

## COMMITTEE REPORT AUTHORISATION CHECK

**21/02144/FUL**

**Land to The South East of Foulton Hall Harwich Road Little Oakley**

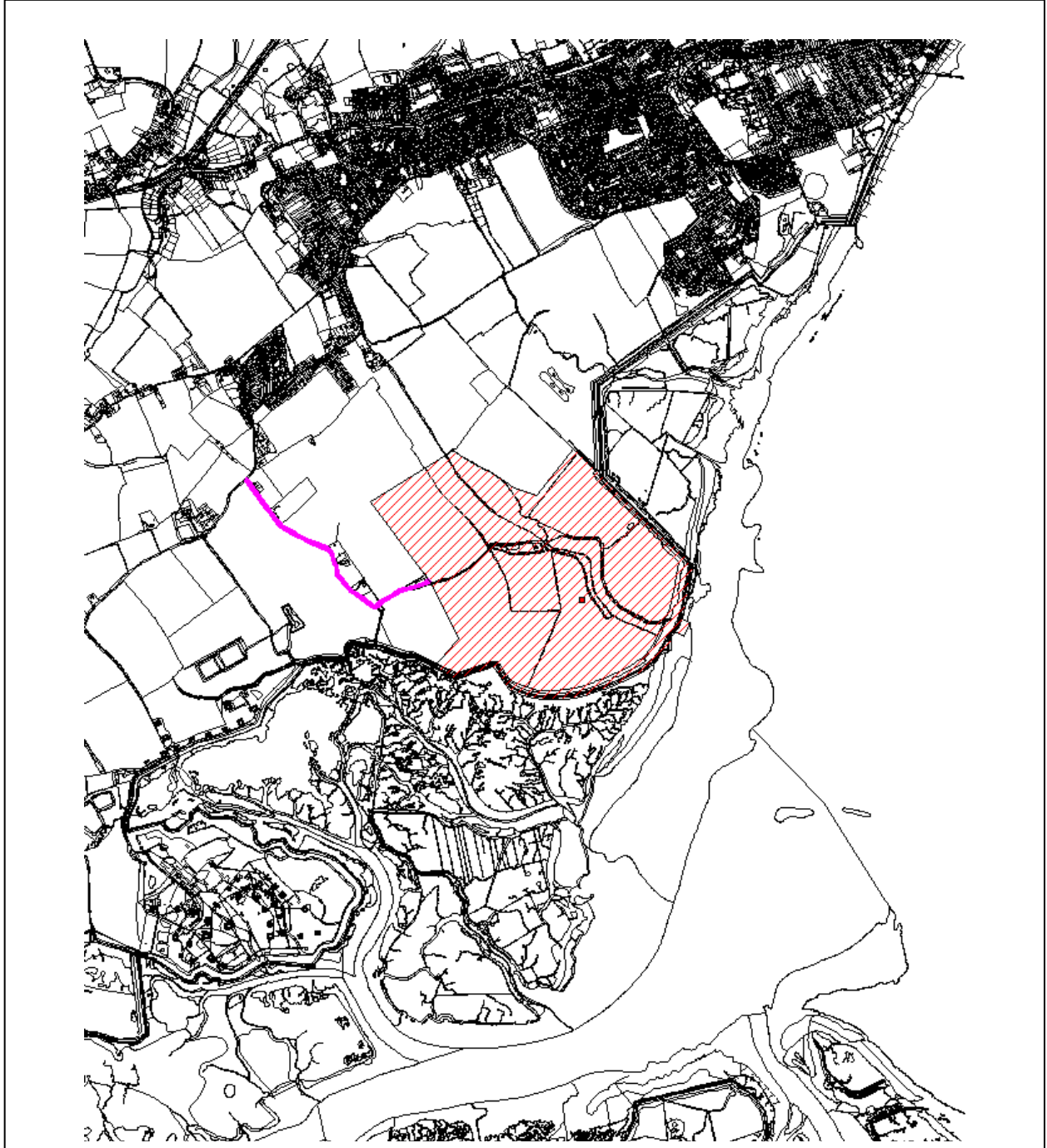
		Initials	Date
1.	File completed and recommendation drafted by	JJJ	05/03/2024
2.	Senior Officer clearance	JPG	06/03/2024
3.	All corrections completed	BB	07/03/2024
4.	DC Admin Support – Uniform updated	BB	07/03/2024

**PLANNING COMMITTEE**

**18<sup>th</sup> March 2024**

**REPORT OF THE DIRECTOR OF PLANNING**

**A.1. PLANNING APPLICATION – 21/02144/FUL – LAND TO THE SOUTH EAST OF FOULTON HALL HARWICH ROAD LITTLE OAKLEY ESSEX CO12 5JA**



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<b>Application:</b>	21/02144/FUL	<b>Expiry Date:</b>	22nd March 2022
<b>Case Officer:</b>	Jacob Jaarsma	<b>EOT Date:</b>	19 <sup>th</sup> March 2024
<b>Town/ Parish:</b>	Little Oakley Parish Council		
<b>Applicant:</b>	Ms Jane Albins - Hutchison Ports (UK) Ltd		
<b>Address:</b>	Land to The South East of Foulton Hall Harwich Road Little Oakley Essex CO12 5JA		
<b>Development:</b>	Proposed removal of vegetation, localised removal of topsoil, construction of a seawall, associated borrow dyke system and wave breaks and managed realignment of coastal flood defences by breaching of the existing seawall to create estuarine and coastal habitat comprised of approximately 76ha of intertidal mudflat, approximately 19ha of intertidal mudflat/saltmarsh transition, approximately 10ha of saltmarsh, approximately 5ha of sand and shingle and approximately 7ha of fresh/brackish water borrow dykes, together with associated engineering (including diversion of footpath), drainage and earthworks.		

## 1. Executive Summary

- 1.0 The application is referred to the planning committee because it has been called in by the local Ward Councillor for The Oakleys and Wix. Moreover, the application is also referred to planning committee due to its strategic importance and interrelated nature with the Bathside Bay Container Terminal Development (from hereon referred to as the BBCT development). Moreover, there is significant public interest in this development.
- 1.1 In 2003, Hutchison Ports (UK) Limited (“HPUK”) applied for planning permission for the construction of a new container terminal and related works at Bathside Bay, Harwich, and the provision of compensatory habitats at Little Oakley, Hamford Water. On 29<sup>th</sup> March 2006, permissions, inter alia, for reclamation works and a container terminal; a small boat harbour; the managed realignment of the coastline and creation of compensatory inter-tidal habitats off-site, and listed building consent in respect of the partial demolition of the long berthing arm attached to a listed Train Ferry Gantry were granted by the Secretary of State, following concurrent Public Inquiries held between 20<sup>th</sup> April 2004 and 21<sup>st</sup> October 2004. These developments (which included a similar realignment scheme the subject of this report) were subjected to rigorous assessments and were found on balance to be acceptable. In particular, with regard to the then Habitats Regulations, the Secretary of State found that Imperative Reasons of Overriding Public Interest (IROPI) outweighed the identified harm to the integrity of a European site (the Stour and Orwell Estuaries SPA).
- 1.2 This habitat creation scheme, purely from a land use perspective, results in no policy conflict insofar as the principle of development is concerned. Indeed, key statutory consultees do not challenge the use or suitability of the application site for that purpose.
- 1.3 Some statutory consultees and a number of third parties have raised concerns in respect of whether this development will provide suitable and/or adequate natural habitat and compensatory measures that will be effective in compensating for the BBCT development. For the extensive reasons given in this report, Officers are satisfied, with the imposition of various planning conditions, that the proposal is capable of ultimately providing suitable and adequate natural habitat and compensatory measures.

- 1.4 Moreover, Condition 55 of the Bathside Bay Container Terminal planning permission (LPA ref. 21/01810/VOC) was specifically imposed to ensure the provision of adequate compensatory measures. Concurrently, the Habitats Regulations will also play a key role in evaluating the forthcoming Marine Licence application imminently due to be submitted by the Developer to the Marine Management Organisation (MMO). Therefore, any perceived outstanding concerns regarding the adequacy of compensation can and should be addressed through the submission of details under the above mentioned Condition 55, the submission of necessary and reasonable further information required under the recommended planning conditions of this proposal, as well as the subsequent determination of the Marine Licence application. Therefore the proposal and if it is sufficient for Bathside Bay mitigation will be looked at separately twice, and this application relates to the planning merits of the proposal itself on its merits.
- 1.5 In addition to the above, a previous planning application for a near identical realignment and habitat creation scheme was granted by the Secretary of State in March 2006 (under planning reference 03/01200/FUL). This planning permission was granted subject to a 10 year time limit for commencement of work, however the permission expired in 2016 – this is sole reason why there is now a requirement to resubmit an application that was already previously approved and is considered to be a significant planning consideration by officers.
- 1.6 Given this clear and robust procedural and historic framework, any outstanding concerns regarding the suitability of the compensation in respect of this separate planning application should not serve as grounds for rejecting this habitat creation scheme, because in accordance with the NPPF, there are planning conditions and another separate process (the MMO license application) that have to be complied with, and will ultimately ensure that the proposal is fully compliant with all relevant Local Plan policies, the relevant provisions in the National Planning Policy Framework (from here on referred to as 'The Framework') and any other relevant provisions, policy guidance or documents.
- 1.7 All other material planning considerations, including statutory and third party concerns have been adequately addressed through the submission of revised information or will be covered in forthcoming submission of details applications or indeed the MMO license application.
- 1.8 Accordingly, the proposal stands as acceptable in principle and is recommended for approval for the detailed reasons set out in this report.

**Recommendation:**

- 1) That the Head of Planning and Building Control be authorised to grant planning permission subject to the conditions as stated at paragraph 8.2, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained; and,
- 2) The informative notes as may be deemed necessary.

## **2. Planning Policy**

2.1 The following Local and National Planning Policies are relevant to this planning application.

### National Policy

NPPF National Planning Policy Framework Dec 2023  
National Planning Practice Guidance  
National Policy Statement for Ports (2012)

## Local Policy

### Tendring District Shared Strategic Section 1 Local Plan (2021)

SP1 Presumption in Favour of Sustainable Development

SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)

SP3 Spatial Strategy for North Essex

SP5 Employment

SP6 Infrastructure and Connectivity

SP7 Place Shaping Principles

### Tendring District Section 2 Local Plan (2022)

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

HP3 Green Infrastructure

HP5 Open Space, Sports and Recreation Facilities

PPL1 Development and Flood Risk

PPL2 Coastal Protection Belt

PPL3 The Rural Landscape

PPL4 Biodiversity and Geodiversity

PPL5 Water Conservation, drainage and sewage

PPL7 Archaeology

PPL8 Conservation Areas

PPL9 Listed Buildings

PPL10 Renewable Energy Generation

PPL15 Safeguarding of Hazardous Substance site, South East of Great Oakley/South West of Harwich

CP1 Sustainable Transport and Accessibility

CP2 Improving the Transport Network

DI1 Infrastructure Delivery and Impact Mitigation

## Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide

## Status of the Local Plan

- 2.2 Planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan (adopted January 2021 and January 2022, respectively), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any neighbourhood plans that have been brought into force.

## Neighbourhood Plans

- 2.3 A neighbourhood plan introduced by the Localism Act that can be prepared by the local community and gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan to promote development and uphold the strategic policies as part of the Development Plan alongside the Local Plan. Relevant policies are considered in the assessment. Further information on our Neighbourhood Plans and their progress can be found via our website <https://www.tendringdc.uk/content/neighbourhood-plans>.
- 2.4 At the time of writing there are no neighbourhood plan(s) in place for this area.

## **3. Relevant Planning History (application site and immediate surrounding area(s))**

03/01200/FUL	Removal of vegetation, localised removal of topsoil, construction of a seawall, associated borrow dyke system and wave breaks and managed realignment of coastal flood defences by breaching of the existing seawall to create estuarine and coastal habitat comprised of approximately 76ha of intertidal mudflat, approximately 19ha of intertidal mudflat/saltmarsh transition, approximately 10ha of saltmarsh, approximately 5ha of sand and shingle and approximately 7ha of fresh/brackish water borrow dykes, together with associated engineering (including diversion of footpath), drainage and earthworks.	Approved	Approved by the Secretary of State 29/03/2006
21/01165/EIASCO	Managed realignment of coastal flood defences.	Responded to	03.09.2021

21/01419/NACON	Consultation from Marine Management Organisation (MMO) for a scoping opinion for managed realignment at Hamford Water, Little Oakley.	Determination	09.09.2021
21/02144/FUL	Proposed removal of vegetation, localised removal of topsoil, construction of a seawall, associated borrow dyke system and wave breaks and managed realignment of coastal flood defences by breaching of the existing seawall to create estuarine and coastal habitat comprised of approximately 76ha of intertidal mudflat, approximately 19ha of intertidal mudflat/saltmarsh transition, approximately 10ha of saltmarsh, approximately 5ha of sand and shingle and approximately 7ha of fresh/brackish water borrow dykes, together with associated engineering (including diversion of footpath), drainage and earthworks.	Current	

**Other Linked and Relevant Planning History** (Bathside Bay)

10/00202/FUL	Application for replacement planning permission (in respect of planning permission 03/00600/FUL) subject to a new time limit (to 2021) for the reclamation of Bathside Bay and development to provide an operational container port; comprising:- Engineering and reclamation works including construction of a cofferdam and 1400 metre quay wall; Construction of a concrete block paved container handling and stacking facility with 11 quayside cranes and 44 Rubber Tyre Gantry (RTG) cranes and associated workshop, customs control, Border Inspection Post and mess buildings, substations, fuelling station and mast and crane mounted lighting; Development of a 6.13 ha rail terminal with 3 rail gantry cranes and heavy duty container area linked to existing rail facilities; Associated office buildings, logistics facility, car and HGV parking and driver facilities; Site works, including additional hardstanding, structural landscape and mounding, wetland buffer,	Approved	Approved by the Secretary of State 29/03/2006
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internal estate roads and perimeter fencing.

21/01792/VOC	Variation of condition 20 of permission 10/00203/FUL to require the approval and installation of an operational lighting scheme before the commencement of operation of the site (rather than the commencement of development)	Approved	28.03.2022
21/01810/VOC	Variation of conditions 2 (Approved Plans / Documents), 28 (Operational Lighting), 41 (Highways), 42 (Highways), 43 (Highways), 44 (Highways), 52 (Operational Air Quality Controls) and 53 (Operational Traffic Noise Attenuation) of application 10/00202/FUL in respect of the proposed Bathside Bay container terminal, Harwich.	Approved	28.03.2022

#### 4. Consultations

4.1. Below is a summary of the comments received from consultees relevant to this application proposal. A number of amendments have been made to the application, and significant additional information have been submitted to address issues and shortcomings raised by statutory and third-party consultees. Moreover, due to the number of re-consultations carried out during the assessment period of this application, in the majority of instances only the latest comments are included below, unless the consultees' latest comments are linked to a previous response from the same consultee, in which case the LPA have included the original comment as well as the latest comment directly below.

Please note: All current and previous consultation responses are available to view, in full (including all recommended conditions and informatives), on the planning file using the application reference number via the Council's Public Access system by following this link <https://idox.tendringdc.gov.uk/online-applications/>.

#### **Historic England**

**25.01.2022**

Thank you for your letter of 6 January 2022 regarding the above application for proposed removal of vegetation, localised removal of topsoil, construction of a seawall, associated borrow dyke system and wave breaks and managed realignment of coastal flood defences by breaching of the existing seawall to create estuarine and coastal habitat comprised of approximately 76ha of intertidal mudflat, approximately 19ha of intertidal mudflat/saltmarsh transition, approximately 10ha of saltmarsh, approximately 5ha of sand and shingle and approximately 7ha of fresh/brackish water borrow dykes, together with associated engineering (including diversion of footpath), drainage and earthworks.

We offer the following advice to assist the Planning Authority in determining the application, taking into consideration the information provided by the applicant: Environment Statement prepared by Royal HaskoningDHV (26 November 2022).

Historic England Advice

The significance of the historic environment



The proposed application site covers a large area of agricultural land to the southeast of the village of Little Oakley and to the south of Upper Dovercourt.

The development has the potential to impact upon both designated and non-designated heritage assets and we have noted the development is potentially within the setting of one scheduled monument, to the east of the scheduled monument known as 'Heavy Anti-aircraft gunsite 350m north east of Little Oakley Hall' (LEN: 1019486).

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

We also note the potential impact on non-designated heritage assets within the redline boundary, which includes the remains of at least ten 'red hills', which are the remains of Bronze Age, Iron Age and/or Roman salt-making sites along the coastal zone. These have not been the subject of previous systematic archaeological investigation.

