. The CTMP addresses the traffic impact of the proposed scheme at Little Oakley, as requested by the Essex County Council highways department during scoping discussions. It accords with the framework set by the original BBCT CTMP and the updated CTMP submitted in association with application reference 21/01625/DISCON.

- 5.4.3. The CTMP defines the strategy to ensure that construction traffic is sufficiently managed. By implementing the defined strategy the proposed scheme will not have a severe highway impact.

- 5.4.4. General measures are proposed to reduce construction impacts:

- Works to roads and footpaths - including temporary and permanent road and footpath closures and diversions
- Maintenance and Repair of the Highway
- Avoidance of nuisances (measures to reduce impact of mud and dust, including responsibility for enforcement)
- Reducing and controlling vehicle emissions
- Controlled use of site access and parking
- Control of movement of Abnormal Indivisible Loads (AILs)

- 5.4.5. Site specific measures include:

- Transportation of topsoil by sea - This will minimise impact on the road network, road users and the associated environment.
- Construction traffic to be limited – by keeping the number of personnel low and topsoil transport by barge.

- Marking of lorries
- Provision of a hotline number
- Safety inductions for lorry drivers
- Limits to operating hours
- Measures to ensure that lorry drivers follow the approved access routes
- Monitoring, enforcement and governance procedures

5.4.6. In addition to the above, operationally, the proposed scheme promotes sustainable modes of transport, as it diverts the footpath around the proposed site to allow for future pedestrian movement. All existing accesses provided to the public and parties with existing legal rights of pedestrian and vehicular access will be retained.

5.4.7. On the basis of the above, whereby sustainable modes of transport are promoted, construction transport and traffic impacts are adequately mitigated and suitable access maintained, the scheme complies with the NPPF, emerging Policies CP 2 'Improving the Transport Network', CP 1 'Sustainable Transport and Accessibility' and SPL 3 'Sustainable Design' and adopted Policies SP6 'Infrastructure and Connectivity', SP7 'Place Shaping Principles', TR1a 'Development Affecting Highways', TR1 'Transport Assessment', TR2 'Travel Plans', TR4 Safeguarding and Improving Public Rights of Ways', QL2 'Promoting Transport Choice', QL10 'Designing New Development to Meet Functional Needs, QL7 'Rural Regeneration' and COM35 'Managed Realignment'.

5.5. Pollution and Contaminated Land

5.5.1. During the scoping stage, impacts associated with noise and air quality had been scoped out of the Environmental Assessment. Due to the nature of the proposed scheme the potential impacts of air quality have been scoped out as it is highly unlikely that the construction and operation of the proposed scheme will increase risks to biodiversity through air pollution, which is agreed with the Council.

5.5.2. With respect to contaminated land, given the negligible level of industrial use and low level of recreational use within Hamford Water, it is not considered that a new source of contamination would have been presented over time that would significantly alter the results found for the 2003 planning permission. A sampling request has been submitted to the MMO for sampling the sediment within the footprint of the foreshore creek. The results of the analysis will be submitted to the MMO.

5.5.3. In terms of impact on the population and human health, a discussion of human health impacts has been undertaken. Due to the rural nature of the proposed scheme, ambient air quality will be high and noise levels will be low. Given that residential properties are some distance from the proposed scheme (approximately 1 to 2km), the only likely receptors are considered to be people walking in the vicinity of the works. However, given that significant construction plant is not required, any impact on air quality or noise would be very localised and short term, consequently passers-by and residents are unlikely to be affected. Contractors will follow strict health and safety procedures on site and will follow environmental good practice methods and procedures, as set out in the numerous Guidance for Pollution Prevention documents and the CIRIA Environmental good practice on site guide (fourth edition) (C741). A Construction Traffic Management Plan has been submitted, which provides controls on air quality and noise during the construction stage, in relation to traffic. In addition, a Construction Environment Management Plan will be produced which will include measures for controlling dust and pollution management, amongst other measures as set out in this ES.

