



# Immingham Green Energy Terminal

9.53 Applicant's Response to the Examining Authority's  
Action Points from Issue Specific Hearing 4 (ISH4)

Infrastructure Planning (Examination Procedure) Rules 2010  
Volume 9

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Planning Inspectorate Scheme Ref: TR030008

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## Introduction

### Overview

- 1.1 This document has been prepared to accompany an application made to the Secretary of State for Transport (the Application”) under section 37 of the Planning Act 2008 (“PA 2008”) for a development consent order (“DCO”) to authorise the construction and operation of the proposed Immingham Green Energy Terminal (“the Project”).
- 1.2 The Application is submitted by Associated British Ports (“the Applicant”). The Applicant was established in 1981 following the privatisation of the British Transport Docks Board. **The Funding Statement [APP-010]** provides further information.
- 1.3 The Project as proposed by the Applicant falls within the definition of a Nationally Significant Infrastructure Project (“NSIP”) as set out in Sections 14(1)(j), 24(2) and 24(3)(c) of the PA 2008.

### The Project

- 1.4 The Applicant is seeking to construct, operate and maintain the Immingham Green Energy Terminal, comprising a new multi-user liquid bulk green energy terminal located on the eastern side of the Port of Immingham (the “Port”).
- 1.5 The Project includes the construction and operation of a green hydrogen production facility, which would be delivered and operated by Air Products (BR) Limited (“Air Products”). Air Products will be the first customer of the new terminal, whereby green ammonia will be imported via the jetty and converted on-site into green hydrogen, making a positive contribution to the UK’s net zero agenda by helping to decarbonise the United Kingdom’s (UK) industrial activities and in particular the heavy transport sector.
- 1.6 A detailed description of the Project is included in **Chapter 2: The Project** of the **Environmental Statement (“ES”) [APP-044]**.

### Purpose of this Document

- 1.7 This document provides the Applicant’s response to the actions arising from Issue Specific Hearing 4 (ISH4) held on 9 April 2024, which were collated in the Examining Authority’s **Action Points from Issue Specific Hearing 4 [EV6-008]**, issued April 24 2024.

## 1. Issue Specific Hearing 4 (ISH4) Action Points

### Action Point 1

#### Agenda Item 3 Marine Ecology and Habitats Regulation Assessment

*Ensure that the item references used in the SOCG are consistent between the Applicant and the Marine Management Organisation (MMO).*

The referencing of issues within the **Statement of Common Ground between the Applicant and the Marine Management Organisation [TR030008/EXAM/9.16]** has been updated to ensure standardisation between documents.

### Action Point 2

#### Agenda Item 3 Marine Ecology and Habitats Regulation Assessment

*Update the Table showing Piling times; instead of vibro and percussive piling, use 'any piling' for clarity (yellow section).*

An updated mitigation calendar is provided below.

Construction activity	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Jetty head			☀ sunrise to sunset		☀ sunrise to sunset	☀ 07:00 to 19:00	☀ 07:00 to 19:00					☀ 07:00 to 19:00
Approach jetty	Dry only	Dry only	☀ sunrise to sunset		☀ sunrise to sunset	☀ 07:00 to 19:00	☀ 07:00 to 19:00 >200 m	>200 m	>200 m	>200 m	>200 m	☀ 07:00 to 19:00 >200 m

Please note:

- This table does not include other proposed mitigation measures that apply year-round (e.g., soft starts, noise suppression system etc.)
- In the context of the Project vibro piling in the marine environment will not occur in isolation of percussive piling.

Key	Restriction detail	Receptor (relevant qualifying interest features in brackets)
	No restrictions – all construction activity allowed	N/A
☀	Night-time piling restriction – piling (percussive and vibro) not allowed between sunset and sunrise or 19:00 and 07:00 (the time of sunrise and sunset will be set in accordance with HM Nautical Almanac Office data)	Migratory fish (including river lamprey and sea lamprey which are qualifying features of the Humber Estuary SAC and Ramsar site)
	Piling reporting protocol: <ul style="list-style-type: none"> <li>• Reports detailing the total duration of piling each day are to be submitted to the MMO on a weekly basis and the Applicant will hold fortnightly meetings with the MMO (unless otherwise agreed with the MMO)</li> <li>• A 60-minute contingency period is allowed as well as the 270 minutes per day maximum percussive pile driving scenario</li> <li>• In the event of an abnormal situation arising which triggers the contingency period, an environmental representative for the works will be notified who will agree a plan with the</li> </ul>	Migratory fish (including river lamprey and sea lamprey which are qualifying features of the Humber Estuary SAC and Ramsar site)

	<p>contractor to limit the duration of percussive piling to 330 minutes for that day, as well as measures to prevent a future recurrence</p> <ul style="list-style-type: none"> <li>• Circumstances that trigger the contingency period will be recorded and explained in the weekly reporting to the MMO – the Applicant proposes to use the fortnightly meeting to discuss and agree further corrective action with the MMO should it be required</li> </ul>	
	Percussive piling not allowed	Migratory fish (including river lamprey and sea lamprey which are qualifying features of the Humber Estuary SAC and Ramsar site)
Dry only	Percussive piling not allowed unless on dry intertidal areas outside of the waterbody at periods of low water	Migratory fish (including river lamprey and sea lamprey which are qualifying features of the Humber Estuary SAC and Ramsar site)
>200 m	<p>Construction activity (including percussive and vibro piling) not allowed on the foreshore or within 200 m of Mean Low Water Springs.</p> <p>Note:</p> <ul style="list-style-type: none"> <li>• Construction can take place on seaward sections of approach jetty when works are &gt;200 m from Mean Low Water Springs</li> <li>• Restriction applies until an acoustic barrier/visual screen has been installed on both sides of the semi-completed structure</li> <li>• With the addition of acoustic barriers, noise levels on the intertidal mudflat will be less than 70 dB(A)</li> </ul>	Overwintering birds (including qualifying features of the Humber Estuary SPA and Ramsar site)

### Action Point 3

#### Agenda Item 3 Marine Ecology and Habitats Regulation Assessment

*Provide unambiguous combined piling timings (IGET and IERRT) with justification for them.*

A distinction is made between the restrictions to be applied to the Project alone and in-combination with the Immingham Eastern Ro-Ro Terminal (IERRT).

### **The Project Alone**

There is a defined limit of 270 minutes of percussive piling per day subject to the contingency explained below. This is based on a realistic worst-case scenario of three piles a day driven by two piling rigs (each pile requiring 90 minutes of percussive pile driving). The Applicant has a high degree of confidence that this will be the case and the works will be planned accordingly.

There is, however, the potential for abnormal or exceptional circumstances, for example:

- Presence of marine mammals and the need to restart the soft-start procedure
- Adverse weather conditions
- Unexpected ground conditions
- Breakdown of piling equipment

This may result in a short-term and temporary need to pile beyond 270 minutes, largely driven by the requirement to repeat the 20 minute 'soft start' period. A maximum contingency period of 60 minutes has therefore been proposed to reflect the additional soft start procedures required for three piles if percussive piling operations are interrupted.

The Applicant is currently agreeing a piling reporting protocol with the Marine Management Organisation (MMO) which is described below.

Reports detailing the total duration of percussive piling each day are to be submitted to the MMO on a weekly basis and the Applicant will hold fortnightly meetings with the MMO unless agreed otherwise.

In the event of an abnormal situation arising which triggers the contingency period, an environmental representative for the works will be notified who will agree a plan with the contractor to limit the duration of percussive piling to the agreed limit for that day (effectively 330 minutes to capture the contingency, equivalent to 20 minutes per pile), as well as measures to prevent a future recurrence.

Circumstances that trigger the contingency period will be recorded and explained in the weekly reporting to the MMO. The Applicant proposes to use the fortnightly meeting to discuss and agree further corrective action with the MMO should it be required.

This restriction is captured in condition 15(11) of the Deemed Marine Licence which restricts the percussive piling to 270 minutes subject to contingency in condition 15(18) and the 20 minutes soft start in condition 15(1).<sup>1</sup>

### **IERRT alone**

The IERRT DML also includes a piling reporting protocol with the MMO. The IERRT project is expected to have 180 minutes of percussive piling per day. This is based on a realistic worst-case scenario of four piles a day driven by up to four piling rigs (each pile requiring 45 minutes of percussive pile driving per day) with a maximum contingency period of 80 minutes agreed for IERRT.

The different pile driving times between the two projects reflect the different ground conditions and pile dimensions between the two projects which affect the time required to drive the piles to required levels.

### **IGET and IERRT in-combination**

Where piling operations for IERRT and IGET are occurring at the same time a combined percussive piling restriction is proposed for the Project (and was agreed with the MMO in the respective Statement of Common Ground for IERRT).

For the period 1 June to 30 June and 1 August to 31 October inclusive the maximum duration of percussive piling permitted within any 4-week period is a total of 196 hours where any percussive pile drivers for either one or both projects are in operation. Where percussive piling is occurring simultaneously across the two projects, these respective time periods will not be double counted as the temporal exposure to this effect is not increased.

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<sup>1</sup> For clarity, in the original Project application documents, a restriction was proposed to limit the duration of percussive piling in any 4-week period to 140 hours where one piling rig is in operation, and 196 hours where two or more rigs are in operation. This restriction no longer applies to the IGET project alone following discussion with the MMO. The originally proposed restriction has been superseded by the piling reporting protocol (including the 270 minute percussive piling restriction and 60 minute contingency) described above.



The measurement of time during each 196-hour work-block must begin at the start of each timeframe (a 4-week period), roll throughout it, then cease at the end, where measurement will begin again at the start of the next timeframe, such process to be repeated until the end of piling works. This restriction does not apply to percussive piling that can be undertaken outside of the waterbody at periods of low water.

The 196 hours is inclusive of any percussive piling arising from the need to trigger the contingency period from either project.

An ABP consents manager will be responsible for overall compliance with this requirement, including the combined reporting, detailing the total duration of piling each day, across the two projects. This will again be communicated to the MMO via the agreed reporting and meeting schedule.

This restriction is captured in the updated **Outline Construction Environmental Management Plan** provided at Deadline 3 [TR03008/EXAM/6.5].

#### Action Point 4

#### Agenda Item 3 Marine Ecology and Habitats Regulation Assessment

*Provide Environmental Action Plan for the Outstrays to Skeffling Managed Realignment Scheme (noted at Appendix 1.2 of REP1-027) and signpost to sections relevant to the agenda item.*

The Applicant has provided a copy of the Outstrays to Skeffling Managed Realignment Scheme Environmental Action Plan (“Environmental Action Plan”) as **Appendix 1** of this document.

Suggested signposting of relevant sections of the Environmental Action Plan and the respective Environmental Statement as provided at Deadline 1 **[REP1-027]** is provided in the table below.

Section	Contents
<b>Environmental Statement [REP1-027]</b>	
1.4.2 Environment Agency habitat requirements	The Environment Agency’s main objective of the Scheme is to compensate for intertidal habitats likely to be lost from the Humber Estuary as a result of implementing the Humber Flood Risk Management Strategy.
1.4.3 Associated British Ports habitat requirements	Outlines Associated British Ports’ (“ABP’s”) habitat requirements for the site, including the aim of using this habitat to compensate for future anticipated habitat losses at their port complexes.
3.2 Welwick to Skeffling Managed Realignment (eastern site)	Description of proposed works within the eastern site, which includes the land under ABP ownership.
3.2.2 Associated Works	Includes reference to:  A ramp over the new flood embankment so that excavation machinery can access the intertidal area for post-construction intervention work, if required.  This relates to the ability to maintain mudflat into the future.
3.5.2 General site management	The overall responsibility for site management will remain with the Environment Agency and ABP; however, the management of some elements, such as land drainage assets, habitat creation

	<p>areas and access facilities, by other organisations is being considered.</p> <p>The Scheme will be monitored after the completion of construction, to ensure that it is delivering on its objectives. This will be in accordance with the Environmental Maintenance and Monitoring Plan for the Scheme, and specific targets for bird species that will be agreed with Natural England.</p>
3.5.3 Intervention works in East 2	<p>Outlines the potential for intervention to occur within the site to ensure the continued functioning of the Welwick to Skeffling Managed Realignment.</p>
Chapter 11 Marine Biodiversity	<p>This section considers the potential impacts and associated effects on the marine biodiversity within and in the vicinity of the Scheme during the construction stage and operational stage of the proposed development as described in Chapter 3.</p>
11.6.2.2 Benthic habitats and species	<p>Assessment of potential effects on benthic habitat and species receptors. Includes habitat predictions for the Welwick to Skeffling Managed Realignment Scheme.</p>
<b>Environmental Action Plan [Appendix 1]</b>	
Environmental Action Plan, Reference Number C4.8	<p>Includes a requirement to carry out monitoring and management as per an Environmental Maintenance and Monitoring Plan.</p>

**Action Point 5**

**Agenda Item 5 Flood Risk and Coastal Change**

*Applicant to meet with North East Lincolnshire Council (NELC) and North East Lindsey Drainage Board (NELDB) to agree a position on the adequacy of ordinary watercourse assessment.*

A meeting was held on 23 April 2024 with the North East Lindsey Internal Drainage Board (IDB) and the Lead Local Flood Authority (LLFA) at North East Lincolnshire Council to discuss the assessment of ordinary watercourses and whether the land raising on Work Nos 3, 5 and 7 could increase the risk of flooding in surrounding areas.

IDB and LLFA agreed at that meeting that the land raising would not give rise to any significant effects with regard to flooding if the applicable ditches and ordinary watercourses, into which these work areas drain, were maintained. As the affected ordinary watercourses are not managed directly by the IDB, they could not guarantee the capacity of the ditches would not be reduced through vegetation growth or other maintenance issues.

The Applicant is in the process of confirming the discussion at the meeting through the circulation of minutes to the IDB and the LLFA

The Applicant will discuss with the IDB and LLFA any necessary updates to the flood risk assessment to confirm those ditches that will be maintained by the Applicant with a view to submitting an amended version at Deadline 4.

## **Action Point 6**

### **Agenda Item 7 Draft Development Consent Order, focussing on the Draft Deemed Marine License**

*Update Explanatory Memorandum with supporting precedents for Schedule 17 (Paragraph 5).*

Paragraph [11.45] of the Explanatory Memorandum has been supplemented to set out, as requested by the Examining Authority at ISH3, precedents for provision in the dDCO that steps the undertaker takes to discharge requirements in Schedule 2 before the Order is made can be treated as effective in complying with those Requirements once the DCO is made. The Applicant noticed following this query that the provision was duplicated in Article 63(6) and paragraph 5 of Schedule 17. In the dDCO submitted at Deadline 3 it now appears only at Article 63(6).

## **Action Point 7**

### Agenda Item 7 Draft Development Consent Order, focussing on the Draft Deemed Marine License

*Applicant to provide extracts from relevant decision-making documents for Sizewell C in relation to the differences between the Applicant and the MMO.*

The extracts have been provided in Appendix 2 of this document.

### Action Point 8

### Agenda Item 7 Draft Development Consent Order, focussing on the Draft Deemed Marine License

*Note identifying where the Deemed Marine License deals with construction-related matters.*

The construction within the marine environment is governed by conditions within the Deemed Marine Licence **[REP1-016]** and is supported by detail provided in the **Outline Construction Environmental Management Plan (“CEMP”)** **[REP2-004]**.

Condition 4 provides the boundaries and conditions that have to be followed for the capital dredge campaign. This includes details on the volume of material taken, the area in which the dredge can be completed and the location of where the dredge arisings should be deposited.

Condition 8 provides a mechanism to secure approval of the CEMP and detail held within it. The final CEMP will provide details of the marine construction working hours as well as details of the best practice and additional mitigation that must be adhered to and followed through the construction phase.

Condition 11 secures approval of and compliance with details of the specific seasonal restrictions around piling durations and any cold weather restrictions that have been agreed with the Marine Management Organisation, to be set out in the cold weather construction restriction strategy.

Condition 14 secures compliance with the CEMP.

Conditions 15 to 22 then outline a number of other specific measures that have to be complied with throughout construction of the Project.

## Action Point 9

### Agenda Item 7 Draft Development Consent Order, focussing on the Draft Deemed Marine License

*Note clarifying relationship between Article 63 and Schedule 17.*

At ISH4 the Examining Authority suggested that in the Deadline 1 version of the dDCO the relationship between Articles 63(4) and (5) and Schedule 17 (Procedure regarding certain approvals, etc.) could be made clearer. The Applicant agrees. Schedule 17 sets out a determination process for certain consents, agreements or approvals under the dDCO as well as an appeal mechanism, in the usual manner. First of all, therefore, in the Deadline 3 version of the dDCO the Applicant has deleted the words “granted, refused or withheld” before “consents, agreements or approvals” in Article 63(4) because otherwise it would not be clear that Schedule 17 applies not only to an appeal mechanism (for matters already “granted, refused or withheld”) but also to initial determination of the consents, agreements or approvals. The following proposed underlined wording aligns better with that in Article 63(5) and Schedule 17 itself, further making that clear: “(4) Subject to paragraph (5), Schedule 17 (procedure regarding certain approvals, etc.) has effect in relation to all consents, agreements or approvals required or contemplated by any of the provisions of this Order. Article 63(5) in the Deadline 3 version of the dDCO makes clear which consents, agreements or approvals Schedule 17 does not apply to (and the Applicant notes that it is clear that Articles 63(4) and 63(5) are to be read together). Article 63(5) is therefore key in clarifying how the scope of Schedule 17 is limited and cross reference to that Article has been inserted into the relevant provisions of Schedule 17 themselves in the Deadline 3 version of the dDCO to clarify additionally the limits of their scope:

- in the definition of the “relevant authorities” to whom Schedule 17 applies at paragraph 1 (Interpretation);
- in the process for determining consents, agreements and approvals at paragraph 2 (Applications made under provisions of this Order);
- in the process for appeals related to consents, agreements and approvals at paragraph 4 (Appeals).

It is now considered that the relationship in the Deadline 3 version of the dDCO between Articles 63(4) and (5) of the dDCO and Schedule 17 is clear.

## **2. Appendices**

### **Appendix 1: Environmental Action Plan**

# National Environmental Assessment Service

## Environmental Action Plan

<b>Project name</b>	Outstrays to Skeffling Managed Realignment Scheme
<b>Project 1B1S reference</b>	ENVIMNE000195
<b>Area</b>	Yorkshire and Humber
<b>Date</b>	25.02.2019
<b>Version number</b>	Version 4
<b>Author</b>	Jacobs

### Revision history

<b>Revision date</b>	<b>Summary of changes</b>	<b>Author</b>	<b>Version number</b>
23.08.18	First draft to inform target costing	L Stephenson	1
26.11.18	Updated following completion of Environmental Statement	L Stephenson	2
14.12.18	Updated for pre-planning consultation	L Stephenson	3
25.02.19	Updated for planning submission	L Stephenson	4

### EAP Approvals

<b>Name</b>	<b>Signature</b>	<b>Title</b>	<b>Date</b>	<b>Version</b>
D Keneghan	Damien Keneghan	Project Manager	23.08.18	1
D Keneghan	Damien Keneghan	Project Manager	26.11.18	2
D Keneghan	Damien Keneghan	Project Manager	14.12.18	3
D Keneghan	Damien Keneghan	Project Manager	25.02.19	4

### Distribution

<b>Name</b>	<b>Title</b>	<b>Date</b>	<b>Version</b>
Skeffling Project Team		7/9/2018	1
Skeffling Project Team		26/11/2018	2
Skeffling Project Team and external consultees		14/12/2018	3
Skeffling Project Team		25/02/2019	4



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## Purpose

This Environmental Action Plan (EAP) summarises the actions required to implement the environmental mitigation and outcomes contained within the Environmental Statement (ES) that has been prepared following Environment Agency Operational Instructions. It sets out specific objectives and targets defining the way in which we wish the ES and its relevant findings to be addressed during the implementation phase of the project (detailed design, construction and post-construction phases). It also details roles and responsibilities of those involved in the proposal and refers to all **temporary** and **permanent** works.

The EAP will be updated during detailed design, and the revised version will form part of the contract documents issued to the contractor for adherence to during the works to minimise the risks to the environment in accordance with Environment Agency policy, and may include consent and planning conditions in future.