#### The proposals and their impact on the historic environment

In our previous advice of 16 July 2021 to the screening opinion (LPA Ref. 21/01165/EIASCO), we raised a number of specific concerns about the proposal.

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

We welcome the information that has been provided in the environmental statement to assess the impact of the proposed solar farm on the scheduled monument 'Heavy Anti-aircraft gunsite 350m north east of Little Oakley Hall' and the Grade II\* listed building 'St Mary's House'.

The proposed application will result in a change to the setting of these highly graded designated heritage assets. This is because they draw a considerable amount of significance from its landscape setting. In our view, the harm would be less than substantial.

We note the Environmental Statement (sections 12.5.2 and 12.5.3) recognises that the proposed development area has potential to preserve archaeological remains of high significance. These will be impacted upon through removal during the construction phase, and the impact of the scheme will be of high magnitude (section 12.6.1). There is also recognition of the impact on the scheme in areas beyond the development area due to changes to the coastal regime (section 12.7.2).

Your authority's historic environment adviser, ECC Place Services takes the lead in advising on the identification, assessment and scope for mitigation on non-designated buried archaeological remains and we note their advice of 15 July 2021 and 24 January 2022 regarding the proposals. We note their concerns about the need for archaeological assessment (comprising geophysical survey and trial trenched evaluation) in advance of the planning decision, in order to assess the nature and complexity of non-designated archaeological remains within the application site.

In our advice of 16 July 2021, we also recommended that any assessments include the potential for deposits of palaeo environmental interest to be preserved. If present, remains could be preserved, such as plant macrofossils, insect remains, pollen, diatoms and foraminifera, which

provide information about the landscape and environment, and how this may have changed over time. We note from the Environmental Statement, this work has not yet been undertaken.

### The policy context

The National Planning Policy Framework (NPPF) establishes a presumption in favour of sustainable development in the planning system (paragraphs 7, 8, 10 and 11) which also identifies protection of the historic environment as an important element of achieving sustainable development. Further policy principles relating to the historic environment are set out in Chapter 16 of the NPPF.

In particular, it emphasises the importance of conserving heritage assets, which are an irreplaceable resource, in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of existing and future generations (NPPF paragraph 189).

Paragraph 194 states that 'In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting.

The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance'.

Paragraph 195 requires the LPA to identify and assess the particular 'significance' of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset). This policy also says that the significance of the heritage assets 'should be taken into account 'when considering the impact of a proposal on a heritage asset.

Paragraph 199 requires the planning authorities to place 'great weight' on the conservation of designated heritage assets, and states that the more important the asset the greater the weight should be, 'this is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance'.

Paragraph 200 States that 'any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification'.

Paragraph 201 states that local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss.'

Paragraph 202 states, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

Paragraph 203 states that 'the effect of an application on the significance of a non designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.'

Paragraph 205 states that 'Local planning authorities should require developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and

any archive generated) publicly accessible. However, the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted'.

Proposals that preserve "those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably" (paragraph 206).

#### Historic England's position

We do not have an in principle objection to an application of this type and we recognise that there is likely to be a public benefit. We acknowledge that, as set out in paragraph 202 of the NPPF, it is for the Local Planning Authority to weigh the balance between benefits and the impact and harm to the historic environment.

With a project of this size, where there is likely to be heritage impacts, we would expect to see weight given to heritage harm when the Local Planning Authority weighs the balance of harm versus public benefit of the scheme, as set out in paragraph 203 of the NPPF. We would also ask the Planning Authority to ensure there is sufficient heritage benefits set out within the proposal as set out in paragraph 205 of the NPPF.

We would advise that the concerns raised by Place Services in their response to the scoping opinion in July 2021 and planning application in January 2022 should be also addressed, as it is normal practice in terms of the assessment of archaeological remains, to identify whether any important archaeological remains are present that could preclude or modify the proposed development, including by the imposition of appropriate conditions. This approach is proportionate, reasonable and justified in accordance with the NPPF.

Archaeological work at this stage helps to ensure that an application is well-informed and appropriately designed and it also significantly reduces the risk of additional unexpected costs and delays at a later stage. Such a strategy will enable greater ability of archaeological contractors to more accurately cost the mitigation scheme.

#### **Recommendation**

Historic England has concerns to the application on heritage grounds as currently submitted.

We consider the application does not meet the requirements of the NPPF, in particular paragraph numbers 189, 194 and 195. In our view, it also fails the key policy test in paragraph 202 and 203.

We consider further information is a prerequisite in order to characterise the archaeological deposits prior to consent being granted. We consider that the issues and safeguards outlined in our advice need to be addressed to ensure the application meets the requirements of the NPPF paragraphs set out above.

Your authority should take these representations into account and seek amendments, safeguards or further information as set out in our advice.

Please contact me if we can be of further assistance.

**Historic England**

**10.01.2024**

Thank you for your letter of 3 January 2024 regarding further information on the above application for planning permission. On the basis of this information, we offer the following advice to assist your authority in determining the application.

**Summary**

Although harm to designated assets would be less than substantial and, therefore, our previous advice with respect to them of 25 January 2022 remains unchanged, we repeat our concerns about assessment and management of high significance undesignated archaeological heritage.

**Historic England Advice**

The proposed amended application will result in a change to the setting of several highly-graded designated heritage assets: 'Heavy Anti-aircraft gunsite 350m north east of Little Oakley Hall' (LEN: 1019486) and one Grade II\* listed building within 2km of the centre of the application site (St Mary's House, LEN: 1112098). In our view, the harm to these assets would be less than substantial and, therefore, our previous advice of 25 January 2022 with respect to them remains unchanged.

In our previous advice, we also raised a number of specific concerns relating to the potential for non-designated archaeological remains within the proposed development area. These include the "red hills"- prehistoric and/or Roman salt making sites. No further archaeological information has been provided in the amended application and, therefore, our advice on these also remains unchanged.

In our view, there is still a need to establish the significance of archaeological remains within the proposed development area, and to establish the impact of the proposed scheme on the significance of buried archaeological remains. We would recommend that you seek the advice of your archaeological advisers at Essex Place Services on these matters, relating to non-designated archaeological remains

It is not necessary to consult us on this application again, unless there are material changes to the proposals. However, if you would like advice from us, please contact us to explain your request. Please advise us of the decision in due course.

**ECC Ecology**

No formal response received by the LPA however an email dated 06/03/2024 from ECC Ecology stated whilst the managed realignment has been designed to deliver what it needs as compensation, it may not be big enough – the reasons for this position appears to be similar to the reasons given by Natural England however ECC Ecology did not elaborate precisely why they take this position.

**ECC Heritage**

No response received

**Crown Estates**

No response

**Essex Wildlife Trust**

01.02.2024

We have read and considered the response submitted by the RSPB on 26 January 2024. We fully endorse their comments regarding the proposed permissive path, and support their objection to HPUK's amendments to Condition 3 (Monitoring).

We wish to submit a further objection to this application due to the lack of sufficient ecological information provided to enable Tendring DC to fully discharge its duty in regards to the protection of biodiversity, as required by the NERC Act 2006.

## 1. Overview

The applicant has not provided a detailed mitigation and compensation strategy. HPUK have stated that they intend to develop an ecological mitigation strategy (Supplementary Environmental Information, p.16). Government guidance relating to mitigation and compensation, in situations where avoidance of impacts is not possible, state that developers must provide details of compensation measures to be agreed with the relevant authority as part of planning permission.

These should:

- ensure no net loss of habitat(s) and provide a better alternative in terms of quality or area compared to the habitat(s) that would be lost
- provide like-for-like habitat replacements next to or near existing species populations and should be secured for the long-term
- provide alternative habitats further away from the impacted population if the natural range of the species is not going to be adversely affected
- include proposals to provide connectivity of similar habitats to allow species movement and dispersal

New compensatory habitats must be created far enough in advance that the compensation measures are in place (i.e. the new habitat is fully ecologically functional) before the existing habitat is destroyed.

The proposed works will involve a very significant loss of wildlife habitats, including areas of grassland, scrub, hedgerows, borrowdykes, ditches and arable farmland. Given the extent of habitat loss, and the complexities (both temporal and spatial) of the protected species translocations necessitated by this loss, we would expect that a detailed ecological mitigation and compensation strategy should be submitted by the applicant and made available for consultation with ourselves, the RSPB and other relevant stakeholders, in advance of decision-making.

The compensation strategy should preferably be developed and produced by an independent ecological consultancy, rather than by HPUK themselves. This will provide confidence for stakeholders such as ourselves that biodiversity will be robustly protected and fully compensated in accordance with best practice guidelines.

EECOS (now known as Essex Ecology) have provided detailed guidelines for the required mitigation and compensation in their ecological survey reports. We fully endorse their recommendations and advise that these recommendations should form the basis of a detailed Ecological Mitigation and Compensation Strategy document.

As the relevant authority, Tendring DC will need to review the proposed mitigation and compensation strategy in order to fully assess the impacts of the proposals on existing biodiversity and to discharge your duty under the NERC Act 2006.

## 2. Birds

The realignment scheme will result in significant loss of breeding bird habitat, including arable farmland, scrub, hedgerows, borrowdykes, ditches and areas of grassland.

The breeding bird community is considered to be of ecological value at a 'district' level, due to the high diversity of species recorded and the conservation status of a large number of those species. These include BOCC red- and amber-listed declining farmland species and two Schedule 1 species listed under the Wildlife and Countryside Act 1981 (as amended); Cetti's Warbler (recorded in the Breeding Bird Survey report [EECOS]) and Bearded Tit (pers.com.).

The Breeding Bird Survey report (EECOS, July 2023) includes the following recommendations: The large-scale loss of bird nesting habitat is an inevitable result of the proposed habitat creation scheme, which will involve removal of certain bird nesting habitat (hedges, scrub and trees) and the flooding of other areas of such habitat (arable fields, borrowdykes and ditches), and cannot be avoided. Therefore, appropriate mitigation measures are largely concerned with compensation for this loss. This should include habitat creation and enhancement at and in the vicinity of the site, at a scale appropriate to the scale of the impact.

Further survey should be undertaken during the period leading up to implementation of the habitat creation scheme. In the case of breeding birds, surveys should be carried out every two years as a minimum.

#### Skylark

Compensation for the inevitable loss of Skylark nesting habitat (arable farmland) involved in the proposed works should be made by enhancing nearby farmland (outside of the habitat creation footprint) for this species to the extent that its carrying capacity is significantly increased. This would involve the provision of multiple small (20m<sup>2</sup>) plots of undisturbed foraging habitat, with the objective of increasing the productivity of the habitat in terms of numbers of breeding pairs.

Plots should not be located within ten metres of hedgerows or trees on field boundaries. A minimum of 32 plots (twice the number of nesting pairs at the site) is recommended.

#### Lapwing

As compensation for the loss of nesting habitat within the site, nearby arable farmland should be enhanced for Lapwing. This would include creating fallow plots (1-2 hectares in size) in the middle of large fields, to offer nesting habitat in areas which are not sown with late spring crops. Bare plots in smaller fields may also be used by nesting Lapwing. These areas should be situated away from trees or tall hedgerows to protect from predators. These areas should be left undisturbed until mid-July, when young birds have fledged the nest.

#### Hedgerows

Compensation for the loss of hedgerows should be made by providing new hedgerows within the farmland adjacent to the site. Good practice indicates that a greater length of hedgerows should be planted than that to be lost.

New hedgerows will take time and correct management to become suitable for the range of breeding bird species which make use of the existing hedges. Therefore, they should be planted as far in advance of the removal of existing hedges as possible.

New hedgerows should consist of a suitable range of locally-occurring native species and should be managed for wildlife. They should link up with existing hedgerows, forming a habitat network and enhancing ecological connectivity, both within and around the site, and between the site and other parts of the local landscape.

#### Scrub

Compensation for the loss of scrub should be made by providing new areas of scrub at the site and/or within farmland adjacent to the site. Good practice indicates that a greater area of scrub should be planted than that to be lost.

The proposed temporary topsoil storage area to the north of the proposed new counter wall may be a good location for the provision of new scrub habitat once the topsoil has been removed. Patches of brambles and other scrub should also be provided, or allowed to develop, beside the new borrowdyke

#### Borrowdyke and Ditches

The current habitat creation proposals involve the loss of 1.1 kilometres of borrowdyke, all of which is used by breeding birds, in addition to 4.24 kilometres of drains and ditches, parts of which are used by breeding birds. Approximately 1.42 kilometres of new borrowdyke is to be created along the new counter wall, with approximately 40,500m<sup>2</sup> of linked, brackish water ponds at either end.

The new borrowdyke and associated ponds should be designed to reflect the diversity of habitats associated with the existing borrowdyke, with similar proportions of open water, reedbed and adjacent scrub, including thorn and bramble scrub.

Given the extent of existing drains and ditches used by breeding birds, we recommend that any opportunities to enhance existing drains and ditches on adjacent farmland are taken.

#### Post-works Monitoring

Post-works monitoring of the surveyed site and any areas of new or enhanced compensation habitat should be undertaken in order to determine the success of habitat creation and enhancement measures.

We advise that the applicant should be required to submit a detailed breeding bird mitigation and habitat compensation strategy as part of the requested ecological mitigation and compensation strategy document, based on the recommendations provided by EECOS in their Breeding Bird Survey report.

### 3. Water voles

The realignment scheme will result in the large-scale loss of Water Vole habitat which forms part of a stronghold for water voles in the Tendring district. Water vole translocation and the creation of a suitable receptor site of at least equal value will therefore be required. The protocols for water vole translocation and reintroduction into new habitat are complex and correct timing of the different phases of the work is crucial.

We are concerned that this complexity and the length of time required to successfully complete the water vole translocation in accordance with best practice guidelines, and the implications for the subsequent timing of the preparatory works for the breaching of the seawall, have not been fully considered by the applicant.

Translocation must be carried out under a Natural England licence. In order to fully assess the site's Water Vole population and satisfy Natural England licensing requirements, repeat surveys will be required prior to translocation. Monitoring of the translocated population will be required in order to determine whether it has established successfully at the receptor site.

We strongly recommend that the possibility of incorporating the site within the new regional Water Vole Conservation Strategy should be investigated.

The Water Vole Survey report (EECOS, July 2023) includes the following recommendations:  
`Due to the large-scale loss of habitat at the surveyed site, Water Voles will have to be translocated to a receptor site. A suitable receptor should be larger than that to be lost and should support high quality habitat, or the potential to develop such habitat in good time before translocation is initiated, as well as good connectivity to other areas. The receptor site should be as close to the donor site as possible.

The receptor site should be able to support the translocated population with additional room to allow for population growth. A variety of factors will have to be considered when assessing new areas as potential receptor sites, including management, vegetation and the height, steepness and complexity of banks.

A new borrowdyke will be constructed on the landward side of the new counter wall, to be constructed to the north of the habitat creation area (see Map. 3). This is likely to provide the best option for a receptor site, being located in close proximity to the donor site, provided a large enough area of suitable habitat can be provided here. The new borrowdyke should be designed to recreate the area of lost habitat as closely as possible, with banks suitable for burrowing extensive stands of reed and areas of open water.

In terms of relative areas, the loss of approximately 23,166m<sup>2</sup> of high quality borrowdyke habitat and approximately 1.64 kilometres of lower quality ditch habitat would be compensated by the creation of approximately 2.1 kilometres of high quality borrowdyke habitat. While this would represent a significant gain in the extent of high-quality habitat, the shortfall in overall habitat compensation could be made up by linking the new borrowdyke with new or existing ditch networks, which could be enhanced for Water Voles.

In all cases, new or enhanced habitat within the new borrowdyke and new or existing ditches should be established far enough in advance of the flooding of the existing borrowdyke and ditches to be suitable for receiving translocated voles. The development of the habitat and its suitability should be monitored prior to translocation, with the relocation of voles commencing once suitable habitat has become established.

Translocation will require licensing by Natural England and must be carried out during the voles' active period during the summer'. The use of temporary barrier fencing may be necessary to prevent natural colonisation of the receptor site by Water Voles prior to the translocation of voles from the donor site and to prevent translocated animals from moving back to the donor site.

#### Further Survey

Further survey should be undertaken during the period leading up to implementation of the habitat creation scheme. Its purpose is to identify any changes in the population of the surveyed species at the site so that this can be taken into account when determining the detail of appropriate mitigation measures. In the case of Water Voles, surveys should preferably be carried out annually up to the time of translocation.