5.5.4. As outlined above in paragraph 5.3.2, in terms of Water and Sediment Quality, none or negligible impacts are concluded and no mitigation is considered necessary.

5.5.5. On the basis of the above, where there will be negligible pollution and contamination impacts as a result of the scheme, and there will be no impact on human health, the scheme is compliant with the NPPF, adopted Policies SP7 'Place Shaping Principles', COM19 'Contaminated Land', COM20 'Air Pollution/Air Quality', COM21 'Light Pollution', COM22 'Noise Pollution', COM23 'General Pollution', QL9 'Design of New Development' and QL11 'Environmental Impacts and Compatibility of Uses' and emerging Policy SPL 3 'Sustainable Design'.

5.6. Safeguarding of Bramble Island

- 5.6.1. The scheme lies within the safeguarding area of the Bramble Island Hazardous Site. Section 15 of the ES 'Accidents and Disasters' highlights that the proposed development will be compatible with the nearby hazardous site and will not result in any safety issues. The scheme proposes a compensation area for new habitat, breaches an existing sea wall and installs new stretches of sea wall, whilst maintaining all existing accesses for the public and parties who already have existing legal rights of pedestrian and vehicular access. As such, no conflict would arise in relation to both public safety and the effective operation as a result of the proposed development.
- 5.6.2. On this basis, the scheme is compliant with emerging Local Plan Policy PPL 15 'Safeguarding of Hazardous Substance Site, South East of Great Oakley/South West of Harwich'.

6. Planning Conditions and Obligations

6.1.1. This section identifies matters that Tendring District Council may wish to address through the use of planning conditions or obligations.

6.2. Planning Conditions

6.2.1. Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects (NPPF Paragraph 55).

6.2.2. Planning Practice Guidance (PPG) notes (Paragraph 006, ID 21a-006-20140306) that it is important the local planning authority limits the use of conditions that require their approval of further matters after the permission has been granted unless they are specifically justified. Such conditions should be discussed with the applicant before permission is granted to ensure that unreasonable burdens are not being imposed and that these conditions ensure that the timing of submission meets the planned sequence of developing the site. Planning conditions that unnecessarily affect the ability to bring a development into use, allow a development to be occupied or otherwise impact on the proper implementation of the planning permission, should not be used.

6.2.3. Some 17 planning conditions were attached to the 2006 permission (03/01200/FUL). Although not all of these conditions should be needed in the event that this application is permitted, there are a number of matters which will need to be covered by planning conditions – the principal ones being:

- Provision and retention of the viewing area
- Breach of the sea wall shall not take place unless and until footpath 19 has been diverted
- No commencement of development until a scheme of pre-construction surveys to establish the level of usage of the site by specified species has been submitted to and approved by the local planning authority
- No commencement of development until a scheme for the translocation of species of nature conservation interest (where reasonably practicable) has been submitted to and approved in writing by the local planning authority, in consultation with English Nature.
- No commencement of development (including ground works) until a programme of archaeological work in accordance with a written scheme of investigation has been submitted to and approved in writing by the local planning authority
- Construction Management Plan

6.2.4. We would welcome the opportunity to discuss the likely conditions during the course of the determination of the application.

6.3. Planning Obligations

6.3.1. Planning obligations can only be required if they meet the tests set out at NPPF paragraph 57 and Regulation 122(2) of the Community Infrastructure Regulations 2010 (as amended). These state that the obligation must be:

- Necessary to make the development acceptable
- Directly related to the development
- Fairly and reasonably related in scale and kind to the development

6.3.2. We would like to suggest having a discussion with the Council on whether planning obligations are required for this planning application.

6.3.3. In the next section we provide our conclusions in respect of the proposed development.

7. Conclusions

7.1.1. The Little Oakley Managed Realignment scheme is required to provide compensatory habitat for the Bathside Bay Container Terminal. The proposed development of the Bathside Bay Container Terminal (hereafter 'BBCT'), pursuant to planning permission 10/00202/FUL, granted by TDC in February 2013. One of the key findings of the environmental assessment that was undertaken to support the above application 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.

