



## Hearing Action Points

### Issue Specific Hearing 5 – draft DCO and any outstanding matters

Action No	Action	Party	Deadline
1	<p><b>Clarify the Applicant's position regarding the Marine Policy Statement and East Marine Plan:</b></p> <ul style="list-style-type: none"> <li>• <b>Should the scheme be assessed against the Marine Policy Statement and/or the East Marine Plan? (In considering this the ExA is mindful that the Deemed Marine Licence may be removed from the DCO, but also that the Princes Quay Bridge is to remain a part of the project.)</b></li> <li>• <b>Have any such specific assessments been carried out? (Although the answer to ExQ1.10.6 indicates that the scheme has been assessed against the East Marine Plan, the ExA has been unable to locate any specific assessment.)</b></li> </ul> <p><b>It may be necessary to engage with the Marine Management Organisation in addressing this matter.</b></p>	Applicant	D5 <sup>1</sup>
	<p>The two main parts of the project as applied for that enter the MMO's area of jurisdiction are Work No. 31 (construction of Princes Quay Bridge) and Work Nos. 21B, 21C and 21D (potential surface water outfalls to the River Humber).</p> <p>Work No. 31 has been authorised by alternative means, namely a planning permission from Hull City Council and a marine licence from the Marine Management Organisation and is now under construction. It is therefore increasingly unlikely that any construction of the bridge will need to take place pursuant to the DCO if granted. Work Nos. 21B, 21C and 21D have now been removed from the project altogether. The overlap of the DCO with the MMO's area of jurisdiction is therefore now small and likely to be zero.</p> <p>The Applicant has prepared a specific assessment of the project against the policies in the East Marine Plan and the Marine Policy Statement beyond that identified in its answer to question 1.10.5. This assessment includes the potential impact arising from Works Nos. 21B, 21C and 21D which, as stated above have now been removed from the DCO. Nevertheless for the avoidance of any doubt arising from potential impact on the MMO's area of jurisdiction, the Applicant will revise the assessment so it only relates to Works currently in the DCO and submit this at Deadline 6.</p>		
2	<b>Provide a copy or relevant extract from the East Riding Local Plan.</b>	Applicant	D5

<sup>1</sup> D5 = 5 August

	A copy was provided on the 18 <sup>th</sup> July.		
3	<p><b>Provide copies of:</b></p> <ul style="list-style-type: none"> <li>• SPDs 2, 10, 11, 12</li> <li>• The Conservation Area Appraisals for the Old Town Conservation Area.</li> </ul>	HCC	D5
4	<p><b>In considering the question of light controlled crossings at the Market Place and Queen St Slip Roads (see ExQ 2.8.2) to engage with Historic England regarding the setting of the Grade I listed King William III statue.</b></p>	Applicant	-
	<p>A discussion of the proposed changes to the crossings at Market Place and Queen Street has taken place with Historic England however the Applicant cannot provide enough details, for example the location of the crossings, to allow Historic England to fully comment on the impact on the Grade I listed King William III statue.</p> <p>Once the Applicant has completed the assessment of the changes to the crossing full details will be submitted to Historic England for their consideration.</p>		
5	<p><b>Provide clarification regarding the Applicant's views on the Sequential Test relating to flood risk. In particular:</b></p> <ul style="list-style-type: none"> <li>• Should the sequential test be applied?</li> <li>• If so, has an assessment been carried out and where is it to be found?</li> </ul> <p><b>The ExA remains uncertain of the Applicant's position having considered:</b></p> <ul style="list-style-type: none"> <li>• The view expressed at ISH2 that the sequential test is not considered relevant. [REP3-008, para 7.1.4];</li> <li>• 5.92-5.93 of the NN NPS Accordance Table [APP-071], which says that a sequential test was carried out within the Flood Risk Assessment (FRA);</li> <li>• The FRA, which does not include a sequential assessment.</li> </ul>	Applicant	D5

This document summarises the requirements of the Sequential Test in relation to the A63 Castle Street Improvement Scheme.

Sections 5.98 and 5.99 of the NNNPS state:

*“5.98 Where flood risk is a factor in determining an application for development consent, the Secretary of State should be satisfied that, where relevant:*

- the application is supported by an appropriate FRA;*
- the Sequential Test (see the National Planning Policy Framework) has been applied as part of site selection and, if required, the Exception Test (see the National Planning Policy Framework).*

*5.99 When determining an application, the Secretary of State should be satisfied that flood risk will not be increased elsewhere and only consider development appropriate in areas at risk of flooding where (informed by a flood risk assessment, following the Sequential Test and, if required, the Exception Test), it can be demonstrated that:*

- within the site, the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location; and*
- development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning; and priority is given to the use of sustainable drainage systems.”*

Sections 158, 159 and 163 of the NPPF state:

*“158. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.*

*159. If it is not possible for development to be located in zones with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in national planning guidance.*

*163. When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:*

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;*
- b) the development is appropriately flood resistant and resilient;*
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;*
- d) any residual risk can be safely managed; and*
- e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.”*

According to the NPPF and associated Planning Practice Guidance, the A63 Castle Street Improvement Scheme is classed as ‘Essential infrastructure’ under the specific category “*Essential transport infrastructure (including mass evacuation routes) which has to cross the area at risk*”. The Hull City Council Strategic Flood Risk Assessment<sup>2</sup> and the Environment Agency’s Flood map for planning<sup>3</sup> confirm that the Scheme is located in Flood Zone 3. Given the location of the Scheme in Flood Zone 3 and an area with a history of flooding, the Sequential Test is applicable.