#### Compensation

Given the importance of the site for this species, for which coastal borrowdykes are a local stronghold within the district of Tendring, it is recommended that the possibility of contributing towards the new regional Water Vole Conservation Strategy should be investigated. Any such measures would represent compensation, over and above the mitigation and translocation measures required to deliver the Little Oakley managed realignment project. We understand that HPUK has held initial discussion with Essex Wildlife Trust on this Strategy and is happy to continue that dialogue.

#### Post-works Monitoring

Post-works monitoring of the surveyed site and any areas of new or enhanced compensation habitat should be undertaken in order to determine the success of habitat creation and enhancement measures.

In the case of Water Voles, it is recommended that at least three monitoring surveys are carried out over the course of a ten year period.'



We advise that the applicant should be required to submit a detailed water vole translocation protocol as part of the requested ecological mitigation and compensation strategy document, based on the recommendations provided by EECOS in their Water Vole Survey report.

#### 4. Reptiles

The application site supports exceptional populations of Slow Worm and Common Lizard, while Grass Snake was also recorded and the presence of Adder was considered likely. The realignment scheme will result in the significant loss of extensive areas of high value reptile habitat.

The Reptile Survey Report (EECOS, July 2023) includes the following recommendations:

1.8 Following best practice, the mitigation hierarchy should be followed, with the priority being retaining reptile habitat and avoiding impacts wherever possible. Reptile habitat will be retained on the upper landward slopes of the seawall, above the new high tide level of the flooded area.

1.9 Within impacted areas, a full programme of reptile translocation will be required before any work begins, due to the inevitable loss of extensive areas of reptile habitat. It is anticipated that reptiles will be moved to the new counter wall to be constructed at the northern end of the site. A suitable lead-in time will be required to allow time for grassland habitat which is suitable for reptiles, both in structure and the availability of invertebrate prey, to become established on the new counter wall; this should be informed by assessments of the developing vegetation. It may be necessary to fence off the new counter wall to prevent natural colonisation by reptiles from off-site habitat.

1.10 Given the extensive areas of reptile habitat to be lost, an off-site receptor supporting suitable habitat is likely to be required in addition to the new counter wall. This should be located as close as possible to the surveyed site.

1.11 Once the receptor site(s) habitat is sufficiently established, the translocation can commence, to be undertaken during suitable weather conditions between April and September. Due to the scale of the impact area, the translocation may need to extend into a second year; the need for additional visits will be determined by the numbers caught and the depletion rate experienced.

1.12 The latter stages of translocation should be accompanied by phased vegetation removal to assist the capture of reptiles, followed by ecological supervision of the final topsoil strip to attempt to capture any remaining individuals. Sufficient time must be allowed for the supervised destructive search, which could extend into several weeks to cover all areas.

1.13 A full Mitigation Strategy should be prepared once the precise impact areas and the location of the receptor site(s) have been confirmed.

1.14 The advice given in this report is valid for 24 months. If the receptor site habitat will not be established within this timeframe, it is likely that an updated survey of the impacted population will be required to take account of the possibility of changes in reptile population and habitat.'

Section 5.3 of the Reptile Survey report provides a more detailed explanation of the required reptile mitigation and translocation protocols. It includes the following emphasis:

'It is important that mitigation strategies are evidence-based and led; there is growing consensus within conservation ecology that reptile populations cannot simply be moved and maintained at their existing numbers and status at a newly established receptor, in particular for larger and more complex sites. A recent review of reptile mitigation projects involving translocations found little evidence of the success of six separate translocation projects associated with development (Nash et al, 2020), with very few of the translocated reptiles found

during subsequent monitoring. The summary statement of this paper reads: "The study found no confirmatory evidence that mitigation-driven translocations are compensating for the losses of populations to development."

This highlights that, a) translocations of reptiles should be an absolute last resort and, b) where translocations of reptiles cannot be avoided, the receptor site and compensation habitat must be of sufficient size (usually significantly larger than the more established area to be lost) and have been established for a sufficient time to develop the structural complexity and invertebrate community to support reptiles in the long term. This is bearing in mind the fact that habitats supporting reptiles are usually many years old and have developed an associated complex structure and ecosystem within which reptiles play a small yet significant role.

Therefore, the strategy for areas of grassland where impacts cannot be avoided (the greater part of the seawall and inland areas of grassland) should include use of a large area of well-established new habitat within the local area as a receptor site; followed by a programme of translocation with a sufficient number of visits to ensure a large proportion of the population is safely moved.

A full and detailed mitigation strategy should be drawn up, based on the recommendations below, once the precise impact areas, retained areas and potential receptor site location have been identified. The mitigation strategy should also seek to ensure that impacts at the site are reduced as far as possible.'

We advise that the applicant should be required to identify a suitable off-site receptor area for translocated reptiles, which should be included in a detailed reptile mitigation and translocation protocol to form part of the requested ecological mitigation and compensation strategy document. This should follow the guidelines and recommendations outlined by EECOS in the Reptile Survey report.

#### 5. Bats

The proposed realignment scheme will result in the large-scale loss of bat foraging and commuting habitat, including hedges, trees, scrub, and borrowdykes. The ecological value of the bat populations recorded at the application site was categorised as being of local importance, and included the species Common Pipistrelle, Soprano Pipistrelle and Noctule.

Compensation for the loss of hedgerows and scrub will require the provision of new hedgerows and areas of scrub within the site and/or within farmland adjacent to the site. Good practice requires that a greater area of habitat should be planted than that to be lost.

A more detailed outline of the compensation and monitoring requirements for bats is provided in the Bat Survey report (EEC OS, July 2023), Sections 5.3 and 5.4.

We advise that the applicant should be required to submit a detailed bat compensation protocol, included as part of the requested ecological mitigation and compensation strategy document. This should follow the recommendations provided by EECOS in the Bat Survey report.

#### 6. Additional sensitive receptors

The impacts of the realignment scheme on terrestrial invertebrate and Fisher's Estuary Moth, and detailed proposals for mitigation and compensation of those impacts, should also be included as part of the ecological information and compensation strategy document.

#### 7. Conclusion

In summary we object to this application for the reasons outlined above. We advise that Tendring DC should require the applicant to submit detailed Ecological Mitigation and

Compensation Strategy prior to determination. This document should be developed by and independent ecological consultancy and made available for examination by relevant stakeholders as part of the consultation process. Once agreed, the measures outlined in this document should be secured by planning condition. They should include financial provision for long term management, monitoring and maintenance of the realignment site, and should incorporate a review plan and adaptive measures so that adjustments can be made if necessary.

**ECC Highways Dept**

**22.01.2024**

The information submitted with the application has been assessed by the Highway Authority and conclusions reached based on a desktop study in conjunction with a previous site visit. It is noted that this application is a resubmission of an earlier application with some amendments to the previously submitted material. To compensate for the impact of Bathside Bay Container Terminal on the nature conservation sites in the Stour and Orwell estuaries, off-site compensatory measures are required. From a Public Rights of Way (PROW) perspective, not very much has changed to what was agreed with the applicant previously and on site and what ended up in the draft order plan. One difference (presumed intentional) is that the southern permissive route is shorter than suggested before and would not reach the beach area now. As it is classed as a 'permissive path' and does not form part of the PROW network it is not a concern to the Highway Authority as such other than the draft plan would need to be changed to reflect the amendment, if this goes through, therefore:

**The Highway Authority does not object to the proposals as submitted, subject to the previous highway conditions that were recommended for 21/02144/FUL (dated: 7 March 2023) are adhered to, with a minor revision to Condition 5 as highlighted below:**

5. No works *that will affect the PROW* shall be permitted to commence on site until such time as an Order securing the diversion of the existing definitive right of way (public footpath nos. 19 and 22 Little Oakley\_ 174 and 177 respectively) to a route to be agreed with the Local Planning Authority in conjunction with the Highway Authority has been confirmed and the new route has been constructed to the satisfaction of the Public Rights of Way team.

**Reason:** To ensure the continued safe passage of pedestrians on the public right of way and accessibility in accordance with Policies DM1 and DM11.

The above amended condition is to ensure that the proposal conforms to the relevant policies contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

**Informative:**

1: All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org)

2: The Public Right of Way network is protected by the Highways Act 1980. Any unauthorised interference with any route noted on the Definitive Map of PROW is considered to be a breach of this legislation. The public's rights and ease of passage over public footpath nos. 19 and 22 (Little Oakley\_ 174 and 177) shall be maintained free and unobstructed at all times to ensure the continued safe passage of the public on the definitive right of way.

The grant of planning permission does not automatically allow development to commence. In the event of works affecting the highway, none shall be permitted to commence until such time

as they have been fully agreed with this Authority. In the interests of highway user safety this may involve the applicant requesting a temporary closure of the definitive route using powers included in the aforementioned Act. All costs associated with this shall be borne by the applicant and any damage caused to the route shall be rectified by the applicant within the timescale of the closure.

3: On the completion of the Development, all roads, footways/paths, cycle ways, covers, gratings, fences, barriers, grass verges, trees, and any other street furniture within the Site and in the area, it covers, and any neighbouring areas affected by it, must be left in a fully functional repaired/renovated state to a standard accepted by the appropriate statutory authority.

4: The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

5: Mitigating and adapting to a changing climate is a national and Essex County Council priority. The Climate Change Act 2008 (amended in 2019) commits the UK to achieving net-zero by 2050. In Essex, the [Essex Climate Action Commission](#) proposed 160+ recommendations for climate action. Essex County Council is working with partners to achieve specific goals by 2030, including net zero carbon development. All those active in the development sector should have regard to these goals and applicants are invited to sign up to the [Essex Developers' Group Climate Charter \[2022\]](#) and to view the advice contained in the [Essex Design Guide](#). Climate Action [Advice guides](#) for residents, businesses and schools are also available.

**Officer comment: for completeness conditions recommended as part of ECC Highways response dated 7 March 2023 are included below (except for the now revised condition 5 which has been included above):**

1. Prior to the commencement of any work on the site, including any ground works or demolition, a Construction Management Plan as detailed in the supporting documents is submitted to and approved in writing by the Local Planning Authority which shall be adhered to by all ground works, construction, and decommissioning traffic throughout the pre-construction, construction, and decommissioning phases.

The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:

- i. the parking of vehicles of site operatives and visitors,
- ii. loading and unloading of plant and materials,
- iii. storage of plant and materials used in constructing the development,
- iv. wheel and underbody washing facilities.
- v. temporary road works entrance and exit/ construction traffic signage.

Reason: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety and Policy DM1.

2. Before the access is first used by construction traffic, the road junction / access at its centre line shall be provided with a minimum clear to ground visibility splay with dimensions of 2.4 metres by 83 metres to the north-east and 2.4 metres by 86 metres to the south-west, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the road junction / access is first used by vehicular traffic and retained free of any obstruction at all times.

Reason: To provide adequate inter-visibility between vehicles using the road junction / access and those in the existing public highway in the interest of highway safety in accordance with policy DM1.

3. No unbound material shall be used in the surface treatment of the vehicular access within 15 metres of the highway boundary at Harwich Road access point.

Reason: To avoid displacement of loose material onto the highway in the interests of highway safety in accordance with policy DM1.

4. Prior to the commencement of any work on the site, an appropriate Traffic Management Plan shall be provided outlining a designated route to and from the development site for all HGV movements restricting those movements through Harwich Road, Little Oakley between the hours of 8am – 9am and 4pm – 5pm Mon – Fri; to be agreed in advance with the Local Planning Authority and in consultation with the Highway Authority.

Reason: To control the location and direction of HGV vehicle movements to and from the site in the interests of highway safety and Policy DM1.

6. The public's rights and ease of passage over public footpath nos. 19 and 22 (Little Oakley\_174 and 177) shall be maintained free and unobstructed at all times. Reason: To ensure the continued safe passage of the public on the definitive right of way and accessibility in accordance with Policies DM1 and DM11.

7. For the proposed gravel hardpacked path at the base of the footpath, a surface maintenance regime shall be put in place, this is to be agreed in advance with the Local Planning Authority and in consultation with the PROW Planning team. Reason: The footpath may occasionally be accessed by vehicles in order to maintain the site, this is to ensure the path remains well-drained and usable yearround and to enable the continued safe passage of the public on the definitive right of way and accessibility in accordance with Policies DM1 and DM11.

The above conditions are to ensure that the proposal conforms to the relevant policies contained within the County Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

Officer comment: *the above requests will be secured through appropriately worded planning conditions in the event of a recommendation of approval, and where relevant some conditions may be amended to ensure compliance with the NPPF tests for planning conditions.*

### **Essex County Council Ecology**

No response

### **Environment Agency**

**02.02.2022**

Thank you for your consultation dated 6 January 2022. We have reviewed the application as submitted and have no objection. We would however request that a planning condition in relation to European Eels is appended to any planning permission. We have detailed this in our response. We have also included information in relation to flood risk and permitting which should be considered in deciding this application.

Ecology

European eel

Many fish species which favour brackish conditions and will benefit from the proposed realignment and a gentler sloping coastline. Eels are a threatened species which often explore and formerly lived in high densities in coastal channels. In order to do so they require good access through sluices which is a requirement of the 2009 eel regulations.

#### Condition

Drainage through the new seawalls is fish and eel friendly.

#### Reason for Condition

To allow eels and other fish species access to freshwater side of seawalls.

#### Biodiversity Net Gain

The Biodiversity Net Gain (BNG) calculations appear to contain an important omission. The net gain calculations here show a huge increase in benefit from the current farmland use compared with the proposed managed realignment and habitat creation however they do not take account of the fact that this site is specifically being proposed for the compensation for total loss of Bathside Bay in the Stour estuary SSSI. Therefore this site should not only compensate for the loss of Bathside Bay but also so a clear biodiversity net gain for the on site habitats here which will be lost to the development of the intertidal habitat.

Whilst BNG may not have been part of the original planning decisions over Bathside Bay clearly to give a fair and honest account of itself any ecological mitigation needs to show a combined benefit for the loss of both Bathside Bay and the existing habitats on this site.

Many of the existing habitats on this site such as scrub, native hedgerow, mixed grassland and broadleaved woodland are relatively easy to mitigate for outside the proposed intertidal zone so shouldn't be difficult to achieve either on site or to sponsor as habitat enhancements nearby. We request that ecological losses on both sites be fully mitigated and accounted for showing a clear definite overall net gain.

#### Flood Risk

Section 9.5 of the Flood Risk Assessment (FRA) states that the project is to control the flow of water into the site and mitigate risk of flooding to the surrounding areas. The proposals indicate existing crest levels of the defences between 4.60 - 4.80m OD yet the proposed crest level as shown on the drawings for the new embankments are set at 4.5m OD. This does not allow for any settlement rates on the wall, which we would usually adopt +200mm for. In order to maintain the same level of present day flood risk protection to the areas at risk, the crest level should be raised to align with the existing embankment after allowing for settlement. The FRA states that a Ground Investigation revealed the ground conditions are reasonable and the proposed seawalls would be stable. In the absence of the Ground Investigation and to account for expected settlement of the new wall crest levels in the order of 4.8-5.0m would be appropriate.

It is assumed that the material to be won from the borrow dykes is suitable for the purposes of constructing a clay embankment. Appropriate testing and soil analysis would be required to demonstrate the suitability of the material along with the depth of the cut off trench and the methodology for compaction and topsoil and seeding proposals.

The assessment of Flood Risk has been taken against present day return periods. No allowance has been identified in the proposals for sustaining these return periods in the future, and therefore the level of flood risk will reduce over time resulting from sea level rise and climate change. Should it be necessary to raise the existing seawalls to sustain the current standard of protection, it would be necessary for the proposed sea walls to be raised accordingly.

The responsibility for maintaining the sections of existing sea wall within the extent of the proposed site will reside with the landowner. The Environment Agency would no longer use its permissive powers to undertake maintenance of these sections of existing sea wall. Additionally, the responsibility for maintenance of the new sea walls and associated drainage structures would reside with the landowner. The Environmental Statement indicates that HPUK will undertake maintenance.

#### Environmental Permitting Regulations 2016

In accordance with The Environmental Permitting (England and Wales) Amendment) (No.2) Regulations 2016, Schedule 25, Part 1, these works may require a Flood Risk Activity Permit. The applicant should apply for a Flood Risk Activity Permit. Information about Flood Risk Activity Permits, and application forms, can be found here; <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits>. Completed application forms should be sent to [FDCCoastal@environment-agency.gov.uk](mailto:FDCCoastal@environment-agency.gov.uk)."

#### **Environment Agency**

**(latest comments dated 05.02.2024)**

Thank you for re-consulting us on the above consultation. We have reviewed the newly submitted documents and can confirm that we have no objection as long as the below requested condition is appended to any permission granted. If the condition cannot be appended to any permission granted we request that you re-consult us.