The EAP should be read in conjunction with the accompanying drawing that shows the location of key environmental designations.

## Roles

The table below lists the roles of the key members of the project team.

Organisation	Contact	Name	Phone & email
Environment Agency	<i>Environment Agency Project Manager (EA PM)</i>	Jenny Cooke	TBC
Environment Agency	<i>National Environmental Assessment Service (NEAS) Officer</i>	Emma Morrish	TBC
TBC	<i>Ecological Clerk of Works (ECW)</i>	TBC	TBC
TBC	<i>Engineering and Construction Contract Project Manager (ECC PM)</i>	TBC	TBC
TBC	<i>Contractor Project Manager</i>	TBC	TBC
TBC	<i>Site Manager</i>	TBC	TBC

Each action in the table below has **one** named person who is responsible for ensuring that the action is implemented. It is ultimately the contractor's responsibility for ensuring the EAP commitments, which may include planning conditions, are delivered.

NEAS are responsible for agreeing any changes to the EAP and for signing off, or agreeing to the signing off of, the actions.

The contractor and Project Manager are responsible for advising NEAS of any changes to method statements or the planned construction work as these may result in changes to the EAP or additional consultation with statutory consultees. NEAS will assess the significance of these changes and determine the appropriate course of action.

The contractor is also responsible for implementing good environmental practice on site, in line with their own Environmental Management System (EMS) and Construction Environmental Management Plan (CEMP) prepared for the proposed scheme. Typical issues include:

- Any working hour restrictions
- Dust suppression measures
- Traffic management
- Site waste management
- Materials management

## Outstrays to Skeffling Managed Realignment Scheme

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- Maintenance of the carbon calculator
- Vehicle maintenance and management
- Pollution prevention and control (including storage, refuelling and incident response)
- Response procedures eg services strike, contaminated land
- Hazardous materials handling and storage
- Noise management
- Securing and delineation of working areas including signage

### Environmental Audits

The appended template should be used when undertaking any site audits during construction. Such audits will be undertaken by NEAS Environmental Project Managers (EPM) or delegated by NEAS to the ECW or other individuals. Technical assistance can be obtained from functional staff as appropriate. Site audits can potentially highlight good practice and can be separate to the review of EAP actions as undertaken in progress meetings. They do not replace the regular checks undertaken by the ECW during the works; no set template has been provided for this.

### Environmental Incident Reporting system

All environmental incidents must be reported to the Environment Agency Incident Hotline 0800 80 70 60 as per the [Environmental Incident Reporting Poster](#) at the earliest opportunity and then to the Engineering and Construction Contract (ECC) Project Manager, Site Supervisor, Environment Agency Project Manager and Environment Agency NEAS Environmental Project Manager. In addition, near misses must be reported via the hotline where there was/is the potential for a significant impact and where lessons can be learned.

Initial reports for such incidents and near misses must be followed by a written report using the contractor's in-house forms. This must include the following information (project/location, date, contractor, NIRS reference number, details of what happened, cause of incident, lessons learned). This final and comprehensive investigation report is to be provided by the Contractor to the ECC Project Manager, Environment Agency Project Manager and Safety, Health and Environment Manager within 14 days.

### Summary of scope of works

The proposed scheme comprises:

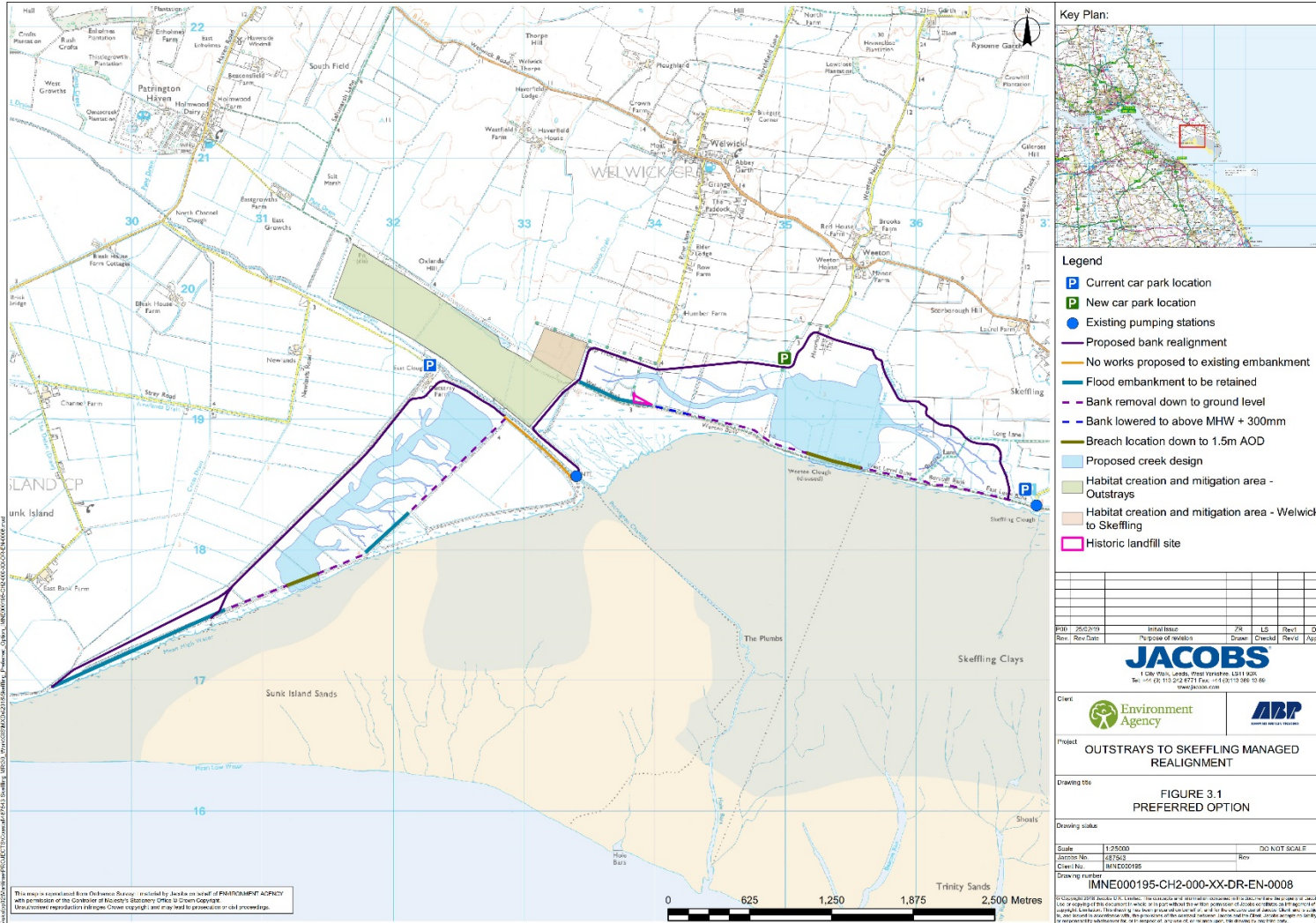
- Creation of two managed realignment (MR) sites in the Humber Estuary –
  - Outstrays (west)
  - Welwick to Skeffling (east)
- These will be formed by a new 'back' flood bank constructed out of locally won material
- Breaches in the existing embankment to link the estuary to each cell
- Use of borrow pits will create an initial creek system
- Piling at two locations – Welwick Bushes and Winestead-Outstrays Pumping Station
- Creation of a habitat creation and mitigation area in West 2 and adjacent to East 1, between the west MR cell and the east MR cell
- Provision of new bridleway access (combination of designated PRow and permissive access) following the new embankment and the edge of the habitat creation area
- Provision of associated ancillary features including viewing points, a car park, drainage and fencing

See the figure below for an overview of the proposed scheme.

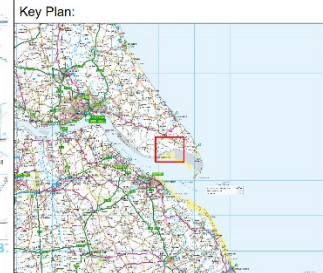
### Relevant contact details

<b>Project Sponsor</b>	Philip Winn and Neil Longden
<b>Project Executive</b>	Andrew Newton
<b>Project Manager</b>	Jenny Cooke
<b>NEAS</b>	Emma Morrish
<b>ECW</b>	TBC
<b>Contractor</b>	TBC
<b>Site Supervisor</b>	TBC

# Plate 1: The proposed Scheme



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- Legend**
- P Current car park location
  - P New car park location
  - Existing pumping stations
  - Proposed bank realignment
  - No works proposed to existing embankment
  - Flood embankment to be retained
  - - - Bank removal down to ground level
  - - - Bank lowered to above MHW + 300mm
  - Breach location down to 1.5m AOD
  - Proposed creek design
  - Habitat creation and mitigation area - Outstrays
  - Habitat creation and mitigation area - Welwick to Skeffling
  - Historic landfill site

Rev	Rev Date	Initial Issue	Prepared	Drawn	Checked	Revised	Approved
01	25/07/19						
02	25/07/19	Purpose of revision					

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Client: **Environment Agency** **MRP**

Project: **OUTSTRAYS TO SKEFFLING MANAGED REALIGNMENT**

Drawing title: **FIGURE 3.1 PREFERRED OPTION**

Drawing status:

Scale: 1:25000 DO NOT SCALE  
 Drawing No: 48753 Rev  
 Client No: MNE000195

Drawing number: **MNE000195-CH2-000-XX-DR-EN-0008**

## Outstrays to Skeffling Managed Realignment Scheme

### Environmental Action Plan

Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>A</b>	<b>Pre-construction</b>						
<b>A1</b>	<b>General</b>						
<b>A1.1</b>	Both sites	Ensure scheme is constructed in accordance with the planning permission.	Adhere to and discharge all planning conditions relating to the Outstrays and Welwick to Skeffling MR sites.	Contractor	Environmental Statement and other planning application documents.		
<b>A1.2</b>	Both sites	Protect the environment and the health, safety and wellbeing of local community and ensure scheme is constructed in accordance with the planning permission.	Review any changes in design, method statements and programme against planning conditions, consenting requirements and environmental strategies/plans (eg Protected Species Plans, Traffic Management Plan). Liaise with NEAS, and with consultees if significant change.	Contractor	Environmental Statement and other planning application documents. Planning conditions		
<b>A1.3</b>	Both sites	Protect the environment and the health, safety and wellbeing of local community.	Update the EAP following completion of detailed design.	Contractor	Environmental Statement		
<b>A1.4</b>	Both sites	Protect the environment and the health, safety and wellbeing of local community.	Produce a Construction Environmental Management Plan (CEMP) detailing measures to minimise environmental impacts during construction. The CEMP may be conditioned as part of the planning approval. CEMP to be produced in parallel with the planning application determination period to ensure no delays to construction post-approval. CEMP to be accepted by NEAS Officer.  CEMP to be updated when appropriate, to include additional consenting requirements and comply with any planning conditions.	Contractor	Environment Agency guidance and Minimum Technical Standards (including pollution prevention guidelines)  Final EAP		

## Outstrays to Skeffling Managed Realignment Scheme

Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
A1.5	Both sites	Protect the environment and the health, safety and wellbeing of local community.	Appoint an Environmental Clerk of Works (ECW) to attend site and audit the <i>Contractor</i> against the EAP and CEMP. Agree with NEAS officer the frequency and timing of ECW visits to site, the frequency of ECW reports, and ECW attendance at site progress meetings.	Environment Agency	Environment Agency guidance and Minimum Technical Standards (including pollution prevention guidelines) Final EAP		
A1.6	Both sites	Ensure the site will be maintained and monitored.	Develop an Environmental Monitoring and Maintenance Plan for the site with the Site Manager and agree this plan with Natural England post submission of the planning application.  The plan will include specific targets for habitats and species, and ecological and landscape mitigation/maintenance.	Contractor	Final EAP Environmental Statement Landscape Masterplan		
<b>A2</b>	<b>People and communities</b>						
A2.1	Both sites	Improve the amenity value of the site	Develop detailed design for amenity features including: <ul style="list-style-type: none"> <li>• Viewing points/bird hides along the crest of the embankment</li> <li>• Interpretation boards</li> <li>• Access ramps where the PRoW transitions from the dry side to the crest of the embankment</li> <li>• The bird hide to be reinstated in West 2</li> <li>• New car park south of Weeton</li> <li>• A plan to restrict motorbike usage of PRoWs</li> <li>• Access route to be Access for All and in line with the Equality Act 2010</li> </ul>	Contractor	ES Figure 6.2 Access and Amenity Plan Typical Bird Viewing Point Details draft drawing)		
A2.2	Both sites	To develop good relationships with local community and minimise disruption.	Update the Communications Plan for the construction phase of the Scheme.	Environment Agency Stakeholder Lead	Communications Plan		
A2.3	Both sites	Keep the local community informed of the Scheme's progress	Continue publishing newsletters for the local community to provide updates on progress, timings of the works and any significant changes in design. Include details of the works including activities and timing of construction traffic. Consider leaving newsletters in key village locations, and publicising information about the works via local radio announcements.	Environment Agency Stakeholder Lead	Communications Plan		



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A2.4	Both sites	Keep the local community informed of the Scheme's progress	Continue to hold drop-in or surgery sessions for the local community to learn more about the project and ask questions.	Environment Agency Stakeholder Lead	Communications Plan		
A2.5	Both sites	Keep the local community informed of the Scheme's progress	Keep any other affected parties, including the sheep grazier on Welwick Saltmarsh, updated on the progress of the scheme and any changes to the timings of the works.	Environment Agency Stakeholder Lead	Communications Plan		
A2.6	Both sites	Reduce impact on affected businesses.	Agree access arrangements with the sheep grazier on Welwick Saltmarsh, with the aim of providing access through the site for as long as possible during construction but ensuring the safety of the grazier, site staff and the public.	Contractor			
A2.7	Both sites	Minimise impact on public use of local path network	Plan the works in such a way to minimise disruption to the Public Rights of Way (PRoW) and maintain access to PRoW as far as practicably possible and safe.	Contractor	ES Chapter 6: Population and Recreation		
A2.8	Both sites	Ensure the safety of the public and minimise impact on the local path network.	<p>If possible, temporarily divert the Public Rights of Way that are within the Welwick to Skeffling MR site:</p> <ul style="list-style-type: none"> <li>• WELWF03</li> <li>• SKEFF02</li> <li>• SKEFF04</li> </ul> <p>and the informal access route through Haverfield Quarry (Outstrays MR).</p> <p>If a temporary diversion is not possible, temporarily close these paths for the duration of construction. Diversion and/or closures must be agreed with ERYC and the correct orders applied for.</p>	Contractor	ES Chapter 6: Population and Recreation		
A2.9	Both sites	Ensure the safety of the public and minimise impact on the local path network.	Put footpath diversion signage and fencing (if necessary) in place prior to construction.	Contractor	ES Chapter 6: Population and Recreation		

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Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
A2.10	Both sites	Minimise impact on the local community and visitors to the area	Install signs around the site prior to works commencing to inform the general public that access to the site, including the Outstray Farm car park and small access roads within the Welwick to Skeffling MR site will be prevented during construction. Indicate the proposed timings of the works. Notices should remain in place throughout construction.	Contractor	ES Figure 6.2 Access and Amenity Plan Access drawings		
A2.11	Both sites	Minimise impact on the local community and visitors to the area	Agree working hours with ERYC prior to the start of construction and include these in the CEMP.	Contractor	CEMP		
<b>A3</b>	<b>Traffic and Transport</b>						
A3.1	Both sites	Minimise impact on public use of local roads to access the site	Install signs well in advance of construction explaining which roads will be closed temporarily and permanently.	Contractor	ES Chapter 14 Traffic and Transport ES Figure 3.2 Construction Overview		
A3.2	Both sites	Minimise disruption to local road network and community	<p>Produce a Construction Traffic Management Plan (CTMP). CTMP to include:</p> <ul style="list-style-type: none"> <li>• Construction access routes</li> <li>• Timing, number and type of vehicle movements</li> <li>• Highway safety measures</li> <li>• The other traffic and transport measures included in this EAP</li> <li>• Measures such as wheel-washing facilities</li> <li>• Any additional measures that are identified once detailed design is finalised and more detail is available on vehicle movements, such as a potential holding area at the end of the access track and/or signal controls to avoid conflicts on the track</li> </ul> <p>The scope of the CTMP will be agreed with ERYC. CTMP will be conditioned as part of the planning approval. CTMP to be produced in parallel with the planning application determination period to ensure no delays to construction post-approval.</p>	Contractor	ES Chapter 14 Traffic and Transport ES Figure 3.2 Construction Overview		



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Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
A3.3	Both sites	Minimise disruption to local road network	If contaminated material is encountered and needs to be removed from site, additional measures may be required to manage the additional vehicle movements. This will need to be included in the CTMP and discussed and agreed with ERYC.	Contractor	ES Chapter 14 Traffic and Transport ES Figure 3.2 Construction Overview		
A3.4	Both sites	Minimise disruption to local road network	Provide adequate passing places for construction traffic (e.g. Haven Road and Oustray Road) and local resurfacing if needed where poor condition (e.g. southernmost section of Humber Side Road). This will need to be carried out in consultation with ERYC. Other road works are planned for Patrington in 2019 so this work could be done at the same time.	Contractor	ES Chapter 14 Traffic and Transport ES Figure 3.2 Construction Overview		
A3.5	Both sites	Minimise disruption to local road network	Potential measure: additional passing places may need to be provided on Haven Road. Discussion and agreement with ERYC is required.	Contractor	ES Chapter 14 Traffic and Transport ES Figure 3.2 Construction Overview		
A3.6	Both sites	Maintain condition of the local road network	Carry out a pre-construction condition survey of the local road network, including Outstray Road (extent of survey to be agreed with ERYC).	Contractor	ES Chapter 14 Traffic and Transport ES Figure 3.2 Construction Overview		
A3.7	Both sites	Obtain necessary agreements for access routes	Seek Section 62/Section 278 agreement from ERYC for construction access track from B1445 to the satellite construction compound.	Contractor	ES Chapter 14 Traffic and Transport ES Figure 3.2 Construction Overview		
<b>A4</b>	<b>Geology, soils, hydrogeology</b>						
A4.1	Both sites	Minimise impact of any pollution incidents on soils, groundwater and surface water.	Develop and implement a Pollution Incident Response Plan as part of the CEMP, to include best practice measures such as use of spill kits, plant nappies and biodegradable oils. Include management activities and communication channels with the Environment Agency in the event of an incident.	Contractor	ES Chapter 9 Geology, Soils and Hydrogeology ES Chapter 8 Water Environment CEMP		
A4.2	Both sites	Minimise adverse effects on land and soils	Carry out further ground investigations to cover the areas not already investigated. Apply for any necessary consents and undertake a Habitat Regulations Assessment, to be signed off by Natural England before the works begin.	Contractor	Ground Investigation reports ES Chapter 9 Geology, Soils and Hydrogeology		

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Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
A4.3	Both sites	Minimise adverse effects on land and soils	Determine the suitability of the material in front of the proposed breach locations for reuse within the Scheme. If material is found to be contaminated, plan for its removal from site and treatment as hazardous waste.	Contractor	Ground Investigation reports ES Chapter 9 Geology, Soils and Hydrogeology		
<b>A5</b>	<b>Water Environment</b>						
A5.1	Both sites	Ensure permits and consents are in place for construction works.	Obtain Environmental Permits for discharges to surface water and groundwater unless exempt from the Environmental Permitting Regulations. Obtain abstraction licence from the Environment Agency if there is a requirement to abstract more than 20 m <sup>3</sup> /day of water from surface or groundwater. Obtain any other applicable water-related consents.	Contractor	Environment Agency guidance and Minimum Technical Standards (including pollution prevention guidelines) ES Chapter 8 Water Environment		
A5.2	Both sites	Minimise adverse effects on water quality and aquatic ecology	Comply with the findings and implement the recommendations of the WFD Assessment that will support the planning applications.	Contractor	Detailed WFD Assessment		
A5.3	Both sites	Minimise impacts on surface water quality	Develop a Surface Water Management Plan (SWMP) as part of the CEMP and linked to the Pollution Incident Response Plan, including: <ul style="list-style-type: none"> <li>• Measures to be taken to manage surface water runoff so as not to increase flood risk within the site or elsewhere</li> <li>• Measures to protect water quality in any receiving waters and specifically detailing measures to prevent sediment pollution from any site runoff.</li> <li>• Use of sustainable drainage systems to minimise pollution, contamination and sedimentation impacts on receiving waters.</li> </ul> <p>The plan must be accepted by the <i>Employer</i>.</p>	Contractor	Environment Agency guidance and Minimum Technical Standards (including pollution prevention guidelines) ES Chapter 8 Water Environment		