7.1.2. In light of the above conclusion, a proposal was developed for the managed realignment of coastal flood defences at Little Oakley in the Walton Backwaters located to the south of the Stour and Orwell estuaries, approximately 2.6km from Bathside Bay and an application for planning permission was granted by the Secretary of State (reference 03/01200/FUL) (hereafter 'the 2006 permission'):

"Removal of vegetation, localised removal of topsoil, construction of a seawall, associated borrow dyke system and wave breaks and managed realignment of coastal flood defences by breaching of the existing seawall to create estuarine and coastal habitat comprised of approximately 76ha of intertidal mudflat, approximately 19ha of intertidal mudflat/saltmarsh transition, approximately 10ha of saltmarsh, approximately 5ha of sand and shingle and approximately 7ha of fresh/brackish water borrow dykes, together with associated engineering (including diversion of footpath), drainage and earthworks".

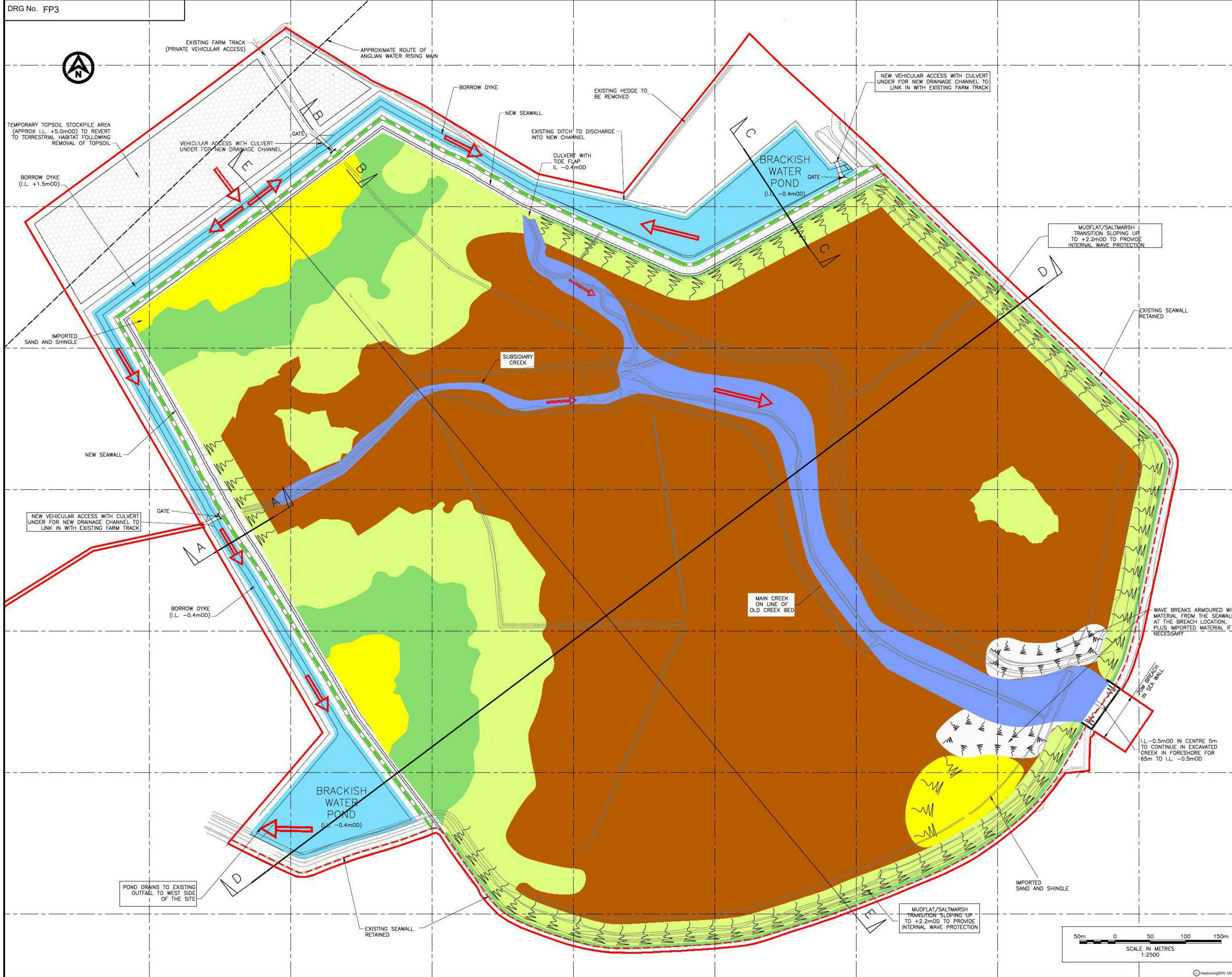
7.1.3. The 2006 permission expired in 2016. Therefore, there is a need to re-submit the aforementioned planning application for the compensatory habitat, which is the subject of this planning application. Given that the scheme was approved by the Council previously, it is our opinion that this planning application should also be approved.