#### Sea Wall Crest Levels

Having reviewed the revised drawings the applicant has increased the crest levels to 4.80m AODN. As previously advised, we suggested crest levels to be between 4.80 - 5.0m AODN, therefore it does meet some of our request, however there is still the potential that following consolidation the 4.80m AODN levels could reduce. Due to this we request the following condition.

#### Condition

Crest levels of the Sea Wall shall be maintained at a minimum of 4.80m AODN

#### Reason

Sea Wall levels falling below this level will result in an increase of flood risk elsewhere.

#### Biodiversity Net Gain

We have reviewed the Supplementary environmental information and whilst we welcome the use of the biodiversity metric in this instance it could be viewed as misleading to attribute a Net Gain for biodiversity at this site. This is because the site is being delivered as compensation for impacts at another site so would be unable to demonstrate the additionality required to prove such a positive impact in units. We also understand that Biodiversity Net Gain is not mandatory for the Little Oakley site however the calculation in its current form does not demonstrate the National Planning Policy Framework requirement to provide biodiversity enhancement where possible.

Due to the complexity of the application and the continuous submission of new and additional information by the applicant spanning over a period of 27 months (with the initial submission made in mid-December 2021), Natural England provided a total of three responses. These responses were submitted in February 2022, January 2023, and February 2024. Given the interconnected nature of these responses, all three have been included below, starting with the oldest response first.

**Natural England**

**17.02.2022**

SUMMARY OF NATURAL ENGLAND'S ADVICE

HOLDING OBJECTION - MORE INFORMATION REQUIRED

We advise that the following would need be provided to remove our objection :

1. Robust project specific evidence, collected within the last 3 years, to demonstrate that the original deed/agreement for compensation is still fit for purpose as required by current case law and guidance.
2. Robust scientific evidence to demonstrate that a detrimental impact to Hamford Water designated sites from the creation of the compensatory habitats can be excluded and if not mitigated/compensated for.
3. More substantial evidence to demonstrate that the compensation area will provide appropriate supporting habitats for the Stour and Orwell Estuaries Special Protected Area (SPA) species and abundance, which will be displaced as a result of supporting habitat loss from BBCT alone, or in combination with impacts to Hamford Water designated areas.
4. Further consideration by the Applicant on the requirement to provide a greater area of supporting habitat to address uncertainties in the evidence and increased environmental value since 2003.

Main Concerns

Whilst Natural England continues to recognise the ecological merits of a managed realignment scheme at Little Oakley and the potential for conservation benefits for the Hamford Water designated area and features, the agreement on the original compensation parameters was in 2006. Since then our understanding of both sites has improved, and the policy framework that we work within has evolved, giving rise to the following particular issues, which relate to determining the adequacy of the current proposed compensation measures to offset the loss of high quality supporting habitat within the Stour and Orwell Estuaries Special Protection Area:

- The data presented to assess the impacts on Bathside Bay and the compensation site is mainly from 2003 surveys. NE has highlighted that updated surveys would be required to enable NE to provide detailed advice and support the competent Authority in undertaking their Appropriate Assessment (please see the checklist circulated by NE on 15th February 22 and those provided in the Annexes to this letter).
- The ratio of compensation to loss is under 1:1 (based on structural / function factors, not foot print). This falls significantly short of current guidance (NE has proposed 2:1).
- The compensation site is functionally linked land to the Hamford Water SPA and has potential impacts that have not been adequately considered in the shadow HRA.
- The proposed compensation is not consistent with Defra's draft 'Best practice guidance for developing compensatory measures in relation to Marine Protected Areas'.
- In addition, NE believes a Marine Licences for BBCT and compensation measures are required and does not exist. Natural England advises that the applicant is required to have all the necessary legal consents.

**Natural England**

**13.01.2023**

Thank you for re-consulting Natural England on the above proposal in a letter dated 23 December 2022, which was received by Natural England's Area Team on 11 January 2023.



Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

We have reviewed the letter and drawings submitted by Savills outlining revisions to the scheme design, changes to access, and proposing a planning condition to assess and mitigate for any waterbird disturbance through a programme of monitoring and adaptation, which will form part of a Compensation Implementation and Management Plan (CIMP) and an Adaptive Management Plan (AMP). Natural England note the comments concerning the use of a similar condition to facilitate phasing the Bathside Bay Container Terminal and Small Boat Harbour projects (21/01792/VOC and 21/01810/VOC), attaching the need to evidence the adequacy of the compensation provisions to the marine works phase of the developments. The proposals outlined in the letter from Savills do not include the evidence requirements outlined in our letter dated 17th February 2022 (Our Ref: 379749).

### 1. Changes to design and access

The change in design to include the creation of islands and improve the provision of roosting and nesting habitat, and potentially reduce recreational and predator disturbance, is supported by Natural England. We also support the creation of a biodiversity area to the north where the topsoil will initially be stored.

Natural England note that the changes to access will involve the creation of permissive rights of way opening up approximately 1.5km of footpath running along the top of the current seawall that was originally due to be closed, and any potential impact from increased recreational activity and possible disturbance are to be monitored and, if necessary, mitigated by the CIMP and AMP attached as a condition to a granted permission.

### 2. Use of conditions to address outstanding evidence gaps

The proposal to use a condition to facilitate development of a compensation scheme in advance of fully evidencing its adequacy is not consistent with Natural England's standard approach and advice on other sustainable development and Habitat Regulations policy casework. We have, to date, expected a full evidence base to be provided on which robust advice and decisions can be made. The condition applied for the Bathside Bay developments ensured that the required evidence is collected prior to any development that posed a risk to the Special Protected Area.

We recognise the value that adaptive management plans can provide and these have regularly been utilised for adapting mitigation measures, however, to our knowledge, they have not been relied upon for compensation. In our opinion it is a risk based approach, sufficient confidence must be provided upfront to justify the compensation scheme. Also, the provision of baseline recreational disturbance information to support the assessments and conclusions presented by monitoring reports associated with a CIMP and AMP, would increase confidence in plans and proposals to mitigate and manage recreational pressures.

There is also a risk in deferring evidence of compensation and mitigation adequacy to conditions and Natural England recommend providing necessary confirmation early for certainty. In short our advice is that this needs further consideration under the Habitats Regulations.

### 3. Hamford Water designated sites

Natural England note that the letter from Savills did not address concerns raised in our response dated 17th February 2022 or our subsequent consultation response to the Marine Management Organisation (MMO) (Reference MLA/2022/106), relating to Hamford Water

designated areas and features and we would welcome further information to allow assessment of potential impacts on these protected habitats and species.

#### 4. Coastal Concordat

Whilst writing Natural England would like to acknowledge the multiple elements and permissions relating to this project and the need for consistency and clear join up amongst the regulators. We have recently provided statutory advice to the MMO for the Little Oakley project, and it was apparent that they were unaware of the proposed development at Bathside Bay and were, therefore, assessing the managed realignment scheme in isolation.

Natural England recommend the principles of the Coastal Concordat are followed and join-up between regulators implemented to reduce the risk of uncertainty and the development of different approaches between consenting bodies. We would be happy to discuss this further with you and how we can support you and the MMO with working within these principles.

#### 5. Summary

In summary Natural England's information requirements outlined in our letter dated 17th February 2022, are still requested to facilitate a contemporary assessment of the adequacy of the compensation to be provided by the Little Oakley scheme based, on either the old or the new design and access proposals.

Natural England wrote to Hutchinson Ports (UK) Ltd (in December 2022) to outline our continued concerns and our willingness to work with them to resolve outstanding points. The comments in this letter are consistent with the advice provided directly to Hutchinson Ports.

For any queries relating to the content of this letter please contact me using the details provided below.

### **Natural England**

**02.02.2024**

Natural England continues to recognise the ecological merits of a managed realignment scheme at Little Oakley and the potential for conservation benefits for the Hamford Water designated area and features.

#### **SUMMARY OF NATURAL ENGLAND ADVICE - MORE INFORMATION REQUIRED**

We advise that the following information would need to be provided to remove continued uncertainty that the proposals will meet the conservation objectives for the Stour & Orwell Estuaries and Hamford Water Special Protection Areas and ensure the ecological coherence of the national site network:

1. Clarity around the provision of sand and shingle habitat within the new design.
2. Updated modelling to assess site development following design changes to ensure conservation objectives could be met.
3. Details of deliverable additional mitigation and compensation should these be required following review of monitoring data by the proposed Regulatory and Advisory Group.
4. Further information to support assumptions that the compensation proposed can deliver the conservation objectives for both SPAs.
5. Securing a monitoring and adaptive management strategy to ensure the compensation site delivers on its objectives, with potential impacts from disturbance as one of the factors within the plan.
6. Further information around coastal geomorphology.

#### **Main Concerns**

We have reviewed the Supplementary Environmental Statement (sES), supporting survey information, drawings, and letter submitted by Savills aiming to address consultee responses relating to the second round of public consultation for the above scheme. Natural England note that the additional information supplied does not include all of the evidence requirements outlined in our letter dated 15 February 2022 (Our Ref: 379749). Questions around coastal geomorphology and the development of the site (particularly in the light of the new design) remain.

## **1. Changes to design and access**

We support the revised change in design to include the creation of islands, additional creeks, and standing water to improve the provision of roosting habitat, and potentially reduce recreational and predator disturbance. However, the new design (Planning Scheme Plan – revised map) excludes the provision of sand/shingle habitat, which is included in the mosaic of habitats present within Bathside Bay and was previously part of the project. It is listed as an objective of the site within Table 3.1 of the sES and may be a mapping error. Clarity around the provision of sand and shingle for the creation of refuge areas, and improving the potential for nesting waterbirds, is needed.

Natural England recommend modelling is updated to demonstrate how the site may develop given the changes in design, including the revised plan to allow the site to develop without using dredged sediments to kick start accretion. This is required to further assess the sites potential to develop the requisite habitats to compensate for losses within Bathside Bay, and the timescales associated with that development, to ensure there is sufficient flow in and out of the managed realignment site for mudflat to persist once developed.

We note that the revised design still aims to create permissive rights of way opening up approximately 1.5km of footpath running along the top of the current seawall that was initially planned to be closed. The Little Oakley Managed Realignment site was originally designed to create a less disturbed habitat than Bathside Bay and Natural England's concerns around disturbance impacting the sites ability to meet its objectives remain. The plan to monitor and if necessary mitigate for potential impacts from recreational activity, not predicted in the original application through a monitoring and adaptation strategy, (attached as a condition to a granted permission) is welcomed as long as deliverable mitigation and or additional compensation is identified as part of the monitoring and adaptation strategies.

## **2. Bird data**

A full dataset has not been presented as part of the sES, but it is noted that the assessments use a combination of data from one year of bespoke surveys, Suffolk Wildlife Trust, and Galloper O&M data to draw conclusions on the relative value of Bathside Bay to the wider Stour and Orwell Estuaries Special Protection Area (S&OE SPA). Natural England concur that the information presented outlines that, whilst the changes in the value of the Bay for some individual bird features within the assemblage has increased significantly (e.g., ringed plover 40.1% and mute swan 20.3%) the assemblage numbers overall appear similar to those seen in 2004 at 2.9% (2.6% in 2004). However, there is still not enough certainty that the conservation objectives for losses within the S&OE SPA can be delivered by the habitat being created at Little Oakley, particularly considering the additional loss of functionally linked land associated with the Hamford Water SPA.

The information supplied previously and as part of this re-consultation states that 69.2ha of intertidal mudflat, 5ha of sand/shingle and 2.8ha of saltmarsh (total 77ha) are being compensated for by the creation of 105ha of intertidal mixed and transitional habitat within a larger 138ha site, which comprises compensatory habitat creation for Hamford Water

terrestrial and brackish/freshwater losses, including those associated with the Hamford Water Special Area of Conservation (SAC). As previously advised, in the 20 years since the 2004 Compensation Mitigation and Monitoring Agreement was agreed the understanding of the pressures on coastal systems, how intertidal habitat develops within a managed realignment site, and the uncertainties attached to the creation and persistence of mudflats has increased. It is recognised that over-compensation is necessary to deliver flexibility around the extent of habitats and the function they provide and to allow for more certainty that a compensation site can deliver the required conservation objectives.

Little Oakley needs to provide compensation for losses within the S&OE SPA and for those associated with Hamford Water SPA, which complicates calculations of the compensation being delivered by the site. The evidence presented needs to demonstrate that the realignment will provide sufficient habitat for both the existing use and to replace the ecological functions of Bathside Bay, with additional scope to offset any failures associated with intertidal habitat creation. In addition, compensation needs to account for the impacts on SPA populations resulting from the loss of resource at both Bathside Bay and Little Oakley prior to functioning compensation habitat being in place.

The data presented for Hamford Water confirms the use of the current site by significant numbers of brent geese, along with shelduck and curlew. Roosting opportunities are being provided by the intertidal habitat proposed and alternative foraging habitat for the curlew and shelduck will be present within the site. However, foraging habitat for brent geese is very limited (they will eat saltmarsh plants and some algae but prefer seagrass, winter crops, and managed grassland areas). Natural England is concerned that the realignment will not provide sufficient foraging habitat for both the S&OE and Hamford Water SPA losses.

Natural England note the report comments that the usage of the site is intermittent, however, use of functionally linked land is expected to be intermittent as it depends on factors such as weather, cropping regime and grassland management. The need remains to ensure that foraging resource is maintained to avoid an adverse effect on integrity, particularly given the strong linkage between the foraging habitat and the Hamford Water SPA.

As highlighted in our consultation response dated 15 February 2022 the relatively sheltered nature of Bathside Bay and the loafing and feeding subtidal areas provided have not been discussed. The Galloper O & M data did look at bird usage in this area at current vessel activity levels. Subtidal habitat linked to and within Bathside Bay will be lost and should be assessed and where necessary compensated for.

### **3. Use of monitoring and adaptation to address outstanding evidence gaps**

Natural England note the clarification given in the Savills letter (21 December 2023) around the purpose of the monitoring, which aims to anticipate and avoid disturbance risks and provide adaptive management measures to ensure the objectives and targets of the site are achieved, and we support this undertaking. The Habitats Regulations consider that monitoring and adaptation are key components of a compensation package and not an additional provision. The implementation of a Regulatory and Advisory Group to oversee monitoring and adaptive management is welcomed by Natural England.

Managed realignment intertidal habitats take time to develop and the suite of birds reliant on them will change over time as they mature. It is necessary that monitoring is in place for a sufficient timescale to confirm that the compensation site has delivered the conservation objectives required and not just to monitor the impacts of disturbance. A 5 year monitoring strategy will fall short of this requirement. Evidence from other sites (e.g. Paull Holme Strays on the Humber) show that after an initial influx of wildfowl, taking advantage of seed and vegetation resources before the site transitions to a more saline system, it takes around 5 years for the invertebrate levels associated with mudflats to evolve and wader numbers to

develop. A period of not less than 10 years monitoring is recommended to confirm that the site does meet its objectives, with adequate review periods to ensure that triggers are in place to identify any intervention or the provision of additional compensation as necessary.

Natural England maintain that sufficient confidence must be provided upfront to justify the compensation scheme is deliverable and management and/or additional resource is in place should the site fail to meet its targets and objectives. These should be included in the Compensation Implementation and Management Plan (CIMP) and the Adaptive Management Plan (AMP), and we would welcome early engagement on the development of these plans to help ensure the project can deliver on its objectives and maintain the coherence of the national site network.

Natural England are confident that additional compensation can be delivered through other routes, should further assessment determine that the Little Oakley realignment does not provide adequate functional habitat. Identifying deliverable alternative provision in advance would help reduce the risks to the applicant and competent authority should the scheme fail to meet its conservation objectives.

#### **4. Hamford Water designated sites**

Natural England note that the conclusions from the sES and Savills covering letter consider that robust evidence has now been presented to demonstrate that the realignment project will not have a detrimental impact on Hamford Water designated sites.

The construction of two new internal bunds to prevent damage and disturbance to the existing outer seawalls should avoid impacts on the Hog's Fennel and grassland habitats associated with the protected Fisher's Estuarine Moth, removing concerns around an adverse effect on the integrity of the Hamford Water SAC. It is important, however, to ensure that vehicles and machinery associated with the project do not use the outer seawalls, within the SAC areas, where supporting habitat has been identified. Recommendations outlined in the Little Oakley Managed Realignment Fisher's Estuarine Moth Survey 2022 report (Essex Ecology Services Limited (EECOS), July 2023) should be followed. This must include post-works monitoring to determine the success of the habitat creation and protection measures, and the implementation of a long term vegetation management plan, to replace maintenance measures previously undertaken by the Environment Agency, to prevent scrub invasion leading to the loss of Hog's Fennel and rank grassland in these areas. This should be attached as a condition of any granted permission.

Certainty that the realignment can deliver suitable foraging resources for displaced brent geese associated with the Hamford Water SPA is less clear (as discussed in the bird section (2.) above) and Natural England do not agree that the evidence comprehensibly demonstrates the ability of the compensation site to provide adequate supporting habitat for Hamford Water SPA displaced features in combination with that required for the S&OE SPA. We, therefore, recommend that further consideration is given to the provision of additional supporting habitat, including alternative foraging habitat suitable for brent geese.

#### **5. Breeding bird surveys**

Natural England have reviewed the Little Oakley Managed Realignment Breeding Bird Survey 2022 report (EECOS, July 2023) and in light of the extensive loss of farmland breeding bird habitat, along with hedgerows and other suitable habitat, concur with the advice within that report. A full strategy for mitigation and monitoring is required and should be secured as a condition of any granted permission.

#### **6. Ecological Mitigation Strategy**

The assurance that the applicant will develop an Ecological Mitigation Strategy to include species translocation and other recommendations contained in the protected species reports (Botanical, Water Vole, Reptile and Invertebrate), attached to the application, is welcomed by Natural England and this should be secured as a condition of any granted permission.

## **7. Other relevant matters**

We have previously raised concerns around the calculation of Biodiversity Net Gain (BNG) for this project. Natural England recognise that the Bathside Bay Container Terminal granted planning permission is exempt from the need to deliver BNG and, as such, the regulations have not required the Little Oakley compensation site to provide BNG for that scheme. We advise that Tendring District Council need to determine if BNG is required for the realignment application. Natural England has consistently advised that we do not view the compensation scheme as a standalone project and any BNG calculations for Little Oakley will need to take into account the losses to biodiversity for which compensation is being provided. In our opinion any calculation of net gain based solely on the merits of the realignment project would not represent a contribution to biodiversity net gain for the North Essex area, or enhance coherent ecological networks.

We advise that you consider whether any subsequent 'new' permission at Bathside Bay will trigger a requirement to deliver BNG and, if so, whether that could be deliverable at the Little Oakley realignment site in addition to the required compensation.

Natural England's information requirements outlined in our letter dated 15 February 2022 and not addressed in subsequent consultations are still requested to facilitate a more complete assessment. This particularly relates to questions raised around the coastal geomorphology data.

## **Royal Society For The Protection of Birds**

**25.01.2024**

The RSPB wishes to respond to the new information addressing consultee responses provided on behalf of Hutchison Ports (UK) Limited (HPUK) in respect of the above application (letter dated 21 December 2023).

Among other things, the letter addresses the RSPB's comments. We set out our response to the new information below. Our response remains focused on how best to address the potential impacts of the proposed permissive path on the achievement of the aims, objectives and targets of the managed realignment compensation i.e. through:

- The design of the managed realignment site itself; and
- Devising a suitable scheme of monitoring and adaptive management in respect of possible recreational disturbance from the use of the permissive path.

We have welcomed HPUK's support for the majority of our proposed amendments to the habitat design and planning condition scheme for monitoring and adaptive management. However, we have objected to the proposed amendment to one of the monitoring conditions and provide detailed comments to explain our concerns and make recommendations on further amendments to meet those concerns.

We also maintain concerns we raised in earlier correspondence regarding the 400 metre long permissive footpath on top of the seawall and potential disturbance which, even with the mitigation proposed, could undermine the effectiveness of the habitat compensation for wading birds. This path in effect creates potential habitat loss, by creating a 200 metre disturbance zone around the perimeter of the site where the permissive footpath is in operation that birds will not use. We also note that this area of influence by recreational users could potentially be

larger without adequate fencing and signage to prevent access further along the seawall and to the breach area.

We would be happy to discuss the comments set out in this letter with yourself and with HPUK.

### **Habitat design amendments**

The RSPB welcomes HPUK's acceptance of our habitat design recommendations, as detailed in the HPUK

Response to Consultees, dated 21 December 2023 and reiterated below:

On page 5 of the 21 December 2023 letter, HPUK sets out its response (repeated below) to the RSPB's suggested design amendments. As noted by HPUK, these were, in part, to help prevent the disturbance of waterbirds using the compensation site by users of the proposed permissive paths.

#### *Design Amendments:*

*The RSPB suggested the following amendments to the scheme to help prevent disturbance to waterbirds to maximise the ecological value of the site: Moving back the proposed islands. Creating new creeks to help prevent disturbance. Not placing shingle on the raised drier areas by the footpath. Understanding details of the viewing platforms. Creating new lagoons. Creating rills and channels. Creating a new island.*

*All of the proposed suggested amendments have been incorporated into the design of the scheme. The amendments are summarised in Section 5 of the report by Royal Haskoning DHV and are depicted in Drawing No. PC3294-RHD-ZZ-XX-DR-C-2001 53 P04.*

### **Planning conditions dealing with potential disturbance to waterbirds from use of permissive paths**

In order to help understand and respond to the risk of disturbance of waterbirds by users of the permissive paths, HPUK proposed a series of interrelated planning conditions to address the issue, working with the Regulatory and Advisory Group in the production of the Compensation Implementation and Management Plan (the CIMP).

Our understanding of this scheme of conditions is that it is designed to identify the potential risk to the success of the compensation site from recreational disturbance (arising from the retention of the (permissive) footpaths) and implement appropriate adaptive management measures, if and when required. Importantly, it will inform discussions in the Regulatory and Advisory Group as to whether recreational disturbance is or is not a contributory factor to any failure to meet the aims, objectives and targets of the managed realignment compensation over its lifetime.

In its previous response, the RSPB recommended amendments to the wording of the conditions to help avoid the risk of significant disturbance to waterbirds occurring.

Therefore, the RSPB welcomes HPUK's acceptance of some of our recommended amendments to the Draft Planning Condition for monitoring and adaptive management measures (see pages 3 and 4 of the 21 December 2023 letter):

*These changes would further help to anticipate and avoid risk of disturbance to waterbird populations. The proposed amendments are set out in a table below and HPUK agrees to them.*

Specifically, the RSPB welcomes agreement to our suggestions on three of the four draft conditions shown on the table on page 4 of the Hutchinson Ports Limited Response to Consultees, dated 21 December 2023. These will ensure the following:

- **Condition 1:** Preparation of a monitoring programme of potential disturbance prepared in consultation with the Regulatory and Advisory Group and integrated into the Compensation Implementation and Management Plan (CIMP) to be approved by the Local Planning Authority;
- **Condition 2:** Preparation of an adaptive management plan, setting out measures that could be implemented if the monitoring indicates disturbance to waterbirds is occurring due to public access, such disturbance potentially resulting in the aims, objectives and targets of the compensation site not being met. The adaptive management plan to be prepared in consultation with the Regulatory and Advisory Group and approved by the Local Planning Authority;
- **Condition 4:** If the monitoring report (see Condition 3) in respect of disturbance indicates further or different compensation and/or further monitoring is required, such measures shall be reflected in an update to the CIMP which shall be prepared in consultation with the Regulatory and Advisory Group and approved by the Local Planning Authority.

The RSPB, however, objects to HPUK's constraining its own Condition 3 such that it is only necessary to submit an annual monitoring report for the first five years of the proposed use. Below we set out our reasons and detailed concerns and recommend amendments to Condition 3 and, by association, Condition 1 to construct a framework for appropriate monitoring of the potential disturbance of waterbirds using the compensation site.

#### Overview of reasons for objecting to HPUK's amendments to Condition 3

We disagree with HPUK's suggested amendments to the proposed planning condition that an annual monitoring report of potential disturbance of waterbirds within the compensation site only be submitted to the Local Planning Authority and Natural England for the first five years following the commencement of the proposed use. This is detailed by HPUK's addition in bold type to the beginning of item 3 in the table on page 4, repeated below:

**Condition 3: For a period of five years following the start of the use of the development hereby approved an annual monitoring report presenting the findings of the monitoring undertaken in accordance with paragraph (1), and where necessary recommending the implementation of adaptive management measures, shall be submitted to and approved in writing by the Local Planning Authority in consultation with Natural England.** Prior to submission of the annual report to the Local Planning Authority, the HPUK shall consult the Regulatory and Advisory Group on the draft monitoring report in order to identify whether it is necessary to recommend implementation of adaptive management measures to avoid the risk of significant disturbance to the waterbirds using the compensation site.

HPUK state that:

The justification for a five-year monitoring period is that by then the initial establishment of the site would have taken place and a robust understanding of the potential sources of disturbances and suitable mitigation (if necessary) would be gained.

HPUK's proposed amendment changes the terms of its original proposed condition which had no time limit placed on it and clearly envisaged annual reporting on potential disturbance of waterbirds using the compensation site. This made sense in the context of a compensation site required in perpetuity, given the way in which the site is used by waterbirds and the patterns of recreational use of the permissive paths may change over time. We considered it would be important to monitor both aspects in order to understand whether or not recreational disturbance was contributing to changes in waterbird usage of the compensation site over time. This is important in order to determine if adaptive management measures for recreational disturbance are needed and then to provide the evidence justifying the use of those measures. Hence the RSPB made no comment on that aspect of the draft condition.

HPUK's proposed revision to Condition 3 assumes that the pattern of recreational use of the permissive paths and thereby the risk of disturbance to waterbirds will be settled within the first 5 years of the compensation site. The RSPB disagrees and strongly recommends that HPUK's proposed amendment to Condition 3 be removed.



Below, we set out our detailed concerns and recommend amendments to Conditions 1 and 3 to implement a proportionate approach to monitoring of recreational disturbance over time, such that Conditions 2 and 4 can be implemented, and justified when necessary, over the lifetime of the compensation scheme.

Detailed comments on how HPUK's amendments to Condition 3 place long-term objectives for the site at risk and recommended amendments to Conditions 1 and 3

In this section, we address the following to help explain our detailed concerns:

- Overall purpose of the compensation site and importance of monitoring and adaptive management measures;
- Reasons why the RSPB objects to HPUK's proposed amendment to Condition 3; and
- Proposed revised wording of Conditions 1 and 3.

*Overall purpose of compensation site and importance of monitoring and adaptive management measures* The full aims, objectives and targets are set out in Schedule 1, Part 2 of the original Bathside Bay Container Terminal Deed. In summary, the purpose of the compensation site is to:

- Support the required numbers and diversity of roosting and feeding waterbirds adversely affected by the permanent loss of Bathside Bay from the Stour and Orwell Estuaries SPA/Ramsar site; and
- within 15 years of the breach of the managed realignment site to be of sufficient quality to qualify for designation as an extension to the Hamford Water SPA/Ramsar site.

Given the permanent loss of Bathside Bay, it is the RSPB's considered view that the Little Oakley managed realignment compensation site will need to be maintained in-perpetuity.

Based on the RSPB's considerable experience, the ecology of managed realignment sites will evolve dynamically over time e.g. in terms of the distribution of intertidal and saltmarsh habitats and therefore the availability of suitable feeding and roosting areas within the site. It is important to recognise these aspects will not be fully stabilised within the first 5 years of the managed realignment and will continue to evolve. For example, some research has suggested that knot (a target species for the compensation site) might take longer to build up in numbers than some other wader species, because they feed on bivalves that potentially take longer to increase in biomass density.

The ecology will also interact with any changes in the use of the site and adjacent areas, including the permissive paths, by people. These too are likely to evolve over time and will not be fixed within the first 5 years.

The overall monitoring and adaptive management programme (to be set out in the CIMP) is essential to inform decisions on the short, medium and long-term management of the compensation site to ensure it continues to meet its aims, objectives and targets. The monitoring programme will, by necessity, need to be reviewed and adapted over time.

The CIMP will need to ensure the monitoring programme is carefully designed to address those factors known to influence bird usage of the compensation site over time in order to better understand and respond appropriately to any changes observed e.g. changes to food supply (diversity, density, biomass), changes in habitat (quality, quantity and distribution) and changes in recreational use (including a pre-construction baseline to understand current use).

The information gathered will inform understanding of how each is influencing the achievement of the compensation aims, objectives and targets. It will be fundamental to the Regulatory and Advisory Group's role in determining:

- if adaptive management measures are required;

- why and when adaptive management measures are required; and
- which adaptive management measures are required.

*Reasons why the RSPB objects to HPUK's proposed amendment to Condition 3*

With respect to recreational use of the permissive paths and adjacent areas, we consider it highly unlikely that the pattern of use will have settled within the relatively short period of 5 years from the creation of the managed realignment. Creation of the managed realignment site represents a significant change in the landscape in the area and is likely to change the way in which the area is used by people in the short, medium and long-term. Understanding this and consistency of management of recreational pressure are likely to be critical to the success of the compensation site. It will be important to monitor, understand and manage recreational pressure including any adaptive management measures undertaken so that, as the ecology of the compensation site evolves, it continues to meet its compensation aims, objectives and targets.

Therefore, in respect of recreational use, the monitoring programme needs to be designed so as to inform decisions in the short, medium and long-term, and not be restricted to, and based on, monitoring information on the first 5 years of recreational use, as this may not be representative of future patterns of use of the site by birds and people.

As with other components of a well-designed monitoring programme, the nature and intensity of monitoring may change over time as usage patterns (birds and humans) settle down and become more established. We consider this should be for the Regulatory and Advisory Group to determine, through both the initial CIMP and any subsequent revisions. We consider HPUK's proposal to limit such monitoring to the first 5 years would be counterproductive as it would fail to detect how patterns of recreational use interact with the bird usage of the compensation site as it evolves and may limit any potential adaptive management that could be undertaken.

The monitoring programme should be designed to inform the Regulatory and Advisory Group as to whether recreational disturbance is likely to undermine the compensation site's ability to meet its aims, objectives and targets and what, if any, adaptive management measures should be implemented. These may relate to the use, for example, of screens, signage, wardens, access management or temporary restrictions, habitat management. For this reason, we have recommended changes to Condition 3 that empower the Regulatory and Advisory Group to recommend to the Local Planning Authority an appropriate monitoring programme, including the frequency of recreational use monitoring after the first 5 years.

We recommend the HPUK amendment in bold type for item 3 on page 4, as detailed above, be removed. Monitoring of how disturbance impacts the site must be longer term than proposed by HPUK in order for the compensation site to ensure it reaches its full potential for wetland birds and meets the compensation targets.

*Proposed revised wording of Conditions 1 and 3*

Based on the above, we set out below our proposed amendments to Conditions 1 and 3 to introduce a robust but proportionate approach to the monitoring of potential disturbance to waterbirds during the lifetime of the managed realignment compensation site.

***Condition 1: A programme of monitoring of the potential disturbance of waterbirds within the managed realignment site due to public access along the redundant arms of the seawalls shall be prepared in consultation with the Regulatory and Advisory Group and submitted to and approved in writing by the Local Planning Authority in consultation with Natural England. The programme of monitoring will form part of a Compensation Implementation and Management Plan and shall comprise monitoring for a period of five years following the implementation of the development and thereafter, periodic repeat monitoring of potential disturbance of waterbirds at a frequency to be determined by the Regulatory and Advisory Group, such frequency to be not less than every five years.***

**Condition 3: For a period of five years following the start of the use of the development hereby approved** an annual monitoring report presenting the findings of the monitoring undertaken in accordance with paragraph (1), and where necessary recommending the implementation of adaptive management measures, shall be submitted to and approved in writing by the Local Planning Authority in consultation with Natural England. Prior to submission of the annual report to the Local Planning Authority, the HPUK shall consult the Regulatory and Advisory Group on the draft monitoring report in order to identify whether it is necessary to recommend implementation of adaptive management measures to avoid the risk of significant disturbance to the waterbirds using the compensation site.

In summary, we welcome HPUK's acceptance of our design management recommendations and some of our recommended amendments to the Draft Planning Conditions for monitoring and adaptive management measures. However, we object to HPUK's assessment that the monitoring report on recreational disturbance should be limited to the first five years following the commencement of the proposed use of the Little Oakley site as compensatory habitat.

We have made recommendations on changes to Conditions 1 and 3 to address our concerns. Monitoring of how disturbance impacts the site must recognise that recreational usage will change over the short, medium and long-term, alongside changes in the ecology of the site. To properly inform decisions on the appropriate management response to ensure the compensation site reaches its full potential for wetland birds and meets the compensation targets it will be necessary to have relevant information. Our amendments to conditions 1 and 3 are designed to help achieve that.

We would be happy to discuss the comments set out in this letter with yourself and with HPUK.

**Royal Society For The Protection of Birds**

**07.02.2024**

In addition to our main letter of 25 January 2024, in response to the new information addressing consultee responses provided on behalf of Hutchison Ports (UK) Limited (HPUK) in respect of the above application (letter dated 21 December 2023), on further reflection the RSPB wishes to add the following comments.

The RSPB wishes to endorse the comments made by Essex Wildlife Trust in their letter dated 1 February 2024. In particular, given the losses of important habitats including borrowdyke and ditches, scrub, hedgerows and grassland at the receptor site, there must be a detailed ecological mitigation and compensation strategy, produced by an independent ecological consultancy. This strategy should be made available in advance of decision-making, for consideration by ourselves, Essex Wildlife Trust and other key stakeholders.

There must be a full consideration of the breeding bird assemblage present at the receptor site, as per the EECOS/Essex Ecology Breeding Bird Survey Report recommendations of July 2023, which include habitat creation and enhancement to compensate for the loss of breeding bird habitat at Little Oakley, and surveys prior to implementation of the habitat creation. Habitat creation should include measures for open-country species, such as Skylark and Lapwing breeding plots, and post-work monitoring. There should be a detailed breeding bird mitigation and habitat compensation strategy within the wider ecological mitigation and compensation strategy document.

In addition, water voles, bats and reptiles - and their habitats - must be given due regard during the process, following the recommendations by EECOS/Essex Ecology in the relevant reports. We defer to Essex Wildlife Trust for further requirements for those taxa.

We would be happy to discuss the comments set out in this letter with yourself and with HPUK

The application site is situated, mainly, in the Hamford Drained Marshes and Slopes Landscape Character Area (LCA) as defined and described in the Tendring District Council Landscape Character Assessment 2001.

The land to the north of the application site is contained in the Hamford Coastal Slopes LCA and the land to the south in the Hamford Water Marshes LCA.

The application site appears to spread into the lower reaches of The Hamford Coastal Slopes LCA.

In terms of the impact of the development proposal on the local landscape character it should be noted that in Section 11.2 of The Environmental Statement submitted by the applicant it refers to National Character Areas (NCA's) and confirms that the application site is situated in the Greater Thames Estuary NCA and borders the Northern Thames Basin NCA. It goes on to accurately describe the character of the area, within which the application site sits, from a national perspective.

Section 11.2 of the Environmental Statement entitled Prediction of potential effects during construction; accurately describes the impact of the development, again from a national perspective.

Where Planning applications are likely to affect the local landscape character it is usual for the applicant to provide technical information, at a district level, in order to establish the baseline landscape qualities and to quantify the likely harm resulting from the development proposal.

This is usually by way of the submission of a Landscape and Visual Assessment (LVIA) that refers in detail to the Tendring District Council Landscape Character Assessment. The LVIA should be in accordance with Landscape Institute and Institute of Environmental Management and Assessment Guidance contained in the Guidelines for Landscape and Visual Impact Assessment Third Edition 2013. The document would identify several locations (visual receptor viewpoints) from which the application site can be viewed.

The LVIA would identify and record the potential impact of the development on the character of the landscape and the way that it is seen and enjoyed by the public. It should quantify the degree of harm to both the physical character of the landscape and its visual qualities. It should also contain information to show how measures such as soft landscaping will be used to mitigate the harm that will result from the change of use of the land.

In the absence of an LVIA it is clear that the proposed realignment of coastal defences and creation of tidal, intertidal and associated wildlife habitats will result in a significant change to the current use of land contained within the boundaries of the application site.

However in its broad sense the application relates to a change of use of the land that will result in the loss of part of one Landscape Character Area; Hamford Drained Marshes, and an increase in another; Hamford Water Marshes. In essence the adjacent LCA's will retain their existing relationship with the boundary between them moving inland and northwards.

Consequently, and taking into account the finding in Section 11 of the Environmental Statement it is considered that the application will not significantly alter the overall nature, character or users experience of the area.

The proposed alterations to the Public Right Of Way (PROW) will maintain the integrity of the PROW network and the opportunity to provide viewing points may improve user's enjoyment of the area whilst reducing disturbance for wildfowl and wetland species using the newly created habitat.

**ECC SuDS Consultee**

**02.02.2022**

Thank you for your email received on 11 August 2021 which provides this Council with the opportunity to assess and advise on the proposed surface water drainage strategy for the above mentioned planning application.

As the Lead Local Flood Authority (LLFA) this Council provides advice on SuDS schemes for major developments. We have been statutory consultee on surface water since the 15th April 2015.

In providing advice this Council looks to ensure sustainable drainage proposals comply with the required standards as set out in the following documents:

- Non-statutory technical standards for sustainable drainage systems
- Essex County Council's (ECC's) adopted Sustainable Drainage Systems Design Guide
- The CIRIA SuDS Manual (C753)
- BS8582 Code of practice for surface water management for development sites.

Lead Local Flood Authority position

Having reviewed the Flood Risk Assessment and the associated documents which accompanied the planning application, we do not object to the granting of planning permission based on the following:

- Ordinary Water Course Consent should be applied for.

We have the following advisory comments:

- We strongly recommend looking at the Essex Green Infrastructure Strategy to ensure that the proposals are implementing multifunctional green/blue features effectively. The link can be found below.

<https://www.essex.gov.uk/protecting-environment>

In the event that more information was supplied by the applicants then the County Council may be in a position to withdraw its objection to the proposal once it has considered the additional clarification/details that are required.

Any questions raised within this response should be directed to the applicant and the response should be provided to the LLFA for further consideration. If you are minded to approve the application contrary to this advice, we request that you contact us to allow further discussion and/or representations from us.

Summary of Flood Risk Responsibilities for your Council

We have not considered the following issues as part of this planning application as they are not within our direct remit; nevertheless these are all very important considerations for managing flood risk for this development, and determining the safety and acceptability of the proposal. Prior to deciding this application you should give due consideration to the issue(s) below. It may be that you need to consult relevant experts outside your planning team.

- Sequential Test in relation to fluvial flood risk;

- Safety of people (including the provision and adequacy of an emergency plan, temporary refuge and rescue or evacuation arrangements);
- Safety of the building;
- Flood recovery measures (including flood proofing and other building level resistance and resilience measures);
- Sustainability of the development.

In all circumstances where warning and emergency response is fundamental to managing flood risk, we advise local planning authorities to formally consider the emergency planning and rescue implications of new development in making their decisions.

Please see Appendix 1 at the end of this letter with more information on the flood risk responsibilities for your council.

#### INFORMATIVES:

- Essex County Council has a duty to maintain a register and record of assets which have a significant impact on the risk of flooding. In order to capture proposed SuDS which may form part of the future register, a copy of the SuDS assets in a GIS layer should be sent to [suds@essex.gov.uk](mailto:suds@essex.gov.uk).
- Any drainage features proposed for adoption by Essex County Council should be consulted on with the relevant Highways Development Management Office.
- Changes to existing water courses may require separate consent under the Land Drainage Act before works take place. More information about consenting can be found in the attached standing advice note.
- It is the applicant's responsibility to check that they are complying with common law if the drainage scheme proposes to discharge into an off-site ditch/pipe. The applicant should seek consent where appropriate from other downstream riparian landowners.
- The Ministerial Statement made on 18th December 2014 (ref. HCWS161) states that the final decision regarding the viability and reasonableness of maintenance requirements lies with the LPA. It is not within the scope of the LLFA to comment on the overall viability of a scheme as the decision is based on a range of issues which are outside of this authority's area of expertise.
- We will advise on the acceptability of surface water and the information submitted on all planning applications submitted after the 15th of April 2015 based on the key documents listed within this letter. This includes applications which have been previously submitted as part of an earlier stage of the planning process and granted planning permission based on historic requirements. The Local Planning Authority should use the information submitted within this response in conjunction with any other relevant information submitted as part of this application or as part of preceding applications to make a balanced decision based on the available information

#### **ECC Green Infrastructure Team**

**01.02.2024**

ECC currently provides advice on green infrastructure schemes (GI) for major developments. ECC have been consultees on GI since 2018. Although there are no statutory requirements for GI, the 25 Year Environment Plan and Environment Act (2021) place significant importance on protecting and enhancing GI, accessibility and biodiversity net gain.

In providing advice we look to ensure that adequate provision, protection and improvements of high-quality GI comply with the objectives and planning principles set out in the following documents:

- Local Planning Authorities (LPA) Green Infrastructure Strategy/ SPD or equivalent green and open space strategies provides further guidance on the LPA's Local Development Plan policies regarding the Council's approach to green infrastructure provision in the local authority area.
- Essex Green Infrastructure Strategy, 2020, aims to enhance the urban and rural environment, through creating connected multi-functional GI that delivers multiple benefits to people and wildlife. It meets the County Council's aspirations to improve GI and green spaces in our towns, city and villages, especially close to areas of deprivation.
- Essex Green Infrastructure Standards, 2022, provide clear guidance on the requirements on both planning policy and planning application and processes. ECC GI position Further to our comments on submitted on 7 February 2022, we have also reviewed the amended Illustrative Masterplan, Supplementary Environmental Information, Perspective plans, ES and the associated documents which accompanied the planning application, **we remove our holding objection and we do not object to the granting of 21/02144/FUL** subject to the following mitigation and conditions: It is encouraging to see that the majority of our previous comments have been taken into account, including the recommendation to consult the RSPB, Essex Wildlife Trust, EA, and Natural England. The ECC GI Team would like to provide an update on the following comments from our previous response.

#### Local Nature Recovery Network/ GI Network

- Make sure this scheme is not in isolation but connected to the wider landscape/ GI network. Apply Lawton Principles of bigger, better and joined up (The Lawton Report, 2010).
- Potential to be included as part of the Local Nature Recovery Network. ECC is the 'Responsible Authority' for delivering the Greater Essex Local Nature Recovery Strategy (GELNRS) and are working with the Essex Local Nature Partnership to provide direction and ensure key stakeholders are engaged. The GELNRS is being prepared for completion by early 2024. The GELNRS will form the baseline for habitat information, which in turn will generate action to promote biodiversity management and improvement. There is a significant opportunity for the Little Oakley realignment Scheme to contribute to the strategy and connect space for nature. For any enquiries relating to the Local Nature Recovery Strategy in Essex  
Biodiversity Net Gain

- Needs to provide more detail on the biodiversity net gain that is being provided. The ECC GI Team welcomes the provision of a biodiversity enhancement area, as well as the proposed intertidal marine habitats and aquatic habitats within and adjacent to the realignment site, which is detailed in the Illustrative Masterplan and Supplementary Environmental Information update. It is noted that this scheme is compensation for the Bathside Bay proposal, and that at the time of application 21/02144/FUL submission, it is outside the scope of BNG requirements and should be treated as a standalone application. The potential for a total net gain of 166% is welcomed, as is the development of an Ecological Management Strategy. Although of a requirement as this application is except for the reason mentioned, consideration should be given to the production of a Habitat Management and Monitoring Plan or at least the elements required for such plan is incorporated into the Ecological Management Plan and is part of a pre-commencement condition.

#### Condition 1

Planning applications delivering significant BNG shall require a Habitat Management and Monitoring Plan to be submitted to and approved in writing by the local planning authority. To ensure that the net gain in biodiversity agreed upon in the Biodiversity Gain Plan/ Assessment shall be implemented in full within a 30-year period. The Biodiversity Net Gain Management and Maintenance Plan shall include 30-year objectives, management responsibilities, maintenance schedules and a methodology to ensure the submission of monitoring reports. The Biodiversity Net Gain Management and Maintenance Plan should cover:

- Details of the management and maintenance operations, actions and work schedule for years 1 – 5 and with broader management aims for the lifetime of the BNG commitment of 30 years.
- Proposals for monitoring needed to measure the effectiveness of management, including methods, frequency and timing.
- Details of the roles and responsibilities for implementation and monitoring, as well as the legal, financial, and other resource requirements for BNG delivery, are secured.
- Including setting out the reporting procedures and options for remedial works and adaptive management to account for necessary changes in work schedule to achieve the required targets if needed.

Reason:

In order to ensure measurable net gains are being delivered and effectively maintained and in accordance with LPA's BNG Policy, allowing the LPA to discharge its duties under the NPPF (2023).

Shoreline Management Plan

Our previous responses, submitted on 7 February 2022, mention that ECC was a partner in the development and endorsement of the Essex and South Suffolk Shoreline Management Plan (2010). It is worth noting that this plan is currently being reviewed, and its policies (including Policy Development Zone B2, which is relevant to this scheme) are being updated and should be monitored. Nonetheless, it is understood that ECC would continue to support the proposal from a coastal perspective.

Recommended Conditions from our Previous Response

Pre-commencement conditions for a Landscape Ecological Management Plan, Monitoring, and Construction Environmental Management Plan as recommended in our previous response submitted on 7 February 2022, are still relevant. This also links to our previous recommendation for 'phased GI implementation will be required.'

Our previous response did not include the proposed wording for the conditions and are listed below for your records.

Condition 2

No development shall take place until there has been submitted to and approved, in writing, by the Local Planning Authority a Construction Environmental Management Plan (CEMP). Ideally, strategic elements of the GI framework are brought forward in phase one of the development, to create a landscape structure or evidence is shown that substantive GI is secured as early as possible in initial phases of delivery to allow early establishment. Therefore, a Construction Environmental Management Plan (CEMP) will be required to set out how retained GI, such as trees, hedges and vegetation, as well as any nature designated sites (e.g., SSSI's etc.) will be protected during construction.

Reason: The phased implementation of new GI of the development construction will allow for the GI to mature and it will provide further benefit of reducing/buffering the aesthetic impact from the construction work.

Condition 3

No development shall take place until there has been submitted to and approved, in writing, by SuDS and landscape specialists at the Local Planning Authority a landscape ecological management and maintenance plan and work schedule for a minimum of 10 years. Details should include who is responsible for GI assets (including any surface water drainage system) and the maintenance activities/frequencies. We would also expect details on how management company services for the maintenance of GI assets and green spaces shall be funded and managed for the lifetime of the development to be included.

Reason: To ensure appropriate management and maintenance arrangements and funding mechanisms are put in place to maintain high-quality value and benefits of the GI assets. Failure to provide the above required information before commencement of works may result



in reducing the value of the development, becoming an undesirable place to live that may increase the impacts from climate change, such as flood risk or air pollution from the site.

Condition 4

The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

Reason: To ensure the GI are maintained for the lifetime of the development as outlined in any approved Maintenance Plan so that they continue to function as intended to ensure the high-quality and multi-functional benefits of GI assets.

INFORMATIVES:

- Any GI features proposed for adoption by Essex County Council should be consulted on with the relevant Highways Development Management Office.
- It is not within the scope of the GI team to comment on the overall viability of a scheme as the decision is based on a range of issues which are outside of this authority's area of expertise.
- We will advise on the acceptability of green infrastructure and the information submitted on planning applications based on the key documents listed within this letter. However, any relevant information relating to green infrastructure submitted as part of any previous applications should be submitted with the updated information.
- The GI consultation responses provide a high-level review of the proposals onsite. However, the relevant specialists e.g., ecology and landscape specialists should still be consulted on the information submitted. It should be noted that detailed discharge of condition applications should be referred to technical specialists rather than the GI planning team.
- Mitigating and adapting to a changing climate is a national and Essex County Council priority. The Climate Change Act 2008 (amended in 2019) commits the UK to achieving net-zero by 2050. In Essex, the Essex Climate Action Commission proposed 160+ recommendations for climate action. Essex County Council is working with partners to achieve specific goals by 2030, including net zero carbon development. All those active in the development sector should have regard to these goals and applicants are invited to sign up to the Essex Developers' Group Climate Charter [2022] and to view the advice contained in the Essex Design Guide. Climate Action Advice guides for residents, businesses and schools are also available.

Please note: This letter is advisory and should only be considered as the opinion formed by specialist staff in relation to this particular matter.

*Officer comment – all the above requests will be secured through appropriately worded planning conditions in the event of a recommendation of approval, and where relevant some conditions may be amended to ensure compliance with the NPPF tests for planning conditions*

**Department For Environment Food and Rural Affairs**

No response

**Essex Bridleways Association**

**10.01.2024**

Essex Bridleways Association ('EBA') commented on the previous application in January 2023 concerning the proposed diversion of Footpath 19 Little Oakey under the scope of this scheme. Our previous comments remain pertinent.

The Tendring district as a whole has a woefully inadequate bridleway network and therefore equestrians are substantially underserved. The inevitable consequence of this lack of provision

of safe off-road riding routes is that riders are forced onto roads, and with traffic volumes ever increasing, the safety of riders is being severely compromised. The frequency of incidents involving equestrians and motorists is increasing and will continue to increase unless the Council reconsiders its approach to the provision of safer off-road riding routes.

Consequently, local riders and EBA have been holding informal discussions with a Tendring District Councillor as to how the bridleway network might be enhanced in the future, to improve upon the safety concerns highlighted above and to make the daily riding experience more enjoyable for equestrians.

In the course of the discussions with the Councillor we raised this planning application and it was mutually agreed that this represents a very good opportunity to create a new route that would benefit not just walkers, but also horse riders whom of course provide a significant benefit to the local economy.

We therefore request that in addition to the proposed diversion of FP19, that this PROW is also upgraded to bridleway status. If the existing stretch of FP19 to the west of the site boundary were also to be upgraded, this would provide natural linkage with the existing bridleway 17 which follows a north westerly direction. This said, by far the most preferred option would be to create a circular riding route which could be achieved by essentially upgrading FP's 19 and 22 in their entirety to bridleway status, and providing linkage to existing bridleways 17, 20, 34 and 36. We hope that the Council will start to consider more seriously the plight of riders who currently have little option other than to ride on roads which are becoming busier and busier, resulting in safety concerns for all road users and this represents an excellent opportunity to signal their intention to do so.

**Essex County Council Archaeology**

**16.02.2024**

The above development lies within an area of known archaeological potential identified through aerial cropmarks and recorded on the Essex Historic Environment Record. The site is known to contain multi-period archaeological remains, many of which will be impacted upon by the proposed development. The archaeological remains known to exist within the site boundary reflect the changing nature of the coastal zone and its use as a resource since prehistoric times and also human exploitation and manipulation over time until the postmedieval periods when the areas were reclaimed. Many elements of this history are likely to be preserved below ground and may also be associated with waterlogged and/or palaeoenvironmental remains.

A programme of trial trench/test pit evaluation will be required in the first instance across the site to establish the depth, nature, extent and complexity of the surviving archaeological deposits and to ensure the implementation of a suitable mitigation strategy.

The following conditions are recommended in line with the National Planning Policy Framework, paragraph 200 and 211 and Tendring Local Plan policy PPL7:

**RECOMMENDATION:**

1. No development or preliminary groundworks of any kind shall take place until a programme of archaeological evaluation has been secured in accordance with a written scheme of investigation which has been submitted by the applicant for approval by the local planning authority.
2. No development or preliminary groundworks of any kind shall take place until the completion of the programme of archaeological evaluation identified in the WSI defined in Part 1 and confirmed by the Local Authority archaeological advisors.
3. A mitigation strategy detailing the excavation / preservation strategy shall be submitted to the local planning authority for approval following the completion of the archaeological evaluation.

4. No development or preliminary groundworks can commence on those areas containing archaeological deposits as detailed in the mitigation strategy (Part 3) until the satisfactory completion of fieldwork.

5. The applicant will submit to the local planning authority a post excavation assessment for approval in writing by the Local Planning Authority. This shall be done within 6 months of the date of completion of the archaeological fieldwork unless otherwise agreed in advance in writing by the Local Planning Authority. This will result in the completion of post excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

A professional archaeological contractor should undertake any archaeological investigation. The District Council should inform the applicant of the recommendation and its financial implications.

*Officer comment: the above requests will be secured through appropriately worded planning conditions in the event of a recommendation of approval, and where relevant some conditions may be amended to ensure compliance with the NPPF tests for planning conditions*

**Hamford Water Management Committee**                      **13.02.2024**

The Hamford Water Management Committee has three points of concern with regard the latest planning submission by HPUK for the compensatory habitat at Foulton Hall.

1. We request that a baseline survey be undertaken prior to construction and that this be followed up by successive surveys to the navigable channel - as part of the monitoring process.

2. Should silting and shallowing of the channel occur, then the developer should be responsible for dredging.

3. The existing sea wall at Fulton Hall should be maintained to the present standard in perpetuity - as this is one of the three critical hard points that protects the Walton Backwaters and the salt marsh within. This hard point limits erosion to the north-side of Hamford Water embayment and National Nature Reserve from the North Sea.

**Environmental Protection**    **16.02.2024**

No adverse comments to make

**Harwich Haven Authority**    **24.01.2024**

Returned a 'no comment' response.

**The Ramblers Association**    **03.01.2024**

No meaningful response.

*Officer comment: Email response sent in in January 2024 referring to an attachment, however no attachment provided. The LPA requested for the response to be resent with the attachment*

*however no response from the Ramblers Associated was forthcoming in time for the publication of this report*

**Highways England**

**19.01.2024**

No objection subject to the following condition:

No development shall commence until a Construction Traffic Management Plan (CTMP) has been approved in writing with the local planning and shall be implemented in full to the satisfaction of the local planning authority in consultation with National Highways (former Highways England) before first use of any part of the development. Construction Traffic Management Plan (CTMP) shall include:

- measures to minimise delivery of construction materials on the A120 and A12 at peak periods.
- agreement on travel routes to and from the A120 and A12 to the proposed development site(s).
- details of how mud and other debris will be prevented from reaching the A120 and A12.
- details of how the construction workforce will get to and from the site, with the aim of minimising any congestion on the A120 and A12.

Reason: To ensure that the A120 trunk road will continue to operate safely and efficiently as a part of the Strategic Road Network in accordance with Section 10

**Marine Management Organisation 03.01.2024**

Please be aware that any works within the Marine area require a licence from the Marine Management Organisation. It is down to the applicant themselves to take the necessary steps to ascertain whether their works will fall below the Mean High Water Springs mark.

Response to your consultation

The Marine Management Organisation (MMO) is a non-departmental public body responsible for the management of England's marine area on behalf of the UK government. The MMO's delivery functions are; marine planning, marine licensing, wildlife licensing and enforcement, marine protected area management, marine emergencies, fisheries management and issuing European grants.

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

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

Applicants should be directed to the MMO's online portal to register for an application for marine licence

<https://www.gov.uk/guidance/make-a-marine-licence-application>

You can also apply to the MMO for consent under the Electricity Act 1989 (as amended) for offshore generating stations between 1 and 100 megawatts in English waters.

The MMO is also the authority responsible for processing and determining Harbour Orders in England, together with granting consent under various local Acts and orders regarding harbours.

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

The MMO is a signatory to the coastal concordat and operates in accordance with its principles. Should the activities subject to planning permission meet the above criteria then the applicant should be directed to the follow pages: check if you need a marine licence and asked to quote the following information on any resultant marine licence application:

- local planning authority name,
- planning officer name and contact details,
- planning application reference.

Following submission of a marine licence application a case team will be in touch with the relevant planning officer to discuss next steps.

### Environmental Impact Assessment

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

In cases where a project requires both a marine licence and terrestrial planning permission, both the MWR and The Town and Country Planning (Environmental Impact Assessment) Regulations <http://www.legislation.gov.uk/ukxi/2017/571/contents/made> may be applicable.

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

<https://www.gov.uk/guidance/make-a-marine-licence-application>

### Marine Planning

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

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

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

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

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

#### Minerals and waste plans and local aggregate assessments

If you are consulting on a mineral/waste plan or local aggregate assessment, the MMO recommend reference to marine aggregates is included and reference to be made to the documents below;

- The Marine Policy Statement (MPS), section 3.5 which highlights the importance of marine aggregates and its supply to England's (and the UK) construction industry.
- The National Planning Policy Framework (NPPF) which sets out policies for national (England) construction minerals supply.
- The Managed Aggregate Supply System (MASS) which includes specific references to the role of marine aggregates in the wider portfolio of supply.
- The National and regional guidelines for aggregates provision in England 2005-2020 predict likely aggregate demand over this period including marine supply.

The NPPF informed MASS guidance requires local mineral planning authorities to prepare Local Aggregate Assessments, these assessments have to consider the opportunities and constraints of all mineral supplies into their planning regions - including marine. This means that even land-locked counties, may have to consider the role that marine sourced supplies (delivered by rail or river) play - particularly where land based resources are becoming increasingly constrained.

If you require further guidance on the Marine Licencing process, please follow the link <https://www.gov.uk/topic/planning-development/marine-licences>

## 5. Representations

- 5.1. Little Oakley Parish Council - The main focus of Little Oakley Parish Council's (LOPC) comment at this stage relates to the loss of the footpath along the top of the sea wall, access from Little Oakley to Irlams Beach and the proposal for an activity shelter in addition to the viewing platforms. These issues relate to local amenities and the impact on the local community which we serve. We are aware of and support the many individual objections and those from concerned organisations (eg British Divers Marine Life Rescue) which relate to consequential loss of habitat, silting up of the Walton Backwaters and the impact on the local seal population.

### **Loss of the footpath along the top of the sea wall**

LOPC do not accept that the diverted PROW should be sited at the base of the sea wall, on the landward side, thus denying walkers expansive views of the landscape and the sea which can be enjoyed from the existing route.

The RSPB reserve at Wallasea to which we have previously referred as a comparable site and where the footpaths are on top of the sea wall, **IS** a compensation site and is considered within the Defra and Natural England report "[Review of the Effectiveness of Natura 2000 Sites Compensation Measures in England](#)" 2016 \*. We can find no evidence, within that report or elsewhere, which identifies that walkers on top of the sea wall will disturb the birds using the

surrounding habitat. On the contrary, the successful development of sites such as Wallasea or Trimley in Felixstowe indicates that the presence of walkers on top of the sea wall does not disrupt the successful development of the compensation site. The RSPB's approach is unnecessarily cautious.

### **Loss of access from Little Oakley to Irlams Beach**

Whilst the retention of access to Irlams Beach is a welcome development, we are concerned that as the access will be along a permissive path, and the statutory protection previously afforded to the route as a PROW will be lost. There is a risk that the path will not be maintained to provide continuing access and could be closed at any time. LOPC propose that appropriate conditions be attached to any planning consent, if passed, identifying responsibility for the upkeep of the permissive paths and ensuring that they remain open.

We are very concerned that it is proposed that the impact of public access will be monitored. The Review previously referred to states: "Inter-seasonal variation in waterbird numbers means that it is extremely difficult to disentangle issues arising from habitat loss and replacement from natural variation". Any variation from the anticipated use of the new habitat may therefore not be caused by public access, but could conveniently be blamed on it. Furthermore, against what metric is the "potential disturbance" to be measured? Are more birds expected to use the new site? A decline in numbers has already been noted in the existing site so is it reasonable to assume numbers will continue to decline? Or not? It appears that the monitoring will be entirely subjective and that those undertaking the monitoring are likely to err on the side of caution and we fear will act against the interests of the local community.

### **Additional infrastructure**

During the consultation process LOPC have consistently indicated that they do not want additional infrastructure to be added to the site. The comparative wilderness of this area is what makes it particularly appealing.

It is therefore disappointing to note that in addition to the viewing platforms, which would be unnecessary if the PROW is sited on top of the sea wall, an activity shelter is now proposed which will introduce infrastructure where none existed before. Who will maintain it? There is a concern that it will degrade quickly, be liable to vandalism and become an eyesore.

### **Additional observations**

LOPC would also like it put on record that, as evidenced in the findings of the above Defra and Natural England report, the Little Oakley managed realignment site will probably only meet its design objectives in the short- to medium-term. Academic studies have shown that mudflat within realignment sites are not sustainable and normally develops in to saltmarsh.

**Little Oakley Parish Council therefore maintain their OBJECTION to this application.**

*<https://www.humbernature.co.uk/admin/resources/13694wc1076finalreport-1.pdf>*

- 5.2. **The Leith Group** (letter sent on behalf of EPC-UK Ltd which is the owner and operator of a major hazardous installation on land to the south east of Great Oakley –

Following the public meeting held on Monday 12th February, we have been made aware of the aforementioned planning application.

This letter is being submitted on behalf of EPC-UK Ltd, the owner and operator of a major hazardous installation on land to the south east of Great Oakley. The site forms part of a large

network of nationally significant sites throughout the UK. EPC-UK is a market leader, and their operations are vital to the national and European mining and defence industries.

The Great Oakley site has long employed numerous members of the local community, and any threat to its long term viability, security or local community safety will be taken seriously and robustly objected to. This includes any potential increase in conflict in logistics and marine access to the site, and a general increase in accessibility and activity within close proximity to the operation. Whilst our clients are keen to confirm that they do not wish to inhibit growth and development generally, this letter is being submitted to set out their initial concerns in relation to this scheme, and to ascertain if they can be addressed, in full, in advance of the planning process progressing further.

EPC-UK import and export hazardous materials from their existing dock at Great Oakley (Hamford Water), and therefore they must raise significant concern in relation to the potential for increased marine traffic in and around their operation, and the potential disruption from the scheme under consideration. Any development which could impact on usage of this vital national service will be the result of strong objection.

Having reviewed the proposed development in detail, it is noted that works are proposed within the channels which could well impact upon our client's right and ability to navigate the stretch of water up to their working dock at Great Oakley. Our concern is that the proposed works could potentially result in our client's being unable to access their dock severely impacting their ability to operate from the site, or force more frequent/higher volume dredging, this would be wholly unacceptable, would be detrimental to our client's business, and would result in a material impact on operating costs/conditions. The impact of the proposed development upon our client's business does not appear to have been duly considered in the application documentation to date, but for the reasons laid out above these issues are in our view material to the determination of the application.

In addition to the points raised above, the proposed development raises a number of further issues (1) any increase in activity in and around our client's operation could well raise additional issues of community safety, but could also result in a reduction in activity at Great Oakley to reduce the associated risk. This will detrimentally impact upon our client's business and the long term future of the site. (2) Any additional activity within this location raises serious concern in relation to the impact on the natural environment given the ecological and natural designations in the locality. Any development or changes in infrastructure which would negatively impact upon the local natural environment will also be objected to.

As detailed above, our clients would not wish to preclude development in this local area, however where there are legitimate concerns regarding the impact of new development on the long term viability and security of the site at Great Oakley, we need to submit a holding objection to this development pending further discussions on the above issues.

For the reasons laid out above, we would request a meeting with the Council and Applicant, either in person or on TEAMS, to discuss our concerns and see if the matter can be addressed prior to determination of the application. If you can advise on your availability to hold such a meeting to discuss these concerns in further detail it would be much appreciated.

## **6. Assessment**

### **Background**

- 6.1 This planning application is interlinked with the approved BBCT development because the latter relates to the reclamation of Bathside Bay and the subsequent establishment and operation of a new 122-hectare deep-sea container port facility, featuring a 1.4-kilometer quay, along with an associated rail terminal and various structures. There has been a subsequent planning approval (relating to the BBCT scheme) under planning reference 21/01810/VOC, also approved by TDC



in March 2022 (21/01810/VOC) essentially just varying the wording of some of the conditions imposed on planning permission 10/00202/FUL however this merely resulted in permission 21/01810/VOC effectively replacing the original 10/00202/FUL permission).

- 6.2 A key aspect of the environmental assessment conducted to support the aforementioned applications highlighted a potential adverse impact of the BBCT development on the integrity of the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar site. In accordance with the Conservation of Habitats and Species Regulations 2017 (as amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019), compensatory measures were deemed necessary to mitigate against these impacts. Given the nature of the habitat loss anticipated at Bathside Bay because of the BBCT development, and the substantial scale of this loss, the most viable approach identified for creating compensatory habitat was through the managed realignment of coastal flood defences.
- 6.3 This planning application seeks approval for the creation and permanent establishment of compensatory habitats in the wetland coastal area to the south-east (the application site), and clearly outside the settlement development boundaries of the nearby small rural settlement of Little Oakley near Harwich. In the main, the proposed compensatory habitats are designed as a new nature reserve and crucially, to support waterbird populations but also other species that will be affected by the loss of intertidal habitats at Bathside Bay. The planning application is very similar to a scheme submitted in 2003 and approved by the Secretary of State in March 2006 with a 10 year time limit for implementation (the time limit expired in 2016 hence the submission of this new application).