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Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
A5.4	Both sites	Minimise impacts on surface water quality	Develop a Silt Management Plan (SMP) as part of the CEMP, including management processes and procedures that will be employed to control, mitigate and monitor silt generation and the risks to surface water during the construction phase.  The plan must be accepted by the <i>Employer</i> .	Contractor	Environment Agency guidance and Minimum Technical Standards (including pollution prevention guidelines)  ES Chapter 8 Water Environment		
A5.5	Both sites	Minimise impacts on surface water quality	Develop Method Statements or strategies for in-channel works and temporary de-watering activities to minimise both the disruption to ecological elements and the risk of siltation/scour during the construction phase. Methods to be accepted by the NEAS Officer.	Contractor	Environment Agency guidance and Minimum Technical Standards (including pollution prevention guidelines)  ES Chapter 8 Water Environment		
A5.6	Both sites	Reduce impacts on geomorphology	For consideration during detailed design: design new culverts and outfalls to minimise bed and bank loss. Erosion protection measures included if required should consider soft engineering techniques.	Contractor	ES Chapter 8 Water Environment		
A5.7	Both sites	Reduce potential impacts on adjacent saltmarsh and soils during piling and earthworks.	The CEMP should include measures below: <ul style="list-style-type: none"> <li>• Limit journeys across saltmarsh;</li> <li>• Limit duration of journeys and preferably undertake above HWM mark if practicable;</li> <li>• Use ground protection mats to protect saltmarsh from plant tracks;</li> <li>• Implement pollution prevention measures to mitigate indirect impacts from sediment suspension;</li> <li>• The use of drip trays or similar at plant compounds and refuelling areas to avoid any potential for contamination from vehicle fluids.</li> </ul>	Contractor	Water Framework Directive Compliance Assessment		
A5.8	Welwick to Skeffling MR	Reduce pollutants in run-off	Pollution prevention measures (i.e. petrol interceptors/an isolated drainage system) for the car park should be considered during detailed design.	Contractor	ES Chapter 8 Water Environment		

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Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>A6</b>	<b>Archaeology</b>						
<b>A6.1</b>	Welwick to Skeffling MR	Protect archaeology and cultural heritage	Employ the services of an Archaeological Contractor to undertake tasks outlined in the Skeffling Archaeological Strategy (tasks included in this EAP).	Contractor	Skeffling Archaeology Strategy ES Chapter 13 Historic Environment		
<b>A6.2</b>	Welwick to Skeffling MR	Protect archaeology and cultural heritage	Ensure that archaeological works contribute to the Research Objectives of the Skeffling Archaeological Strategy. This will ensure that effort is concentrated on archaeologically significant sites.	Contractor	Skeffling Archaeology Strategy ES Chapter 13 Historic Environment		
<b>A6.3</b>	Welwick to Skeffling MR	Protect archaeology and cultural heritage	A Written Scheme of Investigation (WSI) will be required for archaeological surveys and mitigation and must be agreed with the Principal Archaeologist for the Humber Archaeology Partnership and also by the Historic England Regional Science Advisor prior to commencing.	Contractor	Skeffling Archaeology Strategy ES Chapter 13 Historic Environment		
<b>A6.4</b>	Welwick to Skeffling MR	Ensure that the geophysical properties of the whole site are understood and inform the design and further archaeological evaluation/mitigation requirements.	<p>Carry out a geophysical survey to cover the c.100ha area of the Welwick to Skeffling MR site not previously surveyed. Further evaluation and mitigation may be required based on the results of the geophysical survey.</p> <p>Survey should clarify the distribution of potential archaeological features and deposits across the site.</p> <p>Survey c.40ha area in centre of site with Electro-Magnetic Survey to define the extent and depth of palaeochannel and associated palaeoenvironmental deposits. This survey will overlay and compliment areas covered by gradiometer survey in 2015 – 2018.</p> <p>Weeton Beck (asset 5) requires further characterisation of its deposits. This should be undertaken using boreholes and ElectroMagnetic geophysical survey.</p>	Contractor	Skeffling Archaeology Strategy ES Chapter 13 Historic Environment		

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<b>A6.5</b>	Welwick to Skeffling MR	Protect archaeology and cultural heritage	<p>Prior to finalising the scope of further archaeological investigation, assess geophysical data to identify areas where archaeology can be preserved in situ.</p> <p>Develop a methodology for preservation in situ and agree this with the Environment Agency.</p> <p>Agree the methodology with Historic England and the Principal Archaeologist for the Humber Archaeology Partnership.</p> <p>Areas where preservation in situ cannot be delivered will require mitigation in accordance with the Skeffling Archaeology Strategy.</p>	Contractor	<p>Skeffling Archaeology Strategy</p> <p>ES Chapter 13 Historic Environment</p>		
<b>A6.6</b>	Welwick to Skeffling MR	Protect archaeology and cultural heritage	<p>Record the existing Skeffling flood defence. Additional sediment sequencing and dating should be undertaken of the embankment and of the land on the dryland of the embankment in the breach location to ascertain if there is an Anglo-Saxon land surface.</p> <p>Refer to Skeffling Archaeology Strategy for further requirements of the surveys.</p>	Contractor	<p>Skeffling Archaeology Strategy</p> <p>ES Chapter 13 Historic Environment</p> <p>Historic England, 2017: Understanding Historic Landscapes: A Guide to Good Recording Practice</p>		
<b>A6.7</b>	Welwick to Skeffling MR	Protect archaeology and cultural heritage	<p>Any areas with archaeological features that will be impacted by the excavation of the East 1 creek will require mitigation by Strip, Map and Sample (SMS) excavation.</p> <p>Following the completion of the 2018 geophysical survey additional areas of SMS excavation and requirements for geoarchaeology may be identified.</p> <p>Refer to Skeffling Archaeology Strategy for further requirements of the SMS works.</p>	Contractor	<p>Skeffling Archaeology Strategy</p> <p>ES Chapter 13 Historic Environment</p>		
<b>A6.8</b>	Welwick to Skeffling MR	Protect archaeology and cultural heritage	<p>Carry out SMS excavation for the footprint of the drainage ditch that will run along the dry side of the new embankment for the Eastern scheme.</p> <p>Refer to Skeffling Archaeology Strategy for further requirements of the SMS works.</p>	Contractor	<p>Skeffling Archaeology Strategy</p> <p>ES Chapter 13 Historic Environment</p>		

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Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>A6.9</b>	Welwick to Skeffling MR	Protect archaeology and cultural heritage	Further SMS excavation may be required in the bowl and breach locations if further archaeology is identified during the additional geophysical surveys and evaluations and preservation in situ cannot be achieved.	Contractor	Skeffling Archaeology Strategy ES Chapter 13 Historic Environment		
<b>A6.10</b>	Welwick to Skeffling MR	Protect archaeology and cultural heritage	Record Asset 32 Enclosure Complex and Asset 34 Group 2 enclosure. See ES Figures and appendices for details and location of this asset.	Contractor	Skeffling Archaeology Strategy ES Chapter 13 Historic Environment Historic England, 2017: Understanding Historic Landscapes: A Guide to Good Recording Practice		
<b>A6.11</b>	Welwick to Skeffling MR	Protect archaeology and cultural heritage	Carry out historic building recording on the Weeton Clough drainage sluice, which will be permanently removed.	Contractor	Skeffling Archaeology Strategy ES Chapter 13 Historic Environment Historic England, 2017: Understanding Historic Landscapes: A Guide to Good Recording Practice		
<b>A6.12</b>	Welwick to Skeffling MR	Protect archaeology and cultural heritage	Carry out a photographic survey of the WWII AA Battery to record the asset's current setting.	Contractor	Skeffling Archaeology Strategy ES Chapter 13 Historic Environment Historic England, 2017: Understanding Historic Landscapes: A Guide to Good Recording Practice		

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<b>A6.13</b>	Welwick to Skeffling MR	Protect archaeology and cultural heritage	Carry out a monitored strip of the satellite compound area to identify and record any assets of the Romano-British settlement. Any identified remains may require excavation.	Contractor	Skeffling Archaeology Strategy ES Chapter 13 Historic Environment Historic England, 2017: Understanding Historic Landscapes: A Guide to Good Recording Practice		
<b>A6.14</b>	Welwick to Skeffling MR	Protect archaeology and cultural heritage	Carry out strip, map and record in order to record archaeological remains at Asset 36, Group 4 medieval remains in East 1.	Contractor	Skeffling Archaeology Strategy ES Chapter 13 Historic Environment Historic England, 2017: Understanding Historic Landscapes: A Guide to Good Recording Practice		
<b>A7</b>	<b>Biodiversity</b>						
<b>A7.1</b>	Outstrays MR	Create new habitat	Develop detailed design for habitat creation and mitigation area (West 2 and adjacent to East 1). This should be in accordance with the assessment in the ES Chapter 10 and measures included in this EAP and the ES, and should be informed by stakeholder engagement and any further surveys.	Contractor	EAP ES Chapter 10 Terrestrial Biodiversity Landscape Masterplan		
<b>A7.2</b>	Both sites	Obtain necessary consents	Prior to commencing works, obtain necessary consents including Protected Species Licenses.	Contractor	ES Chapter 10 Terrestrial Biodiversity		
<b>A7.3</b>	Both sites	Minimise impacts on European designated sites	Comply with the findings and implement the recommendations of the Habitat Regulations Assessment that will support the planning applications.	Contractor	Habitat Regulations Assessment information ES Chapter 11 Marine Biodiversity		

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Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
A7.4	Both sites	Minimise impacts on breeding Marsh Harrier	<p>Carry out pre-construction marsh harrier surveys to confirm the presence or absence of breeding marsh harrier. Carry out up to five vantage point surveys between mid-April to early July.</p> <p>If Marsh Harrier are found to be present, plan West 2 works and works in the Welwick to Skeffling habitat creation and mitigation area so that no works are carried out within a 200 m exclusion zone of the nests from March to August inclusive. The most sensitive period is before the eggs have hatched, so this period must be avoided. Ongoing monitoring of Marsh Harrier breeding will be required and an adaptive works programme will need to be implemented and the exclusion zone may need to be expanded to avoid disturbance.</p> <p>If an absence of breeding can be confirmed, agreement will need to be obtained from Natural England for works to be carried out within the proposed exclusion zone between March and August inclusive. In the event that breeding subsequently commences cessation of all works within the exclusion zone during that period will take place.</p>	Contractor	CEMP Environmental Monitoring and Maintenance Plan ES Chapter 10 Terrestrial Biodiversity Habitat Regulations Assessment		
A7.5	Both sites	Avoid the spread of non-native invasive species (NNIS) and comply with legislation.	<p>Include measures to manage invasive species as part of the Environmental Monitoring and Maintenance Plan, including cleaning boots, equipment and machinery when moving from an area contaminated with non-native invasive species to elsewhere on the site, and ongoing monitoring by the ECW for new stands of invasive species.</p>	Contractor	CEMP Environmental Monitoring and Maintenance Plan ES Chapter 10 Terrestrial Biodiversity ES Chapter 11 Marine Biodiversity		



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Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>A7.6</b>	Both sites	Avoid disturbance of nesting birds, passage and over wintering birds	<p>Programme all vegetation clearance outside of the breeding bird season (March to August inclusive) if practicable.</p> <p>If vegetation clearance (including scrub clearance) is required during the breeding bird season, an ecologist should carry out checks for active nests prior to vegetation clearance and establish no-go areas if breeding birds are recorded. Phase the scrub clearance to allow birds to vacate the site.</p> <p>Plan works to reduce disturbance to birds.</p>	Contractor	CEMP ES Chapter 10 Terrestrial Biodiversity		
<b>A7.7</b>	Both sites	Avoid disturbance of sea aster mining bee at Welwick Bushes	<p>Clear vegetation from the base of the sea aster mining bee nests at Welwick Bushes at the end of July or early August before the bees emerge. Works to be overseen by ECW.</p> <p>As this is in bird breeding season checks for active bird nests will be required as per action A7.6.</p>	Contractor	ES Chapter 10 Terrestrial Biodiversity		
<b>A7.8</b>	Both sites	Minimise impacts on habitats and species.	Prepare receptor sites for any protected species requiring translocation, including reptiles, amphibians and water voles.	Contractor	ES Chapter 10 Terrestrial Biodiversity Ecology survey reports and mitigation strategies		
<b>A7.9</b>	Both sites	Protect reptile population	Implement the Reptile Mitigation Strategy including details of enhancement works to the receptor site and other areas of retained reptile habitat, and the methods to be used to translocate and displace reptiles from impacted areas.	Contractor	ES Chapter 10 Terrestrial Biodiversity Ecology survey reports and mitigation strategies		
<b>A7.10</b>	Both sites	Protect Great Crested Newt (GCN) population	Agricultural practice will continue in East 1, East 2 and West 2 until works commence. Once the final crop is harvested, ensure that vegetation does not develop, as this could improve the areas suitability for GCN during construction.	Contractor	ES Chapter 10 Terrestrial Biodiversity		
<b>A7.11</b>	Both sites	Protect badger population	Carry out pre-construction surveys to identify any new badger setts. If any are found, they may require closure under licence.	Contractor	ES Chapter 10 Terrestrial Biodiversity Ecology survey reports and mitigation strategies		

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Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>A7.12</b>	Both sites	Protect badger population	Develop and implement a badger mitigation strategy based on survey findings and monitoring. Strategy to include closure of one outlier sett and the annex sett under licence.	Contractor	ES Chapter 10 Terrestrial Biodiversity Ecology survey reports and mitigation strategies		
<b>A7.13</b>	Outstrays MR	Protect the amphibian population	Capture amphibians at Outstray Scrapes and translocate them to the newly created ponds in the West 2 habitat creation and mitigation area.  Refer to Reptile Mitigation Strategy – same methodology for amphibians.	Contractor	ES Chapter 10 Terrestrial Biodiversity Ecology survey reports and mitigation strategies		
<b>A7.14</b>	Outstrays MR	Protect water vole population	Carry out a pre-works inspection of East Clough and Newlands Drain to determine the presence or likely absence of water voles. No mitigation required if absence confirmed.  If presence is confirmed, create exclusion zones to restrict access along the top of the banks to the south of East Clough during construction.	Contractor	ES Chapter 10 Terrestrial Biodiversity Ecology survey reports and mitigation strategies		
<b>A7.15</b>	Welwick to Skeffling MR	Protect water vole population	Repeat surveys of all watercourses should be undertaken 8-12 weeks before construction begins. The survey to be undertaken 8-12 weeks in advance of construction will inform the need for a licence application. Surveys would need to take into consideration time to obtain a licence if required.	Contractor	ES Chapter 10 Terrestrial Biodiversity Ecology survey reports and mitigation strategies		
<b>A7.16</b>	Welwick to Skeffling MR	Protect water vole population	Develop and implement a Water Vole Mitigation Strategy based on findings of surveys and monitoring. Strategy to include translocation, release (with or without captive breeding) and post release site creation, maintenance and monitoring. Refer to Water vole - Concept mitigation strategy.	Contractor	ES Chapter 10 Terrestrial Biodiversity Ecology survey reports and mitigation strategies		

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Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
A7.17	Both sites	Protect water vole population	<p>Water voles should not be displaced and/or translocated onto a new site where mink are present. As mink have been recorded at Haverfield Quarry (southern pond) and in some of the adjacent drains a mink control programme is required.</p> <p>Mink trapping is proposed in and around Haverfield Quarry. Trapping should initially be seasonal trapping (in and around Haverfield Quarry) in 2018 and then an assessment should be made as to whether a re-active trapping approach may be appropriate.</p> <p>If mink keep re-occupying Haverfield Quarry an assessment should be made as to whether an increased trapping effort is required and possible whether the Welwick to Skeffling habitat creation and mitigation area is a suitable receptor site.</p>	Contractor	<p>ES Chapter 10 Terrestrial Biodiversity</p> <p>Ecology survey reports and mitigation strategies</p>		
A7.18	Welwick to Skeffling MR	Protect water vole population	Detailed drainage design and improvements for the new drain along the dry-side toe of the embankment as specified in the drainage strategy will need to permit a sensitive maintenance regime, in line with Environment Agency maintenance requirements. If possible, at least one side of the drain should remain vegetated at any one time to provide suitable habitat for water voles.	Contractor	<p>ES Chapter 10 Terrestrial Biodiversity</p> <p>Ecology survey reports and mitigation strategies</p> <p>Drainage Strategy</p>		
<b>A8</b>	<b>Materials and waste</b>						
A8.1	Both sites	Enable the safe and legal reuse of excavated material on site	Develop a Materials Management Plan (MMP) in accordance with the CL:AIRE Code of Practice. MMP to be reviewed by a CL:AIRE Qualified Independent Assessor, who will need to declare to the Environment Agency that the excavated material meets the necessary criteria for reuse.	Contractor	CL:AIRE Code of Practice		
<b>A9</b>	<b>Landscape and visual amenity</b>						
A9.1	Both sites	Minimise impacts on landscape	Develop a detailed design for landscaping across the scheme, based on the outline Landscape Masterplan.	Contractor	<p>Landscape Masterplan</p> <p>ES Landscape and Visual chapter</p> <p>Landscape and Visual Impact Assessment Appendix</p>		

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Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>A9.2</b>	Both sites	Minimise impacts on landscape	<p>Work with the Site Manager to develop a landscape maintenance and management plan for the site. This will be part of the wider Environmental Monitoring and Maintenance Plan.</p> <p>Landscape maintenance should be carried out in accordance with the current version of the standard Environment Agency NBS Landscape Specification.</p>	Contractor	<p>Environment Agency NBS Landscape Specification</p> <p>Landscape Masterplan</p> <p>ES Landscape and Visual chapter</p> <p>Landscape and Visual Impact Assessment Appendix</p>		
<b>A9.3</b>	Both sites	Minimise impacts to trees during construction	Comply with Tree Protection Plan and Arboricultural Method Statement.	Contractor	<p>Tree Protection Plan</p> <p>Arboricultural Method Statement</p>		

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A9.4	Both sites	Minimise impacts to trees pre-development	<p>Pre-commencement site meeting with client, contractor, Local Planning Authority, engineer and scheme arboriculturalist; Pegging out of construction areas, haul roads, site compounds and welfare facilities; With reference to Figures 1 and 2 of this document and in consultation with client, contractor, LPA and scheme arboriculturalist confirm trees to be removed and trees to be retained; Install protective fencing; Carry out tree removal.</p> <p>All proposed tree works should be carried out by a suitably qualified and insured contractor preferably registered with the Arboricultural Association. Tree work should be carried out in accordance with BS 3998:2010 – “Tree Work - Recommendations.” Under no circumstances shall any tree pruning be undertaken by construction personnel.</p> <p>Tree protection fencing in accordance with BS5837:2012 shall be erected prior to the commencement of any of the following activities: The delivery of any plant or materials; Demolition; Soil stripping; Construction works; Installation of utilities; and Landscape works.</p> <p>The areas covered by the tree protection fencing are known as the Construction Exclusion Zones (CEZ). The CEZ must not be compromised. The following shall apply within these areas: No mechanical excavations; No excavations by other means without the agreement of the project arboriculturist; No change in levels (except removal of grass sward using hand tools); No storage of plant or materials; No storage or handling of any chemicals including cement washings; and No vehicular access.</p> <p>Outside the CEZ, care should be taken when planning site operations to ensure that wide or tall loads or plant with booms, jibs and counterweights can operate without coming into contact with retained trees.</p> <p>Once the protective fencing and ground protection measures have been installed, but prior to the commencement of the development, a site inspection should be undertaken by either the project arboriculturalist or the LPA tree officer.</p>	Contractor	<p>Arboricultural Method Statement</p> <p>BS 3998:2010 – “Tree Work - Recommendations.”</p> <p>Tree Protection Plan</p>		
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## Outstrays to Skeffling Managed Realignment Scheme

Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>B</b>	<b>Construction</b>						
<b>B1</b>	<b>General</b>						
<b>B1.1</b>	Both sites	Minimise environmental impacts during construction	Comply with the CEMP and all associated plans outlined in Section A Pre-Construction, and update them as necessary.	Contractor	CEMP and other plans		
<b>B1.2</b>	Both sites	Minimise environmental impacts during construction	Conduct regular environmental toolbox talks to communicate the main environmental risks to workforce.	Contractor	CEMP		
<b>B1.3</b>	Both sites	Minimise environmental impacts during construction	Environmental Clerk of Works (ECW) to attend site and audit the <i>Contractor</i> against the EAP and CEMP.. Agree with NEAS officer the frequency and timing of ECW visits to site, the frequency of ECW reports, and ECW attendance at site progress meetings.	Environmental Clerk of Works (ECW)	CEMP and other plans		
<b>B1.4</b>	Both sites	Protect the environment and the health, safety and wellbeing of the local community and visitors to the area.	Prevent flooding as a result of works – comply with any flood defence consent requirements. Weather forecasts to be checked daily. Put in place appropriate procedures in case of flood event	Contractor	Flood Risk Assessment		
<b>B1.5</b>	Both sites	Protect the environment and the health, safety and wellbeing of the local community and visitors to the area.	Review any changes in design, method statements and programme against planning conditions, consenting requirements and environmental strategies/plans (eg Protected Species Plans, Traffic Management Plan). Liaise with NEAS, and with consultees if significant change.	Contractor	Environmental Statement EAP CEMP Environmental Monitoring and Maintenance Plan		

## Outstrays to Skeffling Managed Realignment Scheme

Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>B2</b>	<b>People and communities</b>						
<b>B2.1</b>	Both sites	Keep the local community informed of the Scheme's progress	Continue publishing newsletters for the local community to provide updates on progress, timings of the works and any significant changes in design. Include details of the works including activities and timing of construction traffic.	Environment Agency Stakeholder Lead	Communications Plan		
<b>B2.2</b>	Both sites	Keep the local community informed of the Scheme's progress	Continue to hold drop-in or surgery sessions for the local community to learn more about the project and ask questions.	Environment Agency Stakeholder Lead	Communications Plan		
<b>B2.3</b>	Both sites	Minimise impact on the local community and visitors to the area	Report complaints to the Environment Agency Project Manager.	Contractor	Communications Plan		
<b>B2.4</b>	Both sites	Minimise impact on the local community and visitors to the area and ensure public safety	Ensure that all site personnel are aware of the areas where the general public may be encountered and implement appropriate measures to ensure the safety of the general public during works. Maintain secure boundary fencing around works and signage to advise of construction related risks.	Contractor			
<b>B2.5</b>	Both sites	Provide opportunities for learning about construction and engineering for the local community.	Seek opportunities to involve the local community in educational events such as site visits or presentations for schools.	Contractor	ES Chapter 5 Socioeconomics and Land Use		
<b>B2.6</b>	Both sites	Provide opportunities for local people for learning about and working in the construction industry.	Seek opportunities to hire local apprentices during construction.	Contractor	ES Chapter 5 Socioeconomics and Land Use		

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Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
B2.7	Both sites	Improve public access and amenity	As included in the design, construct the new access routes and amenity facilities across the site. Install signage. Signage to be agreed with Natural England to ensure it aligns with the England Coast Path signage.	Contractor			
<b>B3</b>	<b>Traffic and transport</b>						
B3.1	Both sites	Minimise disruption to the local transport network	Comply with the CTMP and update it as necessary. Provide information to the residents so they are aware of when and where plant vehicle movements will occur.	Contractor	CTMP		
B3.2	Welwick to Skeffling MR	Minimise disruption to the local transport network	Construct access track east of Weeton as the main access route to the satellite construction compound. If required, establish a holding area on each end of the access track, which could be signal controlled to avoid conflicts on the track.	Contractor	ES Chapter 14 Traffic and Transport ES Figure 3.2 Construction Overview		
B3.3	Both sites	Minimise disruption to local road network and communities	If excavated material in front of the breach locations is contaminated and therefore needs to be removed offsite, programme these movements so that the western scheme and eastern scheme do not overlap.	Contractor	CTMP ES Chapter 14 Traffic and Transport ES Figure 3.2 Construction Overview		
B3.4	Both sites	Minimise disruption to local road network and communities	Install wheel-washing facilities at the access entrances to the site.	Contractor	CTMP ES Chapter 14 Traffic and Transport CIRIA Environmental Good Practice on Site guidance		
<b>B4</b>	<b>Air Quality</b>						
B4.1	Both sites	Minimise impact on local community, protected species and ecologically designated sites	Follow best practice measures to minimise dust formation and vehicle emissions during construction. Measures to be included in the CEMP.	Contractor	CEMP Pollution Prevention Guidance (withdrawn but still relevant), and Guidance for Pollution Prevention		
<b>B5</b>	<b>Noise</b>						



## Outstrays to Skeffling Managed Realignment Scheme

Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>B5.1</b>	Both sites	Minimise impact on local community, protected species and ecologically designated sites	Use Best Practicable Means (BPM, as defined in Section 72 of the Control of Pollution Act 1974) to reduce construction noise and vibration levels. Measures to be included in the CEMP.	Contractor	Code of practice for noise and vibration control on construction and open sites: BS 228:2009+A1:2014 CEMP		
<b>B5.2</b>	Outstrays MR	Reduce piling noise impacts on fish	Plan work at appropriate tidal phases and work above the High Water Mark (HWM) if practicable to avoid any potential for underwater noise and hence disturbance to fish.	Contractor	Water Framework Directive Compliance Assessment		

## Outstrays to Skeffling Managed Realignment Scheme

Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>B6</b>	<b>Geology, soils and hydrogeology</b>						
<b>B6.1</b>	Both sites	To ensure that material for construction of new flood banks is suitable	The design includes construction of new flood banks from site-won desiccated Tidal Flat Deposits. Keep this material covered during storage to prevent it from drying out and becoming unsuitable for use.	Contractor	Chapter 8 Geology, Soils and Hydrogeology		
<b>B6.2</b>	Both sites	Ensure that subsoil and topsoil are suitable for reuse	Comply with British Standards for subsoil and topsoil handling.	Contractor	BS8601:2013 – Specification for subsoil and requirements for use (British Standard)  BS3882:2015 Specification for Topsoil (British Standard)		
<b>B6.3</b>	Both sites	Reuse topsoil within the scheme	Cover new flood banks with topsoil (minimum of 0.3m) and ensure they become well vegetated with managed grass as per the existing flood defences.	Contractor	ES Chapter 9 Geology, soils and Hydrogeology		
<b>B6.4</b>	Welwick to Skeffling MR	To reduce risk of contamination of soils and waterbodies from historic landfill site in the Welwick to Skeffling MR	Remediate the historic landfill site, as included in the design. This should involve installing a significant clean cover system, raising the ground sufficiently so that it cannot be overtopped, even during flood events.  Land raising should be done using geotechnically suitable, clean, site won fill. The sides of this former landfill should be protected from erosion.	Contractor	ES Chapter 9 Geology, soils and Hydrogeology  General Arrangement Drawings		
<b>B6.5</b>	Both sites	Prevent contamination of soils	Implement standard site mitigation to minimise the risk of pollution/silt entering the land, water and air, and implement the Pollution Incident Response Plan.	Contractor	Environment Agency PPGs: PPG6: Working at construction and demolition sites  PPG21: Pollution incidence response planning  Pollution Incident Response Plan		

## Outstrays to Skeffling Managed Realignment Scheme

Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>B7</b>	<b>Water Environment</b>						
<b>B7.1</b>	Both sites	Minimise impacts on Winestead Drain water quality and quantity.	<p>Comply with abstraction licence for abstracting water for dust suppression if applicable.</p> <p>If abstraction is less than 20m<sup>3</sup>, implement the following measures to prevent environmental damage:</p> <ul style="list-style-type: none"> <li>• If Winestead Drain has poor water quality or quantity on the day of abstraction, consider other sources of water for dust suppression.</li> <li>• Dissolved oxygen level readings may be required (to be agreed with the Environment Agency).</li> </ul> <p>Consider other sources of water including use of existing drains for rainwater storage, water from the estuary for use on areas that will be intertidal once works are completed, and/or creation of a storage area for rainwater which could be used after construction to provide additional water to the wet grassland.</p>	Contractor	<p>Abstraction licence</p> <p>Environment Agency guidance and Minimum Technical Standards (including pollution prevention guidelines)</p> <p>ES Chapter 8 Water Environment</p>		

## Outstrays to Skeffling Managed Realignment Scheme

Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>B7.2</b>	Both sites	Prevent degradation of surface water and groundwater quality	<p>Implement the Surface Water and Sediment Management Plan.</p> <p>Implement standard site mitigation to minimise the risk of pollution/silt entering the land, water and air, and implement the Pollution Incident Response Plan. Comply with Environment Agency PPGs and CIRIA guidance.</p> <p>Comply with the conditions of any Environmental Permits.</p> <p>Measures to be included in the CEMP.</p>	Contractor	<p>CEMP</p> <p>ES Chapter 8 Water Environment</p> <p>Environment Agency (withdrawn) PPGs for guidance: PPG1: General guide to the prevention of water pollution; PPG5: Works in, near or liable to affect watercourses; PPG6: Working at construction and demolition sites; PPG21: Pollution incidence response planning; PPG23: Maintenance of structures over water</p> <p>CIRIA publications: C532 Control of water pollution from construction sites; C648: Control of water pollution from linear construction projects: technical guidance; C649: Control of water pollution from linear construction projects site guide.</p>		
<b>B7.3</b>	Both sites	Minimise impact of pollution incidents	Implement Pollution Incident Response Plan. Provide appropriate reporting of any incidents. Report incidents to the Environment Agency Hotline on 0800 80 70 60, as well as to the Project Manager.	Contractor	<p>CEMP</p> <p>Pollution Incident Response Plan</p>		
<b>B7.4</b>	Outstrays MR	To prevent degradation of water quality in Winestead Drain	Install sediment traps on the new outlet channel which will be created in West 2. These will need to be in place until wet grassland has established, and the water quality of the surface runoff improves.	Contractor	ES Chapter 8 Water Environment		

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Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>B7.6</b>	Outstrays MR	To protect structure and substrate of Winestead Drain river bed and of riparian zone	Potential measure: the new outfall channel for the pumping of water from Winestead Drain onto the wet grassland in West 2 during the operational phase may require scour protection to be installed – to be determined through detailed design.	Contractor	Water Framework Directive Compliance Assessment		
<b>B7.7</b>	Welwick to Skeffling MR	Reduce pollutants in run-off	A suitable aggregate should be chosen for surfacing of the car park and access track to reduce silt generation and aggregates which may affect the pH of the watercourses should be avoided	Contractor	ES Chapter 8 Water Environment		
<b>B8</b>	<b>Materials and waste</b>						
<b>B8.1</b>	Both sites	Enable excavated material to be reused on site.	Track movement of excavated material to be reused around the site and include in a Verification Report at the end of the material use. If, during the course of the project, there are any changes to material reuse, record this in the Materials Management Plan and detail the changes in the Verification Report. The Verification Report must be completed after material used is finished. Any changes to the Materials Management should be submitted to the Environment Agency if they request it. Keep the Verification Report on file for at least two years.	Contractor	CL:AIRE Code of Practice		
<b>B8.2</b>	Both sites	Comply with regulations, minimise material use and waste produced	Store materials and waste in accordance with standard onsite practice and in compliance with legislation. Measures to be included in CEMP.	Contractor	CEMP		
<b>B9</b>	<b>Archaeology</b>						
<b>B9.1</b>	Welwick to Skeffling MR	Protect archaeology and cultural heritage	An archaeological watching brief shall be undertaken of the drainage cut-off trench works and during stripping of the creek areas to identify and record any archaeological remains.	Contractor	Skeffling Archaeology Strategy ES Chapter 13 Historic Environment Historic England, 2017: Understanding Historic Landscapes: A Guide to Good Recording Practice		

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Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>B9.2</b>	Welwick to Skeffling MR	Minimise impacts on archaeology and cultural heritage	The excavation of the main breach and channel and other construction tasks will require a monitored strip to identify any previously unknown archaeological remains. Identified archaeological remains requiring excavation shall be agreed with the client, the Principal Archaeologist for the Humber Archaeology Partnership and also by Historic England.	Contractor	Skeffling Archaeology Strategy ES Chapter 13 Historic Environment Historic England, 2017: Understanding Historic Landscapes: A Guide to Good Recording Practice WSI		
<b>B9.3</b>	Welwick to Skeffling MR	Minimise impacts on archaeology and cultural heritage	The excavation of the compound and subsequent car park will require a monitored strip to identify any previously unknown archaeological remains. Identified archaeological remains requiring excavation shall be agreed with the client, the Principal Archaeologist for the Humber Archaeology Partnership and also by Historic England.	Contractor	Skeffling Archaeology Strategy ES Chapter 13 Historic Environment Historic England, 2017: Understanding Historic Landscapes: A Guide to Good Recording Practice WSI		
<b>B9.4</b>	Welwick to Skeffling MR	Minimise impacts on archaeology and cultural heritage	Develop and deliver a public engagement programme in consultation with the Environment Agency project team, the Principal Archaeologist for the Humber Archaeology Partnership and the Historic England Inspector of Ancient Monuments. The programme should run from 2018-2021, covering the period of pre-construction archaeological investigations and the construction period itself.	Contractor	Skeffling Archaeology Strategy ES Chapter 13 Historic Environment		
<b>B9.5</b>	Welwick to Skeffling MR	Minimise impacts on archaeology and cultural heritage	Publish archaeological findings, taking into account both academic and public audiences and relevant local, regional and national research strategies.  Consider the archive deposition and ongoing access to digital material in conjunction with the Humber Historic Environment Record, the OASIS scheme and the Archaeological Data Service.	Contractor	Skeffling Strategy ES Chapter 13 Historic Environment		

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Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>B10</b>	<b>Biodiversity</b>						
<b>B10.1</b>	Both sites	Minimise impact from construction on the Humber Estuary SSSI	Minimise works footprint within the SSSI where possible, including the piling works at Welwick Bushes. Welwick Bushes piling work will be confined to the footprint of the current embankment, within the fence boundary either side of the embankment.	Contractor	ES Chapter 10 Terrestrial Biodiversity		
<b>B10.2</b>	Outstrays MR	Minimise impact from construction on the Humber Estuary SSSI	If required, construct a temporary access track (e.g. aluminium) through Haverfield Quarry to minimise the footprint of the works on the SSSI. Temporary access to predominantly follow route of existing farm access track (not suitable for construction due to radius of bends).	Contractor	ES Chapter 10 Terrestrial Biodiversity		
<b>B10.3</b>	Both sites	Minimise impacts on breeding marsh harrier in Haverfield Quarry	As specified in action A7.5, ongoing monitoring of Marsh Harrier breeding is required during construction and an adaptive works programme will need to be implemented. Timing of works and the size of the exclusion zone may need to be modified to avoid disturbance.  Piling works are proposed to take place in mid-summer, ideally mid-July, to avoid the most important Marsh Harrier breeding months while also avoiding impacts on coastal waterbirds.	Contractor	ES Chapter 10 Terrestrial Biodiversity		
<b>B10.4</b>	Outstrays MR	Minimise disturbance to Marsh Harrier in Haverfield Quarry	Concept design proposal: create additional nesting habitat (reedbed) away from the public access route. Field B has been identified as a potential expansion site for the breeding Marsh Harrier. A new reedbed is proposed adjacent to the Haverfield Quarry Ponds (Unit 151) to increase the carrying capacity of the site for breeding Marsh Harrier.  Other reedbeds (treatment wetlands) are proposed near the Winestead Drain abstraction areas. The primary focus is to improve water quality on the wet grassland, but again these could facilitate the expansion of breeding marsh harriers and support other reedbed species.	Contractor	ES Chapter 10 Terrestrial Biodiversity  Landscape masterplan		

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Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>B10.5</b>	Outstrays MR	Protect otter population	<p>Otters have been recorded in Haverfield Quarry between March and August.</p> <p>Site workers will be informed as to the presence of otter and the safeguards in place to avoid disturbance during construction. No works will be carried out in and around (within 30m) the ponds at Haverfield Quarry.</p> <p>Where works are required within 30m of the ponds, works will be carried out under licence, to ensure compliance with legislation. The licence will include safeguards to avoid disturbance impacts, this could include avoiding works during the summer, as this coincides with the period where otter have been activity recorded in Haverfield Quarry.</p> <p>Keep construction equipment, materials and site cabins over 100m away from pathways that are likely to be used by otter (Oxlands Drain, Welwick Drain and Soak Dyke) and the ponds at Haverfield Quarry.</p> <p>Where works are required within 100m of these pathways, no works will be carried out within 100m of at least one other pathway into Haverfield Quarry the same time, maintaining at least one commuting route into and out of Haverfield Quarry Ponds, at any one time.</p> <p>No night working to be carried out in West 2.</p>	Contractor	ES Chapter 10 Terrestrial Biodiversity		
<b>B10.6</b>	Outstrays MR	Mitigate the loss of fixed dune grassland due to piling and works footprint at Welwick Bushes, and provide enhancement.	<p>Concept design proposal: expose the sandy substrate Field C in the West 2 habitat creation and mitigation area by re-distributing the topsoil as bunds and islands across Field C. Move excess sand from the scheme to this field and also mix with substrate along the boundary of Haverfield Quarry (southern boundary of Welwick to Skeffling habitat creation and mitigation area) to provide a buffer and expansion area for the fixed dune grassland habitat.</p>	Contractor	ES Chapter 10 Terrestrial Biodiversity Landscape masterplan		



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Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>B10.7</b>	Outstrays MR	Mitigate for loss of scrub within Outstray Scrapes and Haverfield Quarry LWS	<p>Concept design proposal: up to 2 ha of scrub planting in the West 2 habitat creation and mitigation area.</p> <p>Scrub planting should be:</p> <ul style="list-style-type: none"> <li>• locally sourced (as per guidance in Forestry Commission Practice note FCPN008);</li> <li>• promote a mixed aged stand of scrub; and</li> <li>• promote a patchy distribution with habitat mosaics.</li> </ul>	Contractor	<p>ES Chapter 10 Terrestrial Biodiversity</p> <p>Forestry Commission Practice note FCPN008</p> <p>Landscape masterplan</p>		
<b>B10.8</b>	Outstrays MR	Mitigate the loss of stone parsley ( <i>Sison amomum</i> )	Carry out a survey of the ABP Welwick embankment (behind the existing managed realignment site) prior to the works in B10.9 (turf stripping) commencing to determine the presence or absence of stone parsley ( <i>Sison amomum</i> ). If stone parsley is present this will be translocated under ecological supervision to the new embankment.	Contractor	ES Chapter 10 Terrestrial Biodiversity		
<b>B10.9</b>	Both sites	Mitigate the loss of neutral semi-improved grassland along the western and eastern embankments to be removed, which is barn owl foraging habitat and reptile habitat.	<p>Turf to be stripped from existing embankment and translocated to the new embankment (as per outline Reptile Mitigation Strategy).</p> <p>Supplement the stripped turf with additional seeding to cover the additional lengths of new embankment. Seed to be sourced from a locally based supplier.</p>	Contractor	<p>ES Chapter 10 Terrestrial Biodiversity</p> <p>Ecology reports and mitigation strategies.</p>		