7.1.4. Having regard to the three dimensions of delivering sustainable development, the application proposal will perform:

- an economic role – supporting the development of BBCT and the economic benefits it will provide to the local area and the UK;
- a social role – providing a high quality natural environment, including the enhancement of the landscape via the creation of the nature reserve. There is also an intent to provide appropriate public and community access to the new reserve, which will of additional benefit to the local community; and
- an environmental role – contributing to and protecting the natural environment by providing compensatory habitat for BBCT and providing a net gain in biodiversity over 10%.

- 7.1.5. Overall, the development proposal complies with national and local planning policies and achieves sustainable development in line with NPPF Paragraph 11. For the reasons set out in this Statement and in the documents supporting this planning application, we ask the Council to support HPUK and grant planning permission without delay.

Appendix 1: Hamford Water Realignment Planning Scheme – Drawing No. FP3



NOTES
1. FIGURE FP3 TO BE READ IN CONJUNCTION WITH FIGURE FP4.

- LEGEND**
- SITE BOUNDARY
 - - - PROPOSED FOOTPATH DIVERSION
 - - - EXISTING FOOTPATH
 - NEW DRAINAGE SYSTEM APPROXIMATE BED LEVEL VARIES BETWEEN -0.4mOD AND -0.5mOD
 - FLOW DIRECTION

- LEVEL(mOD) AND APPROXIMATE AREAS OF HABITAT CREATION WITHIN SITE
- UP TO +1.500m INTERTIDAL MUDFLAT 76 ha.
 - +1.500m TO +2.000m INTERTIDAL MUDFLAT/SALTMARSH 19 ha.
 - +2.000m TO +2.400m SALTMARSH 10 ha.
 - ABOVE +2.400m MARINE TO TERRESTRIAL 5 ha.
 - BRACKISH WATER 7 ha.
 - AREA FOR TEMPORARY STOCKPILE OF TOPSOIL

REV	DATE	DESCRIPTION	BY	CHK	APP



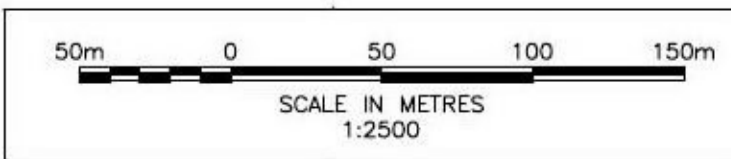
A member of the Hutchison Port Holdings Group

PROJECT
MANAGED REALIGNMENT AT LITTLE OAKLEY, HAMFORD WATER

TITLE
PLANNING SCHEME



DRAWN	MH	CHECKED	MH	APPROVED	MH
DATE	24/11/20	CLIENT'S REF.			
SCALE AT A1	1:2500	AUTOCAD REF.			
DRAWING No.	FP3	STATUS	-	REVISION	-



John Bowles
Director

Ashkan Liaghat
Senior Planner