#### Site Context

- 6.4. In terms of the application site, it encompasses a 138-hectare area situated approximately 2.5 kilometres south of the Stour and Orwell estuaries. The proposed managed realignment site as indicated on the submitted site plans consist of a low-lying terrain intersected by a relict creek demarcated by counter walls. To the north-west, the landscape ascends reasonably steeply towards Little Oakley Hall (a Grade II Listed Building), while to the south, the realignment site is bordered by a seawall, beyond which lie the mudflats and saltmarshes of the Walton Backwaters. The Hamford Water, a navigation channel at the mouth of the Walton Backwaters, runs adjacent to the proposed realignment site. The boundary of the Hamford Water SPA follows the course of the borrow dyke situated behind the existing seawall.
- 6.5. In terms of proximity to listed buildings, while there are no statutorily listed buildings directly on, or in close proximity to the site in question, it's important to note the presence of heritage assets nearby. As briefly mentioned above, Little Oakley Hall, a Grade II Listed building, is located approximately 1000 meters to the west of the nearest northwestern boundary of the application site. Notably, the access point to the site (also part of the application site) is much closer to this listed building – but it is only an existing access point required to be included in the application site. Additionally, St. Mary's House, another Grade II Listed building, lies approximately 2500 meters west of Little Oakley Hall. Furthermore, there is a scheduled monument, the Heavy Anti-aircraft Gunsite, situated approximately 350 meters northeast of Little Oakley Hall.
- 6.6. The applicant has explained that the application site was identified following a comprehensive assessment, including consideration for the immediate impact zone inside the footprint of the proposed new defences and the potential indirect effects stemming from alterations in hydrodynamic and sediment patterns resulting from managed realignment. In essence, the application site includes the Walton Backwaters, the contiguous coastal zone, and a stretch of low-lying (agricultural) land positioned along the northern shore of the Walton Backwaters, as illustrated in the plan on the second page of this report.
- 6.7. In terms of the immediate and wider landscape areas, the subject area includes two distinct landscape types, namely 'Open Farmland' and 'Estuarine Areas.' The area is unique because it

is evident that over time, human intervention in the form of drainage and embankment/sea wall construction, spanning from the post-medieval era to the present, has transformed what would have originally been intertidal land. This alteration facilitated the establishment of some arable farmland. From the viewpoint of the last 200 years of history, the agricultural character in this region is considered much more historically recent due to the human intervention as described above. To safeguard the reclaimed (predominantly) farmland from coastal flooding, seawalls and earth embankments were constructed with fortified concrete blocks. This infrastructure has been strategically constructed around the estuary and currently plays a key role in protecting the low lying cultivated areas from the encroachment of tidal waters and coastal flooding generally.

6.8. Regarding other specific site designations, various portions of this extensive 138 hectare site hold the following designations:

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

6.9. The site is situated within Flood Risk Zone 3, benefitting from existing flood defences. There are also no trees with protection orders on them within the application site. The site falls within the designated Safeguarding Zone for Bramble Island, recognised as a Hazardous Substance Site positioned southeast of Great Oakley and southwest of Harwich. Bramble Island's hazardous substance site is encircled by a safeguarded area, where specific development proposals necessitate consultation with the site operator. Overarchingly this important safeguarding mechanism is in place to ensure any proposals for build development are properly consulted upon as part of the planning process. This also underscores the importance of adhering to safeguarding measures in the vicinity of this hazardous substance site.

### Proposal

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

6.11. Put simply, the Little Oakley development aims to restore coastal habitats that will be lost due to the BBCT project. This involves reconfiguring the coastal defences by creating a 70-metre breach in the existing sea wall on the eastern side of the site, allowing tidal waters to flow in. New sea walls will be built along the northern and western boundaries. The area of the site located within the existing and proposed sea walls would form the majority of the proposed estuarine and coastal habitat. A proposed footpath will run around the back of the proposed sea wall, to include five public viewing platforms. Within the north western part of the site, beyond the sea wall and footpath, is a proposed enhanced biodiversity area.

6.12. The different habitat areas to be created are clearly shown on the submitted 'Planning Scheme' drawing numbers:

- PC3294-RHD-ZZ-XX-DR-C-2001 rev. P04; and
- PC3294-RHD-ZZ-XX-DR-C-2002 rev. P02 (The 'Proposed Seawall and Site Sections which also shows the height and design of the sea walls)

## Principle of Development

- 6.13. As outlined above this proposal is linked to the BBCT development due to the requirement to compensate for the habitat loss that will ensue as a result of the container terminal/renewable energy hub at Bathside Bay. As set out above the proposed creation of a combination of intertidal mudflat/saltmarsh transition and saltmarsh will result in a loss of some 138 ha of agricultural land as well as the loss of existing footpaths, bridleways and existing habitat areas.
- 6.14. Relevant policies SPL1 and SLP2 (as a combination) set out TDC's settlement hierarchy (SPL1), and relevant part of policy SPL2 states outside of Settlement Development Boundaries, these policies state that (summarised) the Council will consider any planning application in relation to the pattern and scales of growth promoted through the Settlement Hierarchy in Policy SPL1 and any other relevant policies in this plan.
- 6.15. Policy SP3 states that existing settlements will be the principal focus for additional growth across the North Essex Authorities area within the Local Plan period. Development will be accommodated within or adjoining settlements according to their scale, sustainability, and existing role both within each individual district and, where relevant, across the wider strategic area.
- 6.16. The site is clearly outside the SBD of nearby Little Oakley, which is a Smaller Rural Settlement (at the bottom of the settlement hierarchy), however neither policy SP3, nor policies SPL1 and SPL2 prevent development proposals of this nature outside SBD's, but this is subject to other material planning considerations which will be covered in the remainder of this report. In fact, new large scale natural habitat creation schemes such as this will, by their very nature, almost always be located beyond SDBs due to their land take.
- 6.17. Turning to the loss of agricultural land, former saved Policy EN4 of 2007 Local Plan sought to prevent the unavoidable loss of agricultural land, and loss of the best and most versatile agricultural land unless special justification could be shown. This policy was superseded with the adoption of the Section 2 Local Plan and there is no direct replacement policy.
- 6.18. Nevertheless, Paragraph 7.3.1 of the Section 2 Local Plan states that in order to promote sustainable development, in considering where to select sites for new development in this Local Plan, the Council has taken particular care to assess the value of the landscape and, where practical, allocate sites with the lowest sensitivity, thereby helping to protect valued landscapes and the best and most versatile agricultural land.
- 6.19. The Glossary to the Framework defines best and most versatile agricultural land as land in grades 1, 2 and 3a of the Agricultural Land Classification (ALC). Paragraph 180 a) of the Framework states that planning policies and decisions should contribute to, and enhance the natural and local environment by protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan). Paragraph b) seeks to ensure (that planning policies and decisions should contribute to and enhance the natural and local environment) by recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland.
- 6.20. Paragraph: 001 Reference ID: 8-001-20190721 of the NPPG states, amongst other things, that planning decisions should take account of the economic and other benefits of the best and most versatile agricultural land. Paragraph: 002 Reference ID: 8-002-20190721 states that soil is an essential natural capital asset that provides important ecosystem services – for instance, as a growing medium for food, timber and other crops, as a store for carbon and water, as a reservoir of biodiversity and as a buffer against pollution.

6.21. According to the Natural England Agricultural Land Classification map the application site consists of grade 4 and 5 ('poor' and 'very poor') agricultural land.

6.22. Natural England's guide to assessing development proposals on agricultural land states that Grade 4 – 'poor quality agricultural land' is:

*"Land with severe limitations which significantly restrict the range of crops or level of yields. It is mainly suited to grass with occasional arable crops (for example cereals and forage crops) the yields of which are variable. In moist climates, yields of grass may be moderate to high but there may be difficulties using the land. The grade also includes arable land that is very dry because of drought."*

And Grade 5 agricultural land is described as:

*"Land with very severe limitations that restrict use to permanent pasture or rough grazing, except for occasional pioneer forage crops."*

6.23. The proposal, if approved, will result in the loss of in the region of 130 hectares of agricultural land, albeit this agricultural land is classes as 'poor' and 'very poor'. Insofar as the proposals impact on agricultural land is concerned, there is clear conflict with the last part of Paragraphs 180 b) of the Framework in that the development will have a negative impact on the economic and other benefits (such as food production) due to the loss of the agricultural land. The permanent loss of this agricultural land, even though it is classed as poor and very poor, weighs against the proposal. This loss will be weighed against other benefits (if any) of the scheme as part of the ultimate planning balance.

6.24. Matters including whether the proposal would contribute to, and enhance the natural and local environment by protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan) will be covered in the remainder of this report, and if any conflict is identified with paragraph 180 a) of the Framework, this will be weighed against other elements of the scheme (in the Planning Balance and Conclusion section of this report).

6.25. Turning to relevant local plan policies, key policy HP3 (Green Infrastructure) states Green Infrastructure will be used as a way of adapting to, and mitigating the effects of, climate change, through the management and enhancement of existing spaces and habitats and the creation of new spaces and habitats, helping to provide shade during higher temperatures, flood mitigation and benefits to biodiversity, along with increased access. All new development must be designed to include and protect and enhance existing Green Infrastructure in the local area, as appropriate.

6.26. Relevant parts of policy PPL4 (Biodiversity and Geodiversity) states proposals (for development) should have no significant impacts upon any protected species, including European Protected Species and schemes should consider (and include provision, as may be relevant for) the preservation, restoration or re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations. The policy also states proposals for enhancement of special interest and features will be supported, subject to other material planning considerations. The last part of the policy states proposals for new development should be supported by an appropriate ecological assessment. The policy also states where new development would harm biodiversity or geodiversity, planning permission will only be granted in exceptional circumstances, where the benefits of the development demonstrably outweigh the harm caused and where adequate mitigation or, as a last resort, compensation measures are included, to ensure a net gain, in biodiversity.

6.27. The site is also in the Coastal Protection belt therefore policy PPL2 is relevant and states within the Coastal Protection Belt, as shown on the Policies Maps and Local Maps, the Council will:

- a. protect the open character of the undeveloped coastline and refuse planning permission for development which does not have a compelling functional or operational requirement to be located there; and
- b. where development does have a compelling functional or operational requirement to be there, its design should respond appropriately to the landscape and historic character of its context and applicants will be required to demonstrate that any development proposals will be safe over their planned lifetime.

6.28. For reasons that will be further expounded upon elsewhere in this report, it is considered that the development does have a compelling functional or operational requirement to be located in this area. Other matters such as the proposals impact on the open character of the area and design matters will be covered in the relevant sections below. The above notwithstanding no clear policy conflict is identified insofar as the principle of development is concerned, and insofar as policy PPL2 is concerned.

6.29. Aside from the minor conflict with paragraph 180 (b) of the Framework as identified above, insofar as the overall principle of development is concerned, and having regard to the wording of the relevant parts of the key Local Plan policies as set out above, a scheme of this nature, in this location is not resisted by any of these Local Plan policies, subject to the consideration of other material planning considerations. These considerations will be expounded upon in the remaining sections of the report. Furthermore, any potential loss or gain of specific habitat types will be carefully weighed up and assessed within the planning framework, taking into account other material considerations, and ultimately weighed in the planning balance.

#### Archaeology

6.30. Policy PPL7 states (summarised): any new development which would affect, or might affect, designated or non-designated archaeological remains will only be considered where accompanied by an appropriate desk-based assessment. It goes on to state: where identified as necessary within that desk-based assessment, a written scheme of investigation including excavation, recording or protection and deposition of archaeological records in a public archive will be required to be submitted to, and approved by, the Local Planning Authority. The policy also states proposals for new development affecting a heritage asset of archaeological importance or its setting will only be permitted where it will protect, or where appropriate, enhance the significance of the asset. Where a proposal will cause harm to the asset, the relevant paragraphs of the NPPF should be applied dependent on the level of the harm caused. The final section of the policy states proposals for new development which are not able to demonstrate that known or possible archaeological remains will be suitably protected from loss or harm, or have an appropriate level of recording, will not be permitted.

6.31. The proposed development site lies within an area of known archaeological significance, as indicated by aerial cropmarks and documented in the Essex Historic Environment Record. This area contains diverse multi-period archaeological remains, many of which stand to be affected by the proposed development. As touched on in the 'site description' section above, these remnants offer insight into the historical evolution of the coastal zone, reflecting human activity from prehistoric eras through to the postmedieval period when areas were subjected to reclamation efforts. ECC Archaeology is of the view that it is probable that significant aspects of this historical narrative are preserved beneath the surface, potentially including waterlogged and paleo-environmental artifacts.

6.32. To adequately assess and address the archaeological implications of the development, a comprehensive program of trial trench and test pit evaluations is necessary. These evaluations will determine the depth, nature, extent, and complexity of the archaeological deposits present, facilitating the formulation of an appropriate mitigation strategy.

- 6.33. In accordance with the guidelines outlined in the Framework, particularly paragraphs 200 and 211, and to ensure compliance with Tendring Local Plan policy PPL7, in the event that planning permission is granted a condition would be required to secure a Written Scheme of Investigation (WSI), evidence of the completion of the programme of archaeological evaluation identified in an approved WSI, and a mitigation strategy detailing the excavation and/or any preservation strategy. Subject to compliance with such a condition no policy conflict can be identified with the above-mentioned policies and Framework paragraphs.

### Heritage

- 6.34. While there are no statutorily listed buildings on or near the site, there is a Grade II Listed building (Little Oakley Hall) approximately a 1000m to the west of the nearest north western boundary of the application site (not including the access to the site, which is considerable closer to this listed building). Another Grade II Listed building (St Mary's House) is approximately 2500m to the west of Little Oakley Hall. There is also a scheduled monument (Heavy Anti-aircraft gun site 350m north-east of Little Oakley) some 350m north east of Little Oakley Hall. These heritage assets, as well as their locations relative to the site have also been identified in the 'Site Description' section above. The site is not located in, or close to any designated conservation areas to such a degree that the development could have an impact on such a designated conservation area.
- 6.35. Historic England is of the opinion that there are also non-designated heritage assets within the redline boundary, which includes the remains of at least ten 'red hills', which are the remains of Bronze or Roman salt-making sites along the coastal zone.
- 6.36. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), special regard must be paid to the desirability of preserving listed buildings potentially affected by the proposal, or their settings or any features of special architectural or historic interest which they may possess. Following Paragraph 193 of the Framework, great weight should be given to the conservation of these heritage assets.
- 6.37. Policy PPL9 states that proposals for new development affecting a listed building or its setting will only be permitted where they will protect its special architectural or historic interest, its character, appearance and fabric. Where a proposal will cause harm to a listed building, the relevant paragraphs of the Framework should be applied dependent on the level of harm caused.
- 6.38. Framework Paragraph 205 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be - irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 203 of the Framework states that the effect of an application on the significance of a non-designated heritage asset should be taken into account - in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
- 6.39. Framework paragraph 208 states where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
- 6.40. Framework Paragraph 209 states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a

balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

- 6.41. Following consultation with Historic England their position is that the application will result in a change to the setting of several highly-graded designated heritage assets as follows: 'Heavy Anti-aircraft gun site 350m north east of Little Oakley Hall' (LEN: 1019486) and one Grade II\* listed building within 2km of the centre of the application site (St Mary's House, LEN: 1112098). In Historic England's view, the harm to these assets would be 'less than substantial' without indication that such harm might be at the lower, middle or higher end of 'less than substantial harm'. In accordance with Framework paragraphs 208 and 209, the harm to the designed and non designed heritage assets should be weighed against the public benefits of the proposal, or (in the case of the non designated heritage assets) a balanced judgement (of the harm vs the benefits) is required – these exercises will be carried out in the Planning Balance and Conclusion section at the end of the report, but it is upheld that regardless of the public benefit, the harm remains and is regarded as harm in the balance.

#### National Landscape impacts (formerly AONB)

- 6.42. The site is not located inside the Suffolk and Essex Coast Heaths National Landscape but set some 3km to the south. Framework paragraph 182 states the scale and extent of development within designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas. The proposal, due to its nature and location away from the designated area, will have no impact on the said area.

#### Landscape Considerations including Appearance, Layout and Scale

- 6.43. The first bullet of relevant Policy SP7 states that new development should respond positively to local character and context to preserve and enhance the quality of existing places and their environs. Policy SPL3 Part B criterion c) states that development must respect or enhance local landscape character, views, skylines, landmarks, existing street patterns, open spaces and other locally important features. Amongst other things, criterion d) of Part B requires that the design and layout of development maintains or enhances important existing site features of landscape value.
- 6.44. Paragraph 7.3.3 of the Section 2 Local Plan states that as a largely rural area, Tendring District's countryside is one of its main assets and maintaining an attractive rural environment is important to the quality of life experienced by both residents and visitors. It can also be an important consideration for the location of some businesses and help to expand the tourist economy and related services.
- 6.45. Policy PPL3 is criteria based, and states that the Council will protect the rural landscape and refuse planning permission for any proposed development which would cause overriding harm to its character or appearance, including to:
- a) *estuaries, rivers and undeveloped coast;*
  - b) *skylines and prominent views including ridge-tops and plateau edges;*
  - c) *traditional buildings