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Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>B10.10</b>	Both Sites	Enhance neutral semi-improved grassland across the scheme	<p>Concept design proposal: Up to 15 ha of arable field to be reverted to species rich grassland in the West 2 habitat creation and mitigation area, and up to 7 ha of arable field to be reverted to species rich grassland in the Welwick to Skeffling habitat creation and mitigation area.</p> <p>The grassland should be designed to benefit target faunal receptors (including patches or strips of rough grassland for barn owls and reptiles, and log/brush piles and earth banks for reptiles) and promote a species-rich sward not a sown agricultural grassland. It should be naturally regenerated.</p> <p>Allowing the field to germinate offers the opportunity to assess the soil's seed bank. If the establishing vegetation is unsuitable and there is little opportunity for suitable species to colonise, the field can be re-worked and seed sown.</p>	Contractor	ES Chapter 10 Terrestrial Biodiversity Reptile Mitigation Strategy Landscape masterplan		
<b>B10.11</b>	Welwick to Skeffling MR	Provide a variety of grassland habitats for mitigation and enhancement	<p>Concept design proposal: Create new cut-off trenches to the east and west of the Welwick to Skeffling habitat creation and mitigation area to reduce drainage function across the site and provide a mosaic of different grassland communities, especially given that this site has a noticeable slope from north to south.</p>	Contractor	ES Chapter 10 Terrestrial Biodiversity Landscape masterplan		
<b>B10.12</b>	Outstrays MR	Mitigate the loss of marshy grassland from Outstray Scrapes (West 1), and provide enhancement.	<p>Concept design proposal: approximately 28 ha of wet grassland to be created in West 2 habitat creation and mitigation area (arable reversion to wet grassland).</p> <p>Wet grassland to include creation of an open landscape (at least 19ha) to act as a high tide roost to support populations of redshank, knot and dunlin is an Environment Agency scheme objective. Targets will also be set to promote SPA birds. This will include:</p> <ul style="list-style-type: none"> <li>• maintain a mosaic of sward heights and water depths, through water level management and a combination of targeted grazing and if necessary mowing; and</li> <li>• maintain an open landscape with wide vistas for adult birds to detect approaching predators.</li> </ul>	Contractor	ES Chapter 10 Terrestrial Biodiversity Landscape masterplan		

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Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>B10.13</b>	Both sites	Mitigate the loss of ponds and amphibian and Great Crested Newt habitat, and provide enhancement.	<p>Concept design proposal: up to 14 ponds in Fields A and B, 10 dune slack pools in Field C and 2 lagoons with islands in Field C, to be created in the West 2 habitat creation and mitigation area. Up to 7 ponds to be created in the Welwick to Skeffling habitat creation and mitigation area. The two ephemeral ponds along the two defunct drainage ditches in the Welwick to Skeffling habitat creation and mitigation area will be widened and deepened to create two larger ponds.</p> <p>These will be variety of designs (size and shape) to benefit the target ecological receptors.</p> <p>The design and construction will be based on the guidance set out in the Great Crested Newt Mitigation Guidelines (English Nature, 2001), the Water Vole Mitigation Handbook (Dean et al, 2016) and will follow the range of guidance documents provided from the Freshwater Habitats Trust website.</p>	Contractor	<p>ES Chapter 10 Terrestrial Biodiversity</p> <p>Section 8.3.1 of the Great Crested Newt Mitigation Guidelines (English Nature, 2001)</p> <p>Section 4.4 of the Water Vole Mitigation Handbook (Dean et al, 2016)</p> <p>Freshwater Habitats Trust website</p> <p>Landscape masterplan</p>		
<b>B10.14</b>	Both sites	Protect Great Crested Newt population	Where required, works will be carried out under licence, to ensure compliance with legislation.	Contractor	ES Chapter 10 Terrestrial Biodiversity		
<b>B10.15</b>	Outstrays MR	Mitigate the loss of running water and provide enhancement.	Concept design proposal: up to 2 km of new channel and up to a further 2 km of linear scrapes will be created in the West 2 habitat creation and mitigation area. Detailed specification for the design of each drain will be produced to benefit the target receptors.	Contractor	<p>ES Chapter 10 Terrestrial Biodiversity</p> <p>Landscape masterplan</p>		
<b>B10.16</b>	Outstrays MR	Mitigate the loss of hedgerow in West 1 and enhance ecological value	<p>Additional planting and ongoing management to improve the hedgerow across northern boundary of West 1 where possible. Connect the large gaps that currently exist along this hedgerow where possible.</p> <p>This will also provide badger mitigation.</p>	Contractor	ES Chapter 10 Terrestrial Biodiversity		
<b>B10.17</b>	Welwick to Skeffling MR	Mitigate the loss of hedgerow in the eastern site and enhance ecological value	<p>Concept design proposal: additional planting and ongoing management to improve the hedgerow within the Welwick to Skeffling habitat creation and mitigation area. Connect the large gaps that currently exist along this hedgerow.</p> <p>Potential for a new hedgerow along the boundary of the site in East 2 and East 3 where possible. This will provide improved wildlife connectivity (including for badgers).</p>	Contractor	<p>ES Chapter 10 Terrestrial Biodiversity</p> <p>Landscape masterplan</p>		

## Outstrays to Skeffling Managed Realignment Scheme

Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>B10.18</b>	Both sites	Prevent spread of non-native invasive species (NNIS) and comply with legislation.	Implement measures in the Environmental Monitoring and Maintenance Plan to avoid spread of NNIS. Undertake an Ecological Clerk of Works to ensure any new stands of invasive species are identified and dealt with in line with best practice and that they are not spread by the works.	Contractor ECW	CEMP Environmental Monitoring and Maintenance Plan ES Chapter 10 Terrestrial Biodiversity		
<b>B10.19</b>	Both sites	Mitigate loss of Marsh Harrier foraging habitat	Concept design proposal: create varied and structurally diverse habitats in West 2 and adjacent to East 1, as part of the habitat creation and mitigation areas. This is likely to increase the prey availability and available nesting habitat.	Contractor	ES Chapter 10 Terrestrial Biodiversity Landscape masterplan		
<b>B10.20</b>	Outstrays MR	Minimise impacts on barn owl	Do not carry out any works at night.	Contractor	CEMP		
<b>B10.21</b>	Both sites	Minimise impacts on the reptile population	As set out in the Reptile Mitigation Strategy, grassy mounds to be created along the line of the old flood embankments to create high tide refuges for reptiles foraging on the saltmarsh.	Contractor	Reptile Mitigation Strategy		
<b>B10.22</b>	Both sites	Minimise impacts on Badger population	Cover up or fence any deep excavations or trenches, or provide an escape route from these excavations to avoid badgers falling in and becoming trapped.	Contractor	ES Chapter 10 Terrestrial Biodiversity Ecology reports and mitigation strategies.		
<b>B10.23</b>	Both sites	Minimise impacts on Badger population	Use fencing to enforce a 30m exclusion zone around any known setts that will not be closed under licence or where disturbance impacts are anticipated.	Contractor	ES Chapter 10 Terrestrial Biodiversity Ecology reports and mitigation strategies.		
<b>B10.24</b>	Both sites	Minimise impacts on Badger population	Continually monitor the site during construction for badger activity.	Contractor	ES Chapter 10 Terrestrial Biodiversity Ecology reports and mitigation strategies.		
<b>B10.25</b>	Both sites	Minimise impacts on sea aster mining bee	Create exclusion zones around sea aster mining bee nests during construction. These will demarcate the location of the nests and ensure the entrances are not blocked or damaged.	Contractor	ES Chapter 10 Terrestrial Biodiversity Ecology reports and mitigation strategies.		

## Outstrays to Skeffling Managed Realignment Scheme

Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>B10.26</b>	Welwick to Skeffling MR	Minimise impacts on Sea aster mining bee and enhance habitat	<p>Concept design proposal: the area of dune grassland in Field C should include:</p> <ul style="list-style-type: none"> <li>• South-facing raised banks using material scraped from sites with a high sand content;</li> <li>• Undulating surfaces with pits and mounds to provide a range of microhabitats and microclimates that mimic their natural habitat;</li> <li>• Areas of bare ground, which will be maintained cutting the vegetation and scraping back to bare earth – this will help suppress dominant vegetation such as coarse grasses.</li> </ul>	Contractor	<p>ES Chapter 10 Terrestrial Biodiversity</p> <p>Ecology reports and mitigation strategies.</p> <p>Landscape masterplan</p>		
<b>B10.27</b>	Outstrays MR	Minimise impacts on Brown Hare	No night working will be carried out in West 2.	Contractor	ES Chapter 10 Terrestrial Biodiversity		
<b>B10.28</b>	Welwick to Skeffling MR	Minimise impacts on Water vole	During construction works the ECW should check for burrows immediately prior to any destruction of ditches.	ECW	ES Chapter 10 Terrestrial Biodiversity		
<b>B10.29</b>	Outstrays MR	Minimise impact on nesting birds	Install up to 20 schwegler nest boxes in Haverfield Quarry Local Wildlife Site to provide temporary nesting bird habitat while replacement scrub planting is maturing.	Contractor	ES Chapter 10 Terrestrial Biodiversity		
<b>B10.30</b>	Both Sites	Minimise impacts on birds linked to the Humber Estuary Special Protection Area/Ramsar Site	<p>Construction works will be undertaken during the spring and summer (April to the end September) to avoid the peak overwintering season.</p> <p>Most disturbing activities (specifically bank lowering, piling and breach works) will be restricted further. Bank lowering and breach works will be restricted to April – June to avoid disturbance to coastal waterbirds and piling should be carried out in mid-summer, ideally mid-July, to avoid the most important months of the Marsh Harrier nesting season while also minimising disturbance to coastal waterbirds.</p> <p>Plant screening vegetation throughout the site to reduce the visual disturbance of humans visiting the site. Place bird hide to minimise visual disturbance from the presence of humans.</p>	Contractor	<p>Habitat Regulations Assessment</p> <p>ES Chapter 11 Marine Biodiversity</p> <p>Landscape masterplan</p>		
<b>B10.31</b>	Both sites	Minimise the impact of visitors on protected bird species	Install fencing along the wet side toe of the embankment to prevent access to the intertidal zone.	Contractor			

## Outstrays to Skeffling Managed Realignment Scheme

Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>B10.32</b>	Outstrays MR	Improving aquatic habitat in West 2	Potential measure: areas compacted by construction plant could also be lightly cultivated as compacted soils can inhibit plant colonisation.	Contractor	Water Framework Directive Compliance Assessment		
<b>B11</b>	<b>Landscape and visual amenity</b>						
<b>B11.1</b>	Both sites	Minimise impacts on visual amenity	Hedgerow planting and shrub planting as described in the Biodiversity section above. Also plant hedgerow around the new car park south of Weeton.  Include scattered tree planting along drains for both sites.	Contractor	ES Landscape and Visual chapter  Landscape and Visual Impact Assessment Appendix		
<b>B11.2</b>	Both sites	Minimise impacts to trees during construction	Comply with Tree Protection Plan and Arboricultural Method Statement.	Contractor	Tree Protection Plans Arboricultural Method Statement		
<b>B11.3</b>	Both sites	Minimise visual impacts during construction	Use standard practice measures to minimise the visual effects of artificial lighting and construction activities during construction. Include measures in the CEMP. Measures to include screening of construction compounds, use of downward directional lighting, and avoidance of night-time lighting.	Contractor	CEMP		
<b>B11.4</b>	Both sites	Minimise impacts to trees during development /construction	Establish site compound - location for cabins, car park and the storage of materials.  Temporary haul routes, site compounds, including mobile WCs and all their service connections, are to be positioned clear of the RPAs of retained trees. The site poster 'Common causes of tree death' (see Appendix 4 of Arboricultural Method Statement) shall be posted in each site cabin.  The construction of new access tracks within the RPAs must be installed using a 'no dig' construction method as described in Arboricultural Method Statement.  Carry out initial ground works and services installations.  Undertake main development avoiding disturbance, and chemical run-off and spillage within RPAs. No building materials shall be stored within RPAs of retained trees.	Contractor	Arboricultural Method Statement		

## Outstrays to Skeffling Managed Realignment Scheme

Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>B12</b>	<b>Physical processes and hydrodynamics</b>						
<b>B12.1</b>	Both sites	Minimise direct disturbance effects to the estuary processes and hydrodynamics.	Where possible, undertake breaching works at lower states of the tide to reduce interaction with the estuary.	Contractor	ES Chapter 7 Physical Processes and the Hydrodynamic Environment		
<b>C</b>	<b>Post-construction</b>						
<b>C1</b>	<b>General</b>						
<b>C1.1</b>	Both sites	Comply with all necessary permissions and consents	Submit any final records associated with permissions and consents (TBC with further consultation)	Environment Agency	Permissions, consents and planning conditions		
<b>C1.2</b>	Both sites	Restore the site to a good condition	Reinstate the site including removing compounds and access tracks and construction hoarding.	Contractor	Environment Agency guidance  CIRIA Environmental Good Practice on Site guidance		
<b>C1.3</b>	Both sites	Protect the environment and the health, safety and wellbeing of local community.	Complete final EAP and site audits, share lessons learnt/good practice.	Contractor and Environment Agency	CIRIA Environmental Good Practice on Site guidance  EAP		
<b>C1.4</b>	Both sites	Maintain the site in good condition	Carry out site management activities, including landscape maintenance, path maintenance, car park maintenance and vegetation control, in accordance with Environmental Monitoring and Maintenance Plan.	Site Manager	Environmental Monitoring and Maintenance Plan		
<b>C2</b>	<b>People and communities</b>						
<b>C2.1</b>	Both sites	To develop good relationships with local community and minimise disruption	Inform landowners, businesses and local residents that the works are complete.	Environment Agency Stakeholder Lead	Communications Plan		

## Outstrays to Skeffling Managed Realignment Scheme

Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
C2.2	Both sites	To develop good relationships with local community and minimise disruption	Complete final consultation/agreements as set out in the Communications Plan.	Environment Agency Stakeholder Lead	Communications Plan		
C2.3	Both sites	To develop good relationships with local community and minimise disruption	Pass on any complaints or issues received from the general public to the Environment Agency.	Contractor	Communications Plan		
C2.4	Welwick to Skeffling MR	Improve public access to site	At the end of the construction phase of the Welwick to Skeffling MR, convert construction compound south of Weeton into new car park for general public, with space for HGVs for the East 2 intervention works (if required).	Contractor	Access Drawings Car Park Drawings		
C2.5	Both sites	Improve public access to site	Open the public access routes.	Contractor			
C2.6	Both sites	Improve public access to site	Notify Natural England that the access routes are open (they will form part of the England Coast Path).	Environment Agency			
<b>C3</b>	<b>Traffic and Transport</b>						
C3.1	Outstrays MR	Maintain condition of the existing road network	Carry out a post-construction condition survey of the local road network, including Outstray Road (extent of survey to be agreed with ERYC). Rectify any defects that have occurred as a result of the construction works.	Contractor	CTMP ES Chapter 14 Traffic and Transport		
<b>C4</b>	<b>Biodiversity</b>						
C4.1	Outstrays MR	Minimise impact on habitats and protected species	Reinstate working areas after construction to pre-construction conditions, including construction compound at Outstrays Farm and access tracks.	Contractor	CEMP		



## Outstrays to Skeffling Managed Realignment Scheme

Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>C4.2</b>	Outstrays MR	Maintain habitats and meet site targets	Monitor and maintain fixed dune grassland in West 2 habitat creation and mitigation area as it is reinstated through natural regeneration for up to 3 years, and remove undesirable species.	Site Manager	ES Chapter 10 Terrestrial Biodiversity Environmental Monitoring and Maintenance Plan		
<b>C4.3</b>	Both sites	Protect Barn Owl population	Reinstate barn owl boxes that are currently damaged/defunct after construction.	Contractor			
<b>C4.4</b>	Both sites	Protect Barn Owl population	Install additional barn owl boxes: <ul style="list-style-type: none"> <li>• 1 in the West 2 habitat creation and mitigation area</li> <li>• 1 in the Welwick to Skeffling habitat creation and mitigation area</li> <li>• 1 on a retained section of Burstall Bank (eastern site).</li> </ul>	Contractor	ES Chapter 10 Terrestrial Biodiversity		
<b>C4.5</b>	Outstrays MR	Minimise disturbance to Marsh Harrier and Otter in Haverfield Quarry	Ensure that access is restricted to designated bridleway and permissive access route only in West 2 habitat creation and mitigation area.  Maintain scrub along the public access route and the edge of the Haverfield Quarry ponds, to deter people accessing the edge of the pond. If required, fencing could be installed along the footpath as a further barrier between the ponds and the footpath. The fencing should deter human access but allow the movement of other mammals (badger and otter). Reinstate the bird hide to avoid public access to edge of ponds.	Site Manager	ES Chapter 10 Terrestrial Biodiversity ES Figure 6.2 Access and Amenity Plan		
<b>C4.6</b>	Welwick to Skeffling MR	Minimise disturbance to Marsh Harrier in Haverfield Quarry	Ensure that public access is restricted to designated bridleway only along the edge of the Welwick to Skeffling habitat creation and mitigation area.	Site Manager	ES Chapter 10 Terrestrial Biodiversity ES Figure 6.2 Access and Amenity Plan		
<b>C4.7</b>	Both sites	Minimise disturbance to sea aster mining bee	Install notice boards at the entrances to Welwick Bushes to inform people about the bee colony and the importance of keeping to the designated footpath.	Contractor	ES Chapter 10 Terrestrial Biodiversity		

## Outstrays to Skeffling Managed Realignment Scheme

Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>C4.8</b>	Both sites	Ensure ecological targets of scheme are met and habitats are maintained	Carry out monitoring and management as per Environmental Monitoring and Maintenance Plan.	Site Manager	Environmental Monitoring and Maintenance Plan		
<b>C4.9</b>	Outstrays MR	Reduce impact pumping water from Winestead Drain.	Potential measure: establish vegetation management plan for Winestead Drain to clear the drain but also to leave aquatic and marginal vegetation for the winter to improve the over winter survival of fish populations in the watercourse.	Contractor	Water Framework Directive Compliance Assessment		
<b>C4.10</b>	Welwick to Skeffling MR	Protect water vole population	For as much of the drain as possible, implement a sensitive maintenance regime for the new drain along the dry-side toe of the embankment in line with Environment Agency maintenance requirements. If possible, at least one side of the drain should remain vegetated at any one time to provide suitable habitat for water voles.	Contractor	ES Chapter 10 Terrestrial Biodiversity Ecology survey reports and mitigation strategies Drainage Strategy		
<b>C4.11</b>	Both Sites	Minimise impacts on birds linked to the Humber Estuary Special Protection Area/Ramsar Site	Ensure that public access is restricted to designated areas and that fencing prevents public access to the intertidal zone by humans and dogs.  Monitor the coastal waterbirds as per the Environmental Monitoring and Maintenance Plan.	Site Manager	Habitat Regulations Assessment ES Chapter 11 Marine Biodiversity ES Figure 6.2 Access and Amenity Plan Environmental Monitoring and Maintenance Plan		
<b>C5</b>	<b>Landscape and visual amenity</b>						
<b>C5.1</b>	Both sites	Ensure andscape is maintained	Implement the landscape maintenance and management plan as part of the Environmental Monitoring and Maintenance Plan.  Landscape maintenance should be carried out in accordance with the current version of the standard Environment Agency NBS Landscape Specification.	Site Manager	Environment Agency NBS Landscape Specification Environmental Monitoring and Maintenance Plan		

## Outstrays to Skeffling Managed Realignment Scheme

Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>C5.2</b>	Both sites	Minimise impacts to trees post-development	Carry out soft landscaping. For all soft landscape works, excavations and ground preparation within these areas is to be carried out using hand tools only in a sensitive manner to ensure root damage is kept to a minimum. At no time shall a rotavator be used within any of the protected areas to prepare the soil.  Remove protective fencing.	Contractor	Arboricultural Method Statement		
<b>C6</b>	<b>Water environment</b>						
<b>C6.1</b>	Outstrays MR	Reduce impact of water abstraction on WFD elements of Winestead Drain.	Pumping will only be required in winter to wet up the wet grassland in the West 2 habitat creation and mitigation area. An abstraction licence (to be applied for) will establish a pumping regime based on hands off flow or level in the drain. No water to be extracted from the drain if it causes temperature issues to be exacerbated. No water to be extracted from the drain if it causes BOD or dissolved oxygen issues to be exacerbated.  Consider methods to oxygenate water in Winestead Drain. No water to be extracted from the drain if it causes salinity issues to be exacerbated. No water to be extracted from the drain if it causes acidity issues to be exacerbated. No water to be extracted from the drain if it causes nutrient issues to be exacerbated.  Tackle pollution at source (agricultural management) – this would require the agreement of landowners.  Establish vegetation management plan for Winestead Drain to clear the drain but also to leave aquatic and marginal vegetation for the winter to improve the over winter survival of fish populations in the watercourse.	Contractor	Water Framework Directive Compliance Assessment		
<b>C6.2</b>	Outstrays MR	Reduce nitrate pollution in Winestead Drain	Agricultural management practices should be discussed with landowners to reduce nitrate pollution into Winestead Drain.	Contractor	Water Framework Directive Compliance Assessment		
<b>C6.3</b>	Welwick to Skeffling	Enhance ecology	Detailed drainage design and management arrangements are still to be completed.  Potential measure: new drainage strategy could selectively manage vegetation to allow for improved riparian habitat.	Contractor	Water Framework Directive Compliance Assessment		

## Outstrays to Skeffling Managed Realignment Scheme

Ref. No.	Applicability	Objective	Action	Responsibility	Reference to further information	Progress and Further Action	Sign off and date
<b>C6.4</b>	Welwick to Skeffling	Educate landowners	Agricultural management practices would be discussed with landowners to reduce nitrate pollution into Fosse Drain / Skeffling Drain.	Environment Agency	Water Framework Directive Compliance Assessment		

## Outstrays to Skeffling Managed Realignment Scheme

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### Environmental audit record

Project		Project ref.:	
Project Manager:		NEAS EPM:	
Location		Grid reference	

### Site Visit Audit Details

Visit During/Post Construction:		Date of Visit:		Time of Visit:	
Audit Officer:		Photos taken (y/n):		Referenced to Pre-Photos(y/n):	

Does the Site Supervisor have an up to date copy of the EAP?      Yes / No

### General comments

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**Appendix 2: Extracts from relevant decision-making documents for Sizewell C in relation to the differences between the Applicant and the MMO**

**The Sizewell C Project - Extract of Decision Letter from the Secretary of State dated 20 July 2022 (paragraphs 9.1.10 and 9.1.10.1)**

England and the drainage authority. The amendments also include a requirement to provide details of the approved surface and foul water drainage system to SCC and to obtain endorsement from SCC for the approved management and maintenance arrangements and means of pollution control. These amendments reflect the changes proposed by the Applicant in April 2022, in response to the Secretary of State's consultation on 31 March 2022. Minor consequential amendments (to refer to the drainage strategy) have been made to requirement 23 (main development site: highway works) and requirement 35 (highway works).

- 9.1.9.2 Amendments to requirement 6 (project wide: emergency planning) to include consultation with the ONR, Sizewell Emergency Planning Consultative Committee or Suffolk Resilience Forum, to remove the requirement to refer the agreement to the ONR in some circumstances and to remove the option to implement the emergency plan in accordance with the ONR decision, if relevant. This reflects the drafting submitted by the Applicant as a post-examination submission on 24 February 2022, which was agreed by the ONR, SCC and ESC.

**9.1.10 Amendments to Schedule 21 (deemed marine licence under Part 4 (Marine Licensing) of the Marine and Coastal Access Act 2009):**

- 9.1.10.1 Pursuant to the ExA's recommendation at Appendix E to the ExA's Report, the Secretary of State has considered the determination periods under Schedule 21. The Secretary of State agrees with the ExA views in relation to the appeal mechanism as reflected in the recommended order. In the absence of an appeal mechanism for the deemed marine licence in the recommended Order, takes the view that the term "determination date" and the various determination periods referred to in the deemed marine licence have no effect. As such, the Secretary of State has concluded that all references to the determination date and the determination periods should be omitted.**

- 9.1.11 Amendments to the works described at paragraph 4(2)(a) (Work No. 1A(I)) (pursuant to the Applicant's response to the Secretary of State's consultation on 31 March 2022) and 4(2)(n) (Works No. 2O and 2P) (pursuant to the Applicant's response to the Secretary of State's consultation on 25 April 2022).

- 9.1.12 Replacement of "July" with "August" in paragraph 36(3) (beach landing facility and temporary marine bulk import facility) when setting the dates between which impact piling cannot commence for Work No. 1A(I) and Work No. 1A(aa) (pursuant to the Applicant's response to the Secretary of State's consultation on 31 March 2022).

- 9.1.13 Amendments to Schedule 23 (certified documents):

- 9.1.14 Inclusion of the first and second deeds of variation to the Deed of Obligation, dated 13 April 2022 and 6 May 2022 (respectively).

- 9.1.15 Pursuant to the ExA's recommendation at Appendix E to the ExA's Report, the Secretary of State verified the document references where there appeared to be discrepancies in the Examination Library. The Secretary of State has



**The Sizewell C Project - Extract of Examining  
Authority's Report dated 25 February 2022  
(paragraphs 9.1.28 to 9.1.36)**

lateral limits of deviation became governed by the Approved Plans rather than the Parameter Plans. In the case of ancillary structures within the other works the limits became defined by any authorisation under Req 13 (as it then was, now 22). That requirement uses the Parameter Plans to limit the ancillary structures. Finally Revision 11 adds Work No 17 (which had been accidentally omitted) to the list of Works governed solely by Approved Plans and approvals pursuant to requirements.

- 9.1.27. Remembering that the Approved Plans are within the limits on the Parameter Plans the net result is that the limits of deviation are confined to what has been subject to EIA and that any variations must pass the test in paragraph 1 of Schedule 2 of not giving rise to any materially new or different significant environmental effects to those assessed in the environmental information. The ExA is satisfied with this position.
- 9.1.28. The MMO has concerns about time limits being imposed on their DML decision making and the creation of an appeals process against their decision or failure to decide. In their [RR-0744] they sought instead that disputes over approvals pursuant to the DML should be dealt with by way of judicial review. We observed in ExQ1 DCO.1.124 that the norm in the case of regulatory approvals is for there to be an appeal process on the merits before a right to review on the law is available. Whilst the PA2008 does not contain such a process for approvals pursuant to requirements it is now common for an appeal process for those to be included in DCOs. From an early stage the dDCO has had a process for DML appeals which is separate from the requirements appeals process. They are, in Revision 11 of the dDCO, Schedules 22 and 25 respectively.
- 9.1.29. All submissions on this matter concentrated on the principle rather than on the detail of Schedule 22.
- 9.1.30. The MMO's case [REP3-070a], [REP6-039], [EV-142i],[REP8-164] is that appeals are already available in the form of an escalated internal procedure and judicial review. The appeal process the Applicant proposes would be inconsistent with the statutory scheme and would be unique to this Applicant. The MMO is open and transparent. The scale and complexity of NSIPs does not create an exception and the discharge of conditions on over 130 DCOs has been handled without a special appeal process; the MMO was not aware of any disputes in relation to those. In addition, the decisions on the DCOs for Norfolk Vanguard, Hornsea Three have upheld the MMO's position. The Norfolk Vanguard ExA observed that "*There is no substantive evidence of any potential delays to support an adaptation to existing procedures to address such perceived deficiencies*". The Hornsea Three ExA commented that the scale and complexity of matters approved under DMLs is a strong indicator that they should be determined by the appropriate statutory body.
- 9.1.31. In its post-ISH1 written submissions [REP6-039] the MMO added that it disagreed with determination dates for its decision making. At [EV-142i] it added that it understood the Applicant's wish for certainty around the timing of decisions it stressed that it does not delay determining applications unnecessarily.

- 9.1.32. The Applicant put its case at ISH1 [REP5-106] and also in response [REP8-128] to the MMO's written submission to ISH14 [EV-421i] that the norm is to have an appeal mechanism for regulatory approvals before a review on the law becomes available. The purpose of the appeal process it suggested is to address non-decision, delay and the risk of impediment to delivery for an interminable length of time. Judicial review is not an adequate remedy on a merits issue. The DCO is a single statutory authorisation bringing together the permissions needed and Parliament has decided that NSIPs do not have to be authorised pursuant to a different regime outside the Planning Act 2008. There is no difference between the DML and the rest of the DCO in terms of the public interest and the subject matter of the conditions in the DML and requirements in the DCO is not intrinsically different – indeed in the case of the Coastal Processes Monitoring and Mitigation Plan (CPMMP) they are the same.
- 9.1.33. On the point of the Norfolk Vanguard and Hornsea Three cases the Applicant drew attention to the fact the SoS is not bound by precedent and each case must be decided on its own facts. There is no need to evidence any potential delays because the potential is obvious – there is no ability to break a deadlock. The MMO resists any time limit on its decision making, but undue delay is not a ground for judicial review. The Applicant rejected the relevance of the decision in Hornsea Three as it said the ExA in that case did not appear to have grappled with the case being made for the Applicant in this case.
- 9.1.34. It also drew attention to the fact that Parliament had not provided a mechanism for appeals of requirements under DCOs yet such a mechanism is now added as standard. The whole project relies on a defined programme and construction schedule. The potential knock-on delays to other elements of the SZC project from a delay to an offshore element would be very significant. Aside from potential delays to the construction and delivery of an operational Sizewell C, the costs associated with such delays could be very significant given the need to pre-book very large vessels of limited availability or progress other inter-related elements on the MDS (10s to 100s millions of pounds). The MMO had acknowledged the problems of delay but simply asserted that it does not delay unnecessarily.
- 9.1.35. In the ExA's view, there should be determination periods in the DML. The Applicant needs to know by when it can expect a decision. We recommend amendments to provide three or six months, having regard to complexity. In relation to the bigger question of the appeal mechanism in Sch 22 we hear the Applicant's plea and we recognise that neither we nor the SoS are bound by precedent. However we note the observations of the ExAs in Norfolk Vanguard and Hornsea Three, particularly the latter's comments about scale and complexity. In our view the MMO is the body with the necessary skills and expertise. We have therefore deleted Sch 22 and Art 75.
- 9.1.36. That leaves the question of what is to happen at the end of the determination periods. The dDCO says that a right of appeal arises under the now deleted Sch 22. We suggest instead that the definition should

state that it is the date by when the MMO is expected to have determined the application. We did not canvass this during the Examination and the SoS may wish to satisfy themselves as to what should occur. We have left the definition of "determination date" in para 1 of the licence (in Sch 21) and the references to it in that schedule.

- 9.1.37. On 11 October 2021, the day before DL10 and three days before the end of the Examination, the Applicant's solicitors wrote to the County and District Councils' solicitors and informed them that they intended to remove paragraph (3) from Article 9B. Paragraph (3) says: "*An application under paragraph (2) for the modification of an obligation in the Deed of Obligation may not specify a modification imposing an obligation on any other person against whom the Deed of Obligation is enforceable.*" This is modelled on the equivalent provisions for planning obligations in the Town and Country Planning Act 1990.
- 9.1.38. The rationale for the proposal in the letter is set out in Drafting Note 16 annexed to the Applicant's explanation of proposed changes to the dDCO [REP10-012]. Essentially the concern is that changes to the DoO may require either Council to take on new obligations.
- 9.1.39. ESC requested the removal. SCC oppose it.
- 9.1.40. We quote from SCC's final submission [REP10-210] which summarises the position. "*The effect of its removal would be to remove a limitation on the types of application that could be made for modification of the DoO. Without the paragraph, applications could be made so as to specify a modification imposing an obligation on any other person against whom the Deed of Obligation is enforceable. It was explained that the removal of the paragraph addressed a concern that its retention may be unduly restrictive given the nature of the Deed of Obligation, which features many governance arrangements, collaborations and commitments by various parties in the Deed and the deeds of covenant under it. It was explained that in circumstances where the Applicant were seeking to go to the Secretary of State to seek a variation, the sort of variation needed could require modifications of existing arrangements which could be said to constitute the imposition of new/varied arrangements on parties other than SZC Co. It seemed important that the Secretary of State has that ability otherwise art 9B(2) may be of little value in practice. It was said that the TCPA drafting works for most standard s106 agreements – where a developer just wants to remove a payment or move trigger date, but the Deed of Obligation is obviously more complex.*"
- 9.1.41. We agree with SCC. The removal of the paragraph would allow any obligation, administrative or financial, to be imposed on either SCC or ESC without their consent. Accordingly we have reinstated the provision in the rDCO.

## **9.2. THE EXA'S DCO INCLUDING PROVISIONS RECOMMENDED TO BE CHANGED**

**The Sizewell C Project - Extract of Written Summaries of Oral Submissions made at Issue Specific Hearing 1 of the Examination for the The Sizewell C (Nuclear Generating Station) Order [REP5-106] dated 6 July 2021 (paragraph 1.4.2)**

- 1.3.50 The maintenance activities that form part of the Maintenance Activities Plan ("MAP") (Schedule 20, paragraph 34) relate to those parts of the development that fall within the MMO's jurisdiction. In response to ESC's request that the coastal works (i.e. HCDF, SCDF and BLF) should also form part of the MAP, HPQC agreed that a post-hearing note would be submitted providing an explanation of the scope of the MAP. It should be noted that this issue was also covered in ISH6 (Coastal Geomorphology) and that the summary of the oral submissions made on behalf of SZC Co. to that hearing includes the submissions made in respect of the MAP and the reason for the imposition of the relevant condition on the DML.
- 1.3.51 With regard to the definition of "*commence*", paragraph 3.6 of the **Explanatory Memorandum** (Doc Ref. 3.2(C)) and response to **ExQ1 DCO.1.0** [REP2-100], set out the rationale behind the definition and explain that the mitigation required for certain pre-commencement activities is already secured for the duration of construction activities (for example in the **CoCP** (Doc Ref. 8.11(C)) and Terrestrial Ecology Monitoring and Mitigation Plan (Doc Ref. 9.4(A))) and are not limited by the definition of "*commence*" (as updated at Deadline 2).
- 1.3.52 SZC Co.'s justification for the use of the term "*near*" the Order limits in relation to the felling and lopping of trees (article 79 of the **draft DCO**) can be found in its response to **ExQ1 DCO.1.50** [REP2-100].
- 1.4 **Agenda Item 2: Draft DCO – Deemed Marine Licence**
- 1.4.1 HPQC confirmed that a written response to the detailed points made in the MMO's Deadline 3 submissions would be submitted at Deadline 5.
- 1.4.2 In relation to the appeals procedure as set out in Schedule 20A of the **draft DCO** (Doc Ref. 3.1(D)), HPQC drew the ExA's attention to the response to **ExQ1 DCO 1.160** [REP2-100] and explained that:
- The ExA in **ExQ1 DCO.1.124** has noted (correctly) that the norm in the case of regulatory approvals is for there to be an appeal process on the merits before a right to review on the law is available.
  - SZC Co.'s response to **ExQ1 DCO.1.149** explains the underlying purpose of Article 75A and Schedule 20A. These address non-decision, delay and the risk of a potential impediment to delivery for an indeterminable length of time.
  - SZC Co.'s response to **ExQ1 DCO.1.160** articulates the following points (amongst others):

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- Judicial review is clearly not an adequate remedy where a dispute arises as to the merits of a decision by the Marine Management Organisation (MMO) to refuse an application for discharge of a condition.
- The MMO has failed to identify any public interest rationale for creating a statutory instrument (the DCO) pursuant to which the Undertaker has a right of appeal in respect of a decision made on discharge of a DCO requirement, but not in respect of a decision on discharge of a condition on the DML.
  - The DCO is a single statutory authorisation which is intended to collect together in one document the permissions needed to implement the project.
  - Comparison with marine licences granted pursuant to a different statutory regime outside the PA 2008 does not provide a sensible or satisfactory answer, because Parliament has decided that NSIPs do not have to be authorised pursuant to that regime on the basis that different issues arise with projects of this scale and national importance, and that decision-making in such cases should be streamlined in order to deliver such nationally significant projects faster than would otherwise be the case.
  - Hence the DCO contains a *deemed* marine licence rather than a marine licence per se, which is contained in the same statutory instrument as the other forms of development consent which are required.
  - There is no difference between the DML and the remainder of the DCO in terms of the practical and public interest considerations in each case.
  - The subject matter of the conditions in the DML is not intrinsically different to the subject matter of the requirements in the DCO, indeed in some cases (e.g. the CPMMP) it is identical.
- If a dispute arises between the Undertaker and the MMO over the merits of a submission made to discharge a condition, it is unlikely that this would involve any public law error on the part of the MMO. It cannot be right, therefore, to suggest that delivery of a NSIP could potentially be significantly delayed by an unmeritorious and potentially unreasonable (but not



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*Wednesbury* unreasonable) decision by the MMO, with no remedy for the undertaker whatsoever.

- A decision by the Secretary of State on this issue is not constrained by precedent. It is not a matter that has been determined by statute or by the courts. Previous decisions of the Secretary of State are relevant but neither binding nor determinative and must be considered on their own facts. It is a matter that needs to be determined by the Secretary of State by reference to the balance of public interest on the strength or otherwise of the substantive arguments advanced in this case.
- In response to SZC Co.'s written submissions, the MMO has advanced a number of points (see MMO's Deadline 3 response at paragraph 4.1.2 et seq [REP3-070]), none of which provide a satisfactory answer.
  - It is wrong as a matter of fact for the MMO to argue that 'appeals are already available'.
    - An appeal must provide the ability to ask an independent decision-maker to review the decision afresh on its merits.
    - It is a basic principle of public law that judicial review is not an appeal.
    - The MMO's '*escalated internal procedure*' is not an appeal – it involves a complaint being made to the MMO about the MMO, with the MMO deciding if that complaint is justified.
  - The Norfolk Vanguard decision on which the MMO relies (paragraph 4.1.5) does not grapple with the arguments advanced by SZC Co. in this case. Nor does the ExA or the Secretary of State need '*evidence of any potential delays*' because the potential for delay can be deduced from first principles, i.e. there is no ability to break a deadlock if a dispute arises which concerns the merits. Such an impasse either leads to delay, or obliges the Undertaker to accept any decision of the MMO, however unreasonable. Neither outcome could properly be argued to be in the public interest.
    - It is important in this context to note that the MMO resists SZC Co. having the ability to appeal even if the MMO has not made *any decision at all* on an application after 4 months (SZC Co.'s suggestion) or ever (the MMO's position). The MMO suggests that



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Judicial Review would be an adequate remedy if the MMO were to “delay unduly” (paragraph 4.3.3), but undue delay is not a ground on which an application for judicial review can be brought.

- The MMO’s key performance indicator for determining an application for a marine licence is 13 weeks – there is no good reason why discharge of a condition on a DML should take longer than 4 months.
- Similarly, the MMO’s reliance on the Hornsea Three decision (paragraph 4.1.6) is misplaced, because the ExAR in that case does not appear to have grappled with the points made on behalf of SZC Co. here.
- HPQC also drew the ExA’s attention to the fact that the same issue has been debated at the recent Aquind examination, and that a decision on that application is expected in September. As and when that decision emerges, SZC Co. will consider and comment on its implications.

## 1.5 Agenda Item 3: Deed of Obligation

### *Converting the Obligations to Requirements*

- 1.5.1 The ExA requested an explanation of why those obligations which SZC Co. considered would not fall within the legal test of Section 106(1) of the Town and Country Planning Act 1990, such as the governance arrangements, were not transferred into the requirements? These would be enforced by the criminal law, which may be a more attractive approach than reliance upon injunctions.
- 1.5.2 HPQC referred the ExA to the Explanatory Memorandum for the **draft Deed of Obligation** (Doc Ref. 8.20(D)) which sets out in some detail SZC Co’s position in respect of particular obligations, their compliance (or otherwise) with Section 106(1) of the Town and Country Planning Act 1990, and whether they could be dealt with by means of a requirement.
- 1.5.3 It was explained that the transfer of certain obligations into the draft DCO to enable the remaining obligations to be secured under Section 106 of the Town and Country Planning Act 1990 would involve disaggregating a system of obligations which is intended to work together.
- 1.5.4 SZC Co. has given careful consideration to this suggestion, but considers it to be highly undesirable because the obligations that have been

**The Sizewell C Project - Extract of Written Submissions responding to actions arising from  
Issue Specific Hearing 14 [REP8-128] dated 17 September 2021  
(paragraphs 1.9.1 to 1.9.9)**

## 1.9 Response to MMO

### Appeals under Schedule 20A

- 1.9.1 The MMO's written submissions in respect of the appeals procedure provided by Schedule 20A of the dDCO completely fail to engage with and thus respond to the submissions made on behalf of the Applicant at ISH1 (see [REP5-106] at section 1.4 and additional references therein).
- 1.9.2 By way of example, the Applicant's submissions have already dealt with the other DCOs to which the MMO refers and the issue of 'evidence' – see internal pp. 15-16 of REP5-106. The MMO's most recent submission neither acknowledges nor addresses what the Applicant has said about those matters.
- 1.9.3 When properly analysed, it is apparent that the MMO's most recent written submission is simply repeating the points it made before ISH1, and not engaging with or responding to the detailed submissions that the Applicant has provided in response to those points.
- 1.9.4 In those circumstances it would be reasonable to infer that the MMO's reluctance to acknowledge and address those submissions is because it has no answer to them. That is unsurprising, because those submissions can fairly be described as compelling.
- 1.9.5 It is instructive that the MMO acknowledges the problems associated with delay at para. 2.10 of its written submission, but having done so it then just asserts that it does not delay unnecessarily. No doubt any public body with important decision-making powers would say the same, but that is not regarded as sufficient to obviate the need for statutory timeframes to be set to ensure that decisions are made promptly, and that there are safeguards to protect the interests of applicants in the event that does not occur.
- 1.9.6 Furthermore, the MMO's assurances about not delaying unnecessarily are rather undermined by the suggestion in 2.11 that in the event timeframes are imposed it should have 6 months to make a decision in all cases. The draft DML at Schedule 20 to the dDCO provides bespoke determination periods for each relevant condition. Some allow six months, others less, depending on the subject matter and relative complexity. The MMO's most recent written submission treats all as alike, building in an excessive amount of time for the discharge of more straightforward conditions without any attempt at reasoned justification.
- 1.9.7 The whole project relies on a very well-defined programme and construction schedule. The potential knock-on delays to other elements of the SZC project from a delay to an offshore element would be very significant. For

example, the whole transport strategy is based on the availability of the BLF and MBIF so delays to the discharge of conditions relating to those works would have significant impacts on the overall construction programme. Similarly, offshore works rely entirely on dredging and disposal works and delays to those works can also have significant impacts on programme as well as logistical issues with leasing vessels. Aside from potential delays to the construction and delivery of an operational Sizewell C, the costs associated with such delays could be very significant given the need to pre-book very large vessels of limited availability or progress other inter-related elements on the MDS (10s to 100s millions of pounds).

1.9.8 Government policy also identifies the need for new large scale nuclear power stations as urgent; the delivery of Sizewell C should not be delayed for want of an effective consenting process. The DCO provides a mechanism through which the Government can and should provide such a process. Schedule 20A contains provisions which are necessary and proportionate to the scale of the Project. Each project should be considered on its own merits, and Schedule 20A provides a fair and appropriate appeal mechanism to reduce what would otherwise be the real risk of delay and impediment to the timely delivery of the Sizewell C Project.

1.9.9 Finally, it is noteworthy that Parliament didn't provide a mechanism for appeal of requirements in DCOs, yet DCOs now add that in as standard because it's useful so SZC Co is of the view that it is equally useful for DMLs.

### **Appeals Process for Environment Agency Permits**

1.9.10 In addition to a response to the MMO's position on the need for an appeals process, the ExA asked the Applicant to provide a written response explaining why it was not seeking to impose an appeal mechanism in respect of conditions on Environment Agency administered consents in the same way that it was seeking to create an appeal mechanism in respect of conditions on the Deemed Marine Licence ("DML").

1.9.11 There are two related reasons why the DCO does not seek to take that step.

#### **(a) The DML is part of the DCO**

1.9.12 Whereas the DML is part of the DCO, and the conditions attached to it are simply DCO provisions that happen to be in a Schedule entitled 'Deemed Marine Licence', the Applicant has not sought to remove the need for any environmental permit or other prescribed consent or authorisation administered by the Environment Agency and incorporate equivalent provision within the dDCO.

- 1.9.13 Had the Applicant wished to use the DCO for that purpose, it would have required the consent of the Environment Agency (see PA 2008 s. 150, and Regulation 5 of, and Schedule 2 to, the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015). The same is not true in respect of Marine Licences, which are not amongst the list of prescribed consents and authorisations.
- 1.9.14 In any event, the dDCO does not seek to remove the need for any environmental permit that would otherwise be required.
- 1.9.15 That is important having regard to the rationale for the creation of an appeal on the merits in Schedule 20A as set out on behalf of the Applicant in section 1.4 of [REP5-106] and in response to ExQ1 DCO.1.149 and DCO.1.160 [REP2-100]. In summary:
- 1.9.16 Both the ‘requirements’ under the DCO and the ‘conditions’ under the DML are all part of the DCO – a statutory instrument that would be granted so as to permit the construction of the proposed development.
- 1.9.17 Some of that development happens to sit within the UK marine licensing areas, where a marine licence would normally be required in addition to development consent. In this case, however, a marine licence would be deemed to be granted pursuant to the DCO. The DML, however, is not a marine licence. It is a schedule to the DCO and the ‘conditions’ are simply DCO provisions that happen to be contained in that same schedule.
- 1.9.18 There is no difference between the DML and the remainder of the DCO in terms of the practical and public interest considerations that arise when considering discharge of the conditions and the requirements. The subject matter is not intrinsically different, and in some instances (e.g. approval of the CPMMP) it is identical. The same is not true in respect of environmental permits administered by the Environment Agency (see further below).
- 1.9.19 In those circumstances there are no good public interest considerations that would justify the DCO treating the ‘conditions’ and the ‘requirements’ differently in terms of whether an appeal on the merits should be available against a refusal or failure to discharge.
- 1.9.20 The same rationale does not apply in the case of environmental permits administered by the Environment Agency. They do not form part of the DCO and are subject to a separate and distinct statutory regime that reflects the specific issues that arise in respect of the control of regulated activities (see further below). Any attempt to use the DCO to introduce a right of appeal in respect of conditions on such a permit (there is no concept of ‘discharging’ such a condition, as explained below in respect of the second

reason) would therefore involve modification of the relevant legislation and different considerations would arise.

**(b) Different considerations arise in respect of conditions on Environment Agency permits**

- 1.9.21 The framework for the environmental permitting regime administered by the Environment Agency is contained in the Environmental Permitting (England and Wales) Regulations 2016 (“the 2016 Regulations”), supplemented by the DEFRA Environmental Permitting: Core Guidance (March 2020) (“the Core Guidance”).
- 1.9.22 The regime applies to regulated facilities, which have that status because unless made subject to this additional strict system of regulation (additional to development control and, where relevant, marine licensing) they could harm the environment or human health.
- 1.9.23 Where the regulator grants a permit, it can impose any conditions it sees fit (Schedule 5, Part 1, paragraph 12(2) to the 2016 Regulations). Importantly, however, it has a duty to impose conditions in order to secure the obligations that apply to the class of regulated activity (see paragraph 7.8 of the Core Guidance). That reflects the qualitatively different nature of the environmental permitting regime, and the correspondingly different type of conditions to which permits are made subject. Conditions attached to such permits are generally concerned with compliance, with any approvals addressed at the initial application stage rather than via condition. Hence conditions on permits are to be complied with, rather than ‘discharged’ as is often the case with requirements on DCOs or conditions imposed on marine licences.
- 1.9.24 Those differences can also be seen in the specific provisions contained within Regulations 15, 16 and 18 of the 2016 Regulations in relation to conditions imposed on permits. Pursuant to Regulation 15(1), for example, a condition imposed on a permit may require the operator to carry out works or do other things in relation land which the operator is not entitled to do or carry out without obtaining the consent of another person. In those circumstances Regulation 15(2) the person whose consent is required must grant the operator such rights as are necessary to enable the operator to comply with the condition. Compensation is payable in those circumstances pursuant to Schedule 5, Part 2.
- 1.9.25 It is also reflected in the scope for the regulator to vary or revoke a permit of its own volition under Regulations 20 and 22.
- 1.9.26 The environmental permitting and marine licensing regimes are not therefore directly comparable. Those differences help to explain why the



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former regime falls within the category of prescribed consents or authorisations whereas the latter does not.

- 1.9.27 For those reasons the absence of any provision within the dDCO to create a right of appeal in relation to any approvals that might be required under a permit administered by the Environment Agency is unsurprising, and does not have any material bearing on the justification for the provisions in Schedule 20A.

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**The Sizewell C Project - Extract of Deadline 3 Submission from the Marine Management Organisation - Comments on Written Representations, Comments on Statement of Common Ground, Comments on responses to ExA's Written Questions (ExQ1) and Comments on Applicant's revised draft DCO (Revision 4) [REP3-070a] (paragraphs 4.1.2 - 4.1.7)**



### 3.2 Maritime and Coastguard Agency (“MCA”) response to ExQ1 - [REP2-145]

- 3.2.1 The MMO note that the MCA have no objections or concerns regarding the establishment of a Statutory Harbour Authority (SHA) or the application of the Harbours, Docks and Piers Clauses Act 1847 within the DCO.
- 3.2.2 The MMO note the MCA have requested two points of clarification within their response to Written Questions. The MMO support this request.

## 4. Comments on Applicant’s revised draft Development Consent Order (“DCO”), Revision 4 - [REP2-013]

The MMO recognises that a number of updates have been made to the draft DCO and DML to address the previous comments that we have made [RR-0744 and REP2-140]. The MMO thanks the Applicant for these changes as several of our previous comments have now been resolved. We will note below where changes have been made to resolve some of our more significant comments. There are still some remaining issues for the MMO which we will list below and which we will continue to discuss with the Applicant as part of our Statement of Common Ground. These comments are submitted without prejudice to any future representation the MMO may make on the DCO in future. We note that we may have further comments on this version following a longer period of time to review and will submit these where appropriate at future deadlines.

### 4.1 Development Consent Order (“DCO”) - [REP2-013]

#### **Arbitration**

- 4.1.1 The MMO’s concerns about the arbitration process outlined in Part 7, Article 82 have been resolved as the DCO now outlines that this process will no longer apply to the MMO.

#### **Appeals**

- 4.1.2 The MMO has major concerns about the “Procedure for approvals, consents and appeals” contained within Schedule 20A. This proposes a new enhanced Appeals procedure for the Applicant should the MMO refuse an application for approval under a condition, or fail to determine the application for approval by certain “determination dates” which have been inserted into the DML in Schedule 20. This is not available for other marine licence holders. The MMO strongly requests that the appeals procedure for the MMO, and the “determination dates”, are removed from both the DCO and DML.
- 4.1.3 Appeals are already available to the Applicant in the form of an escalated internal procedure and judicial review (“JR”), and therefore, including any additional appeal mechanism for the MMO within the DCO and DML is unnecessary. The Marine Licensing (Licence Application Appeals) Regulations 2011 apply a statutory appeal process to the decisions that the MMO makes

regarding whether to grant or refuse a licence or conditions which are to be applied to the licence. However, they do not include an appeal process to any decisions the MMO is required to give in response to an application to discharge any conditions of a marine licence issued directly by us. Therefore, if the DCO were to be granted with the proposed appeal process included, this would not be consistent with the existing statutory processes. This amendment would be introducing and making available to this specific Applicant, a new and enhanced appeal process which is not available to other marine licence holders, creating an unlevel playing field across the regulated community. The MMO has explained within our Relevant Representation [RR-0744] that these proposals go against the statutory functions laid out by parliament. The MMO's previous comments within RR-0744 on the appeals route remain.

4.1.4 In addition to this, the MMO emphasises that we are an open and transparent organisation that actively engages, and maintains excellent working relationships with, industry and those it regulates. The MMO discharges its statutory responsibilities in a manner which is both timely and robust in order to fulfil the public functions vested in it by Parliament. The scale and complexity of Nationally Significant Infrastructure Projects creates no exception in this regard and indeed it follows that where decisions are required to be made, or approvals given, in relation to these developments of significant public interest only those bodies appointed by Parliament should carry the weight of that responsibility. Since its inception the MMO has undertaken licensing functions on over 130 DCOs, comprising some of the largest and most complex operations globally. The MMO is not aware of an occasion whereby any dispute which has arisen in relation to the discharge of a condition under a DML has failed to be resolved satisfactorily between the MMO and the applicant, without any recourse to an "appeal" mechanism.

4.1.5 The MMO further draws attention to the position on Norfolk Vanguard Offshore Wind Farm DCO. The ExA recommendation on Schedules 9 to 12, Part 5 – procedure for appeals concluding in paragraph 9.4.42 is outlined as follows:

*"There is no substantive evidence of any potential delays to support an adaptation to existing procedures to address such perceived deficiencies. To do so would place this particular Applicant in a different position to other licence holders."*

4.1.6 Similarly, the Hornsea Three Offshore Wind Farm ExA Recommendation report states under the 'Alternative dispute resolution methods in relation to decisions of the MMO under conditions of the DMLs' section, in paragraphs 20.5.27 – 20.5.29:

*"We agree with the MMO on this point. The process set out in the Marine Licensing (Licence Application Appeals) Regulations 2011 does not cover appeals against decisions relating to conditions. Whilst it would be possible to amend those regulations under PA2008, the result would be to create a DML which would be different to other marine licences granted by the MMO. We recommend that the Applicant's alternative drafting in Articles 38(4) and*

*38(5) is not included in the DCO. (...) We have commented above that the scale and complexity of the matters to be approved under the DMLs is a strong indicator that those matters should be determined by the appropriate statutory body (the MMO). In our view an approach whereby matters of this magnitude would be deemed to be approved as a result of a time period being exceeded would be wholly inappropriate. Notwithstanding the exclusion of European sites, this approach would pose unacceptable risks to the marine environment and navigational safety. We recommend that the Applicant's alternative drafting is not included in the DCO."*

4.1.7 There is no compelling evidence as to why the Applicant in the case of Sizewell C should be an exception to the well-established rules and treated differently to any other Marine Licence holder.

### **Unexploded Ordinances (“UXO”)**

4.1.8 The MMO's concerns about the inclusion of UXO clearance works within the DCO and DML have been resolved. The UXO works have now been removed from the DCO and DML and will be consented via a separate Marine Licence should they be required.

### **Interpretations**

4.1.9 In relation to the “Interpretations” in Part 1, Article 2, the MMO advises that the Applicant provide a definition for both “onshore” and “offshore” if these terms are going to be used in the DCO and DML. Clarification is required on whether offshore means “beyond 12 nautical miles ” or just “not on land”. Alternatively, instead of using the term “offshore”, the term “marine works” could be used instead. This may be more appropriate as the interpretation of “terrestrial works” in the DCO is “all works located above MHWS described in Schedule 1. Works below MHWS are marine works.” The MMO advise that the DCO incorporates all the definitions within its "Interpretation" section (and that the DML includes all those relevant to the DML within it's own “Interpretation" section). We advise that both "interpretation" sections should mirror each other by having the same definitions.

### **Vertical Deviation**

4.1.10 In relation to Part 2 Article 4 (1)(a), the MMO notes that “the undertaker may deviate vertically to any extent found necessary or convenient”. This allows marine structures to deviate vertically to any extent found necessary or convenient. The MMO outline that there should be maximum limits on horizontal and vertical deviations in line with what has been assessed in the Environmental Statement (“ES”).

### **Authorised Development**

**The Sizewell C Project - Extract of Deadline 6 Submission from the Marine Management Organisation - Post hearing submission in relation to Issue Specific Hearing 1 and responses to any further information requested by the ExA for this Deadline [REP6-039] (paragraphs 1.1.7 to 1.1.21 and 6.2 to 6.5)**

- 1.1.4 The MMO strongly disagree with the Appeals procedure contained in Schedule 20A of the DCO. This introduces a new and enhanced appeal process for the Applicant, which is not available to other marine licence holders (including other Nationally Significant Infrastructure Projects). This would create an unlevel playing field amongst marine licence holders and goes against what was intended by parliament with the Marine Licensing (Licence Application Appeals) Regulations 2011 (Appeal Regulations). The reasons for this are clarified below in our Post hearing submission.
- 1.1.5 The MMO disagrees with the inclusion of “determination dates” in the DML conditions, which state that the Applicant is able to use the Appeals procedure if the MMO has not made a decision by that date. We request that the inclusion of a “determination date” is removed from the DML conditions.
- 1.1.6 The MMO is not clear on all of the monitoring that will take place within the marine area, and which therefore should be secured via DML conditions. The MMO advise that an in-principle monitoring plan is provided which outlines all of the proposed monitoring within the marine environment to be agreed as a certified document.

### **Post hearing submission**

- 1.1.7 The MMO would like to elaborate on the reasons for disagreeing with the enhanced Appeals Procedure that is proposed in Schedule 23. Then the MMO will address the question that was asked by the Examiner during the hearing.
- 1.1.8 The MMO disagrees with the enhanced Appeals Procedure proposed by the Applicant because the MMO is subject to an appeal process in respect of specific aspects of marine licences granted under Part 4 of the Marine and Coastal Access Act, Section 73. This provides an appeal process for Applicants of marine licences through the Appeals Regulations. This appeal process is for an Applicant to appeal a refusal of a marine licence or the inclusion of conditions within a licence.
- 1.1.9 If the Applicant requires some form of mechanism to be available to appeal in the event that the MMO either fails to make a determination within an appropriate time period or makes a decision to refuse to approve the documentation, this is already available to the Applicant in the form of an escalated internal procedure and judicial review (“JR”), and therefore including any additional appeal mechanism for the MMO in the order is simply unnecessary.
- 1.1.10 The MMO believes this amendment to the appeals process constitutes a misunderstanding of when the appeal regulations apply. The 2011 regulations apply a statutory appeal process to the decisions the MMO takes regarding whether to grant or refuse a licence or conditions which are to be applied to the licence. However, they do not include an appeal process to any decisions the MMO is required to give in response to an application to discharge any

conditions of a marine licence issued directly by us. Therefore, if the DCO were to be granted with the proposed appeal process included, this would not be an appeal procedure broadly consistent with the existing statutory processes. This amendment would be introducing and making available to this specific Applicant a new and enhanced appeal process which is not available to other marine licence holders.

- 1.1.11 This is problematic because it would lead to a clear disparity between those licence holders who obtained their marine licence directly from the MMO and those who obtained their marine licence via the DCO process. This would lead to an inconsistent playing field across the regulated community. Had parliament intended the appeal process to extend to these decisions, whether in relation to NSIPS or the marine licence granted directly by the MMO, then the wording of the Appeal Regulations would have been drafted differently.
- 1.1.12 In addition, the effect of the proposed change, in this case, would be to replace the review of the MMO decision making on conventional public law grounds (via the process of JR), for discharge of conditions under an expressly granted licence, with a merits review by the Secretary of State ("SoS"). This is a fundamental departure from what Parliament intended, and the MMO can see no justification for such a major change particularly where the purpose of the deemed licence regime under the Planning Act 2008 is essentially to remove the need for a separate application for a licence alongside or following the making of the Order and not to fundamentally change the regulatory regime that applies.
- 1.1.13 The MMO notes that the Planning Act 2008 which set out the regime for DCOs does not have any 'statutory' appeals process either. It works on the basis that the Applicant and those with an interest in the application work with the Examining Authority to agree the terms of the order, but it is ultimately for the SoS to decide on its terms. The way to appeal against the decisions of the SoS to grant the order as made, or refuse the order, is provided for in the Act through the JR process and not by way of an appeal to PINS or to a tribunal.
- 1.1.14 The MMO requests the removal of the appeals process stipulated in Schedule 23 of the DML as the MMO considers it is wholly inappropriate for the DCO to replace the existing appeals process (JR) with a modified version of the appeals route set out in the 2011 regulations for the reasons already set out above.
- 1.1.15 The MMO would like to highlight that there is a current mechanism available to the Applicant should the MMO fail to make a determination within what the Applicant considers to be a reasonable timescale. The Applicant would write to the MMO explaining this and requiring the MMO to make a determination by a specific date. Should the MMO fail to make the decision then the Applicant would be able to judicially review that failure to make a decision. If the MMO were to make the determination, but decided to refuse to approve the documents, the Applicant would again be able to challenge that refusal through JR. This provides a degree of certainty and the Applicant can already be confident of a reliable and consistent approval process.



1.1.16 In addition to this, the MMO emphasises that we are an open and transparent organisation that actively engages, and maintains excellent working relationships with, industry and those it regulates. The MMO discharges its statutory responsibilities in a manner which is both timely and robust in order to fulfil the public functions vested in it by Parliament. The scale and complexity of NSIPS creates no exception in this regard and indeed it follows that where decisions are required to be made, or approvals given, in relation to these developments of significant public interest only those bodies appointed by Parliament should carry the weight of that responsibility. Since its inception the MMO has undertaken licensing functions on over 130 DCOs, comprising some of the largest and most complex operations globally. The MMO is not aware of an occasion whereby any dispute which has arisen in relation to the discharge of a condition under a DML has failed to be resolved satisfactorily between the MMO and the Applicant, without any recourse to an "appeal" mechanism.