During Design Manual for Roads and Bridges (DMRB) Stage 2, an Environmental Assessment and options selection process was undertaken which evaluated the options against a range of factors including safety, cost, programme and environmental factors including flood risk. The options assessed were limited to alterations to road layout within close proximity of the existing Castle Street junction. The options considered in detail during Stage 2 were various arrangements of underpass or overpass / flyover of varying lengths. The preferred scheme, which was the A63 in cutting / underpass was taken forward to DMRB Stage 3 preliminary design and the subsequently developed Scheme is that presented in the Development Consent Order application.

Therefore, given the nature of the Scheme and the spatial, environmental and practical constraints of the site within the centre of Hull, it would neither be possible nor desirable to relocate the Scheme to an area of lower flood risk in either Flood Zones 1 or 2. The Environment Agency’s flood map for planning confirms that the entirety of Kingston upon Hull is within Flood Zone 3. As such, there are no “reasonably available alternative sites” that are not within Flood Zone 3.

Based upon the above assessment, the Scheme meets the requirements of the Sequential Test. However, given the vulnerability classification of the Scheme and the location within Flood Zone 3, the Exception Test is applicable. A discussion of the requirements of the Exception Test are outlined the Flood Risk Assessment.

The particular points of the Examining Authority’s queries with regards to the Sequential Test are addressed below.

Examining Authority’s query	Applicant’s response
Provide clarification regarding the Applicant’s views on the Sequential Test relating to flood risk. In particular: <ul style="list-style-type: none"> <li>• Should the sequential test be applied?</li> </ul>	<ul style="list-style-type: none"> <li>• Yes, the Sequential Test should be applied due to the location of the Scheme within Flood Zone 3 and an area with a history of flooding</li> </ul>
<ul style="list-style-type: none"> <li>• If so, has an assessment been carried out and where is it to be found?</li> </ul>	<ul style="list-style-type: none"> <li>• For clarity, a detailed response regarding the application of the Sequential Test to the Scheme is supplied within this document</li> </ul>
The ExA remains uncertain of the Applicant’s position having considered: <ul style="list-style-type: none"> <li>• The view expressed at ISH2 that the sequential test is not considered relevant. [REP3-008, para 7.1.4];</li> </ul>	<ul style="list-style-type: none"> <li>• To expand upon the view expressed at ISH2 regarding the Sequential Test, the Applicant would like to clarify that under the NPPF the Sequential Test is required. However, as the Scheme is an improvement to existing infrastructure and cannot be reasonably located outside of Flood Zone 3, it is considered that the requirements of the Sequential Test are met.</li> </ul>

<sup>2</sup> Hull City Council (2016). Strategic Flood Risk Assessment.

<sup>3</sup> <https://flood-map-for-planning.service.gov.uk/confirm-location?easting=510063&northing=428869&placeOrPostcode=Hull>

	<ul style="list-style-type: none"> <li>5.92-5.93 of the NN NPS Accordance Table [APP-071], which says that at sequential test was carried out within the Flood Risk Assessment (FRA);</li> </ul>	<ul style="list-style-type: none"> <li>No explicit assessment of the Sequential Test was reported in the FRA although it was considered. As such, a detailed response considering the Sequential Test has been provided within this document.</li> </ul>	
	<ul style="list-style-type: none"> <li>The FRA, which does not include a sequential assessment.</li> </ul>	<ul style="list-style-type: none"> <li>No explicit assessment of the Sequential Test was reported in the FRA. As such, a detailed response considering the Sequential Test has been provided within this document.</li> </ul>	
<b>6</b>	<b>Consider whether the references to actions being carried out by 'the Secretary of State' in Article 11 should change.</b>	<b>Applicant</b>	<b>D6<sup>4</sup></b>
	This has been amended in the latest version of the draft DCO document.		
<b>7</b>	<b>Finalise statements of common ground.</b>	<b>Applicant</b>	<b>D5</b>
	The table below provides a summary of our current position:		
	<b>Statement of Common Ground</b>	<b>Status</b>	<b>Sign-off date</b>
	Hull City Council	Final version issued for sign off	Between Deadlines 5 and 6
	Environment Agency	Signed Off	16 July 2019
	Historic England	Redrafted to reflect changes in respect of Beverley Gate. Final version to be issued for sign off following holidays	By Deadline 6
	Natural England	Signed Off	2 May 2019
	EPIC (No.2) Limited for Kingston Retail Park	Final version issued for sign off	Between Deadlines 5 and 6

**Please note** that these Action Points relate to the items discussed at the Hearing and are additional to any other requirements for information, notable the further written questions issued on 11 July and any post-hearing written submissions.

<sup>4</sup> Although a deadline for this action was not discussed at the hearing, D6 (27 August) is the established deadline for the submission of the Applicant's final preferred DCO.