1.1.17 The MMO draws attention to the position on Norfolk Vanguard Offshore Wind Farm DCO. The ExA recommendation on Schedules 9 to 12, Part 5 – procedure for appeals concluding in paragraph 9.4.42 is outlined as follows:

*"There is no substantive evidence of any potential delays to support an adaptation to existing procedures to address such perceived deficiencies. To do so would place this particular Applicant in a different position to other licence holders."*

1.1.18 Similarly, the Hornsea Three Offshore Wind Farm ExA Recommendation report states under the 'Alternative dispute resolution methods in relation to decisions of the MMO under conditions of the DMLs' section, in paragraphs 20.5.27 – 20.5.29:

*"We agree with the MMO on this point. The process set out in the Marine Licensing (Licence Application Appeals) Regulations 2011 does not cover appeals against decisions relating to conditions. Whilst it would be possible to amend those regulations under PA2008, the result would be to create a DML which would be different to other marine licences granted by the MMO. We recommend that the Applicant's alternative drafting in Articles 38(4) and 38(5) is not included in the DCO. (...) We have commented above that the scale and complexity of the matters to be approved under the DMLs is a strong indicator that those matters should be determined by the appropriate statutory body (the MMO). In our view an approach whereby matters of this magnitude would be deemed to be approved as a result of a time period being exceeded would be wholly inappropriate. Notwithstanding the exclusion of European sites, this approach would pose unacceptable risks to the marine environment and navigational safety. We recommend that the Applicant's alternative drafting is not included in the DCO."*

1.1.19 There is no compelling evidence as to why the Applicant in the case of Sizewell C should be an exception to the well-established rules and treated differently to any other Marine Licence holder.

## **Answer to Examiner's Question**

1.1.20 The MMO was asked to respond to the Examiner's Questions: *"Why do you think that Parliament said there is only a judicial review remedy" and "Tell us why you think the judicial review only approach was thought to be correct."*

1.1.21 In answer to this, the MMO notes that judicial review is an established process for challenging public law decision making and it applies where all other remedies have been exhausted. Statutory appeals processes are clearly provided for by Parliament, they are set out in the legislation, and they must be exhausted before the judicial review process can be initiated. The MMO's position is not that it thinks Parliament has said that there is only a judicial review remedy to challenge our public law decision making in relation to approvals which are required under the conditions of a regulatory approval; our position is that if Parliament had intended these to be challengeable through a statutory appeals process as an alternative to the established process of JR, then that would have been expressly provided for, in the legislation in the same way as is provided for in the terrestrial planning regime and Parliament didn't do so.

1.1.22 The MMO has provided further information that is relevant to this issue in section 6 below.

## **1.2 Issue Specific Hearing 6 (ISH6) Coastal Geomorphology**

### **Post hearing submission**

#### **1.2.1 Agenda Item 2 - The assessment of the coastal impacts of the Proposed Development**

##### **1.2.1.1 Agenda Item 2 (a) – Whether the potential coastal impacts of the Proposed Development can be satisfactorily assessed from the information submitted by the Applicant?**

1.2.1.1.1 The MMO considers that further information is required to assess the impacts on coastal geomorphology from the Soft Coastal Defence Feature ("SCDF") proposals. See our comments on this in section 5.1 below.

#### **1.2.2 Agenda Item 4 - Potential impacts on coastal processes and geomorphology including those arising from the proposed HCDF and the soft coastal sea defence (SCDF) and the temporary and permanent beach landing facilities (BLFs) and associated activities**

##### **1.2.2.1 Agenda Item 4 (a) - The potential for consequential adverse and/ or beneficial impacts on coastal processes arising from these features and activities**



## 6 Responses to any further information requested by the ExA for this Deadline

6.1 At Deadline 2 the MMO provided responses to the ExA's written questions (ExQ1). However we were not able to answer all questions at that stage. Please find below our response to question reference "DCO1.124" regarding Schedule 23 in the DCO. The question asked by the ExA was:

*"The ExA notes that the MMO in its RR-0744 has concerns about Sch 23 and seeks instead that disputes over approvals pursuant to the DML should be dealt with by way of judicial review (para 2.1.12 and following). The norm in the case of regulatory approvals is for there to be an appeal process on the merits before a right to review on the law is available. Whilst the PA2008 does not contain such a process for approvals pursuant to requirements it is now common for a process along the lines of Sch 23 to be included in DCOs. Should not the comparison be with the appeal system under s.73 of the MMCA Act 2009 suitably adapted for approvals pursuant to conditions of a DML, rather than judicial review? Will the MMO please outline the process which applies to disputes over submissions for approvals under a DML?"*

6.2 In response to this, the MMO agrees that it is not unusual for a merits based appeals process to be applied to regulatory approvals before a right to review on the law is available, however the MMO's view is that in many cases these statutory appeals processes apply to the decisions to attach conditions to a regulatory approval/permission or to refuse to grant the regulatory approval and that they do not, in the main, apply to any further approvals which may be required in order to discharge the conditions of the approval or permission.

6.3 As is noted by the ExA the Planning Act does not set out a statutory appeals route for decisions around an approval which is required under a condition of a DCO or to do so conditionally and neither does the Environmental Permitting Regulations (England and Wales) Regulations 2016 which sets out the framework for the environmental permitting regime under which the Environment Agency operate. The only statutory appeals process which applies to decisions to refuse consent, agreement or approval required by a condition imposed on a regulatory permission, or grant it subject to conditions, that the MMO is aware of is the process that is set out in section 78(1)(b) of the Town and Country Planning Act 1990 and which applies to planning permissions.

6.4 The statutory appeals process which applies to marine licensing decisions is set out in section 73 of the Marine and Coastal Access Act 2009 ("MCAA"), as supplemented by the Marine Licensing (Licence Application Appeals) Regulations 2011. This statutory appeals process applies only to decisions made by the MMO under section 71(1)(b) or (c) of MCAA, i.e. decisions to grant a licence subject to conditions, and to decisions to refuse to grant a licence. This process does not provide an appeal route against the MMO's refusal to give an approval which is required under a condition of a marine licence or to grant a conditional approval. Such decisions are challengeable initially via the MMO's internal complaint process and thereafter, if not satisfactorily resolved, by way of Judicial review.

6.5 What the Applicant is proposing here would apply the marine licensing statutory appeals process to decisions which sit outside of that process. What the Applicant is proposing is a significant shift in terms of the appeal routes available to those who apply to marine licences issued by the MMO outside of the DCO process. PINS Advice Note 11B notes that wherever possible any deemed licence should be generally consistent with those issued independently by the MMO. The MMO remains strongly of the view that to apply an appeals process through Sch. 20 to approvals that are required under the conditions of a deemed marine licence is inconsistent with the approach taken in relation to marine licences issued independently by the MMO. It creates an unnecessary two-tier approach which favours licences granted under a DCO over those issued directly by the MMO, and creates an unfair playing field across this regulated community. The MMO's view is this is simply unnecessary given there is an established route for challenging these decisions via internal complaint and then JR.

**The Sizewell C Project - Extract of the Marine Management Organisation's Submission in lieu of attendance at Issue Specific Hearing 14 [EV-142i] (paragraphs 1.2 to 2.8)**

1.2 The MMO would like to highlight that there is still a significant disagreement between the Applicant and the MMO in relation to the Appeals procedure, as the Appeals process proposed remains unacceptable to the MMO. The MMO's position on Appeals is outlined within our responses referenced as follows: sections 2.1.2 – 2.1.7 of REP2-140; sections 2.1.5 – 2.1.14 of REP2-144; sections 1.1.7 – 1.1.22; and section 6 of REP6-039. The MMO discusses our comments on Appeals further, under section 2 of this submission.

## 2 ExQs3, DCO.3.3:

2.1 Within ExQs3, under the reference DCO.3.3, the following question is posed by the

ExA:

*“Please see MMO’s REP6-039, paras 1.1.7 -22*

*(a) Please will the Applicant explain why it must have Sch 23 for DML conditions refusals /*

*deemed refusals? Why is this case different from Hornsea 3 and Norfolk Vanguard?*

*(b) MMO – are the considerations which apply to wind farms really the same for a single*

*phase, time critical project with little flexibility over siting?”*

2.2 Whilst the MMO notes that (a) is directed to the Applicant, the MMO understands that Article 83 of the Order is intended to apply the approvals process set out in Schedule 23 to any approval required of the *discharging authority* under the Order. The MMO is not the *discharging authority* under the Order. The MMO understands that the Applicant's intention is that Article 83 and Schedule 23 will not apply to any approval required of the MMO under a condition of the DML, the Applicant intends for the MMO approvals to be subject to the modified Appeals process currently set out in Schedule 20A of the Order. Having reconsidered the wording of Article 83 in light of the ExA's question the MMO observes that Article 83 might benefit from being further amended so it clearly excludes any approval of the MMO that is required under a condition of the DML from its application.

2.3 In relation to part (b) of the question the MMO can see no reason why this applicant and this project should be treated any differently from any applicant for a windfarm project, or indeed an applicant for any other standalone marine licence. The MMO's view is that the considerations to which the ExA refers, that being single phase, time critical projects with little flexibility over siting, apply equally to windfarms (and other applications) as they do to nuclear new builds. The MMO take the view that should this application have been frontloaded and assessed to a further extent prior to submission to examination, then the risk of these considerations would have been greatly reduced. Furthermore, windfarms are nationally significant infrastructure projects which are critical for delivering the Governments commitments on climate change, they too are time critical projects with little flexibility over siting and the MMO's position is that the considerations that apply in this case are analogous to those which apply to windfarms. The MMO can see no reason why the Applicant in this case should, by virtue of the project being proposed, be treated significantly differently to the applicants for other DCOs.



- 2.4 The MMO adds the following in support of our comments regarding the discussion on Appeals. In both Hornsea 3 and Norfolk Vanguard DCO's, the applicants advanced the need for the MMO's approvals to be made within a set determination period and that those decisions be subject to either an arbitration process or at least a modified Appeals process to be based on the Marine Licensing (Licence Application Appeals) Regulations 2011. In neither case, and on neither point, did the ExA, or indeed the Secretary of State, agree with the applicant.
- 2.5 In Vanguard, the ExA noted at 9.4.42 of its recommendation report<sup>1</sup> the need for evidence to justify the adapting of existing provisions regarding the discharge of conditions on DML's by the MMO in the exercise of its regulatory function. The ExA noted that it did not have such evidence before it, nor did it have before it any evidence of any previous delays occasioned by the MMO in the exercise of these functions so as to cause material harm to any marine licence holder. The MMO observes that there is no such evidence before the ExA in relation to this application.
- 2.6 In light of our comments made on the considerations of this application being any greater than for those of other applications, the MMO's position is that the Applicant does not appear to be advancing any justification over and above that advanced in Vanguard in relation to any need to adapt existing provision, nor is it advising any evidence of any current delays in the MMO providing any approvals under the conditions of this licence. The MMO cannot therefore see any need for the inclusion of the statutory Appeals process in relation to this application and this DML.
- 2.7 The ExA in Vanguard acknowledged that to apply an Appeals process as proposed, it would place the Applicant in a different position to other licence holders. The MMO's position was that to do so was problematic because it would lead to a clear disparity between those licence holders who obtained their marine licence directly from the MMO and those who obtained their marine licence via the DCO process, this would lead to an inconsistent playing field across the regulated community, and therefore falls against what parliament had intended within the wording of the Appeals regulations. Further, the Appeals Regulations do not apply to approvals required under the conditions of a licence.
- 2.8 The MMO's position for this application is that to include the Appeals process in schedule 20A within the DCO would put this Applicant in a different position to other licence holders for no clear cogent or robust reason. As the MMO has set out in its previous comments in relation to this application, there is already a clearly defined route to challenge the MMO over these approvals and this is through the MMO's internal complaints procedure and ultimately through Judicial Review. For the avoidance of doubt, to date, the MMO has never been judicially reviewed over the refusal, or a failure to refuse, an application for an approval under a condition of a licence. The MMO would suggest that the Applicant is attempting to fix an issue which isn't broken.

<sup>1</sup> Report available at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004268-Norfolk%20Vanguard%20Final%20Report%20to%20SoS%2010092019%20FINAL.pdf>



**The Sizewell C Project - Extract of the Marine Management  
Organisations's Post-hearing submissions in respect of Issue  
Specific Hearing 14 [REP8-164] (paragraphs 1.2.1.1 to 1.2.1.10)**



- 1.1.3.15 In relation to Section 4.3, the MMO advise that if there is a potential for scour protection to be used for the nearshore outfalls then this should be stated in the CPMMP and monitored accordingly.
- 1.1.3.16 Throughout the report the MMO advises that it would be helpful to include illustrations of the proposed monitoring areas and the anticipated areas of scour.
- 1.1.3.17 Please see our comments under section 1.1.3.7 regarding our comments on the approval of the CPMMP.

## 1.2 ISH14 - Development Consent Order, Deed of Obligation and allied documents

The MMO provided a submission [EV-142i] in lieu of our attendance at Issue Specific Hearing 14 (“ISH14”) which highlighted MMO’s outstanding concerns with the Appeals procedure outlined in Schedule 20A of the draft DCO. These comments are repeated below, alongside an update on the MMO’s additional outstanding issues with the DML which is contained within Schedule 20 of the draft DCO.

### 1.2.1 Schedule 20A in the draft DCO [REP7-006] – Appeals procedure and determination dates

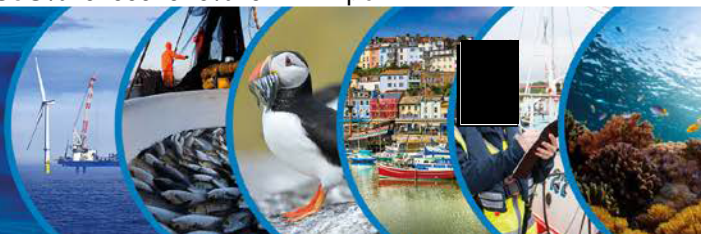
- 1.2.1.1 The MMO notes that the detailed agenda for ISH 14 ‘Development Consent Order, Deed of Obligation and allied documents’ did not include the Deemed Marine Licence Appeals Procedure which is contained within Schedule 20A of the draft Development Consent Order.
- 1.2.1.2 The MMO would like to highlight that there is still a significant disagreement between the Applicant and the MMO in relation to the Appeals procedure, as the Appeals process proposed remains unacceptable to the MMO. The MMO’s position on Appeals is outlined within our responses referenced as follows: sections 2.1.2 – 2.1.7 of REP2- 140; sections 2.1.5 – 2.1.14 of REP2-144; sections 1.1.7 – 1.1.22; and section 6 of REP6-039.
- 1.2.1.3 Within ExQs3, under the reference DCO.3.3, the following question is posed by the ExA, and it was requested to be considered by the MMO for ISH 14:
- “Please see MMO’s REP6-039, paras 1.1.7 -22*
- (a) Please will the Applicant explain why it must have Sch 23 for DML conditions refusals / deemed refusals? Why is this case different from Hornsea 3 and Norfolk Vanguard?*
- (b) MMO – are the considerations which apply to wind farms really the same for a single phase, time critical project with little flexibility over siting?”*



- 1.2.1.4 Whilst the MMO notes that (a) is directed to the Applicant, the MMO understands that Article 83 of the Order is intended to apply the approvals process set out in Schedule 23 to any approval required of the discharging authority under the Order. The MMO is not the discharging authority under the Order. The MMO understands that the Applicant's intention is that Article 83 and Schedule 23 will not apply to any approval required of the MMO under a condition of the DML, the Applicant intends for the MMO approvals to be subject to the modified Appeals process currently set out in Schedule 20A of the Order. Having reconsidered the wording of Article 83 in light of the ExA's question the MMO observes that Article 83 might benefit from being further amended so it clearly excludes any approval of the MMO that is required under a condition of the DML from its application.
- 1.2.1.5 In relation to part (b) of the question the MMO can see no reason why this applicant and this project should be treated any differently from any applicant for a windfarm project, or indeed an applicant for any other standalone marine licence. The MMO's view is that the considerations to which the ExA refers, that being single phase, time critical projects with little flexibility over siting, apply equally to windfarms (and other applications) as they do to nuclear new builds. The MMO take the view that should this application have been frontloaded and assessed to a further extent prior to submission to examination, then the risk of these considerations would have been greatly reduced. Furthermore, windfarms are nationally significant infrastructure projects which are critical for delivering the Governments commitments on climate change, they too are time critical projects with little flexibility over siting and the MMO's position is that the considerations that apply in this case are analogous to those which apply to windfarms. The MMO can see no reason why the Applicant in this case should, by virtue of the project being proposed, be treated significantly differently to the applicants for other DCOs.
- 1.2.1.6 The MMO adds the following in support of our comments regarding the discussion on Appeals. In both Hornsea 3 and Norfolk Vanguard DCO's, the applicants advanced the need for the MMO's approvals to be made within a set determination period and that those decisions be subject to either an arbitration process or at least a modified Appeals process to be based on the Marine Licensing (Licence Application Appeals) Regulations 2011. In neither case, and on neither point, did the ExA, or indeed the Secretary of State, agree with the applicant.
- 1.2.1.7 In Vanguard, the ExA noted at 9.4.42 of its recommendation report<sup>1</sup> the need for evidence to justify the adapting of existing provisions regarding the discharge of conditions on DML's by the MMO in the exercise of its regulatory function. The ExA noted that it did not have such evidence before it, nor did it have before it any evidence of any previous delays occasioned

<sup>1</sup>Report available at:

<https://infrastructure.planninginspectorate.gov.uk/wpcontent/ipc/uploads/projects/EN010079/EN010079-004268- Norfolk%20Vanguard%20Final%20Report%20to%20SoS%2010092019%20FINAL.pdf>





by the MMO in the exercise of these functions so as to cause material harm to any marine licence holder. The MMO observes that there is no such evidence before the ExA in relation to this application.

1.2.1.8 In light of our comments made on the considerations of this application being any greater than for those of other applications, the MMO's position is that the Applicant does not appear to be advancing any justification over and above that advanced in Vanguard in relation to any need to adapt existing provision, nor is it advising any evidence of any current delays in the MMO providing any approvals under the conditions of this licence. The MMO cannot therefore see any need for the inclusion of the statutory Appeals process in relation to this application and this DML.

1.2.1.9 The ExA in Vanguard acknowledged that to apply an Appeals process as proposed, would place the Applicant in a different position to other licence holders. The MMO's position was that to do so was problematic because it would lead to a clear disparity between those licence holders who obtained their marine licence directly from the MMO and those who obtained their marine licence via the DCO process, this would lead to an inconsistent playing field across the regulated community, and therefore falls against what parliament had intended within the wording of the Appeals regulations. Further, the Appeals Regulations do not apply to approvals required under the conditions of a licence.

1.2.1.10 The MMO's position for this application is that to include the Appeals process in schedule 20A within the DCO would put this Applicant in a different position to other licence holders for no clear cogent or robust reason. As the MMO has set out in its previous comments in relation to this application, there is already a clearly defined route to challenge the MMO over these approvals and this is through the MMO's internal complaints procedure and ultimately through Judicial Review. For the avoidance of doubt, to date, the MMO has never been judicially reviewed over the refusal, or a failure to refuse, an application for an approval under a condition of a licence. The MMO would suggest that the Applicant is attempting to fix an issue which isn't broken.

1.2.1.11 The MMO remains concerned about the applicants proposed inclusion of a specified determination period in which the MMO must determine whether or not to grant any approval required under a condition of the DML. It is the MMO's strongest view that it is inappropriate to put timeframes on complex technical decisions of this nature. The time it takes the MMO to make such determinations depends on the quality of the application made, and the complexity of the issues and the amount of consultation the MMO is required to undertake with other organisations. The MMO's position remains that it is inappropriate to apply a strict timeframe to the approvals the MMO is required to give under the conditions of the DML given this would create disparity between licences issued under the DCO process and those issued directly by the MMO, as these marine licences are not subject to set determination periods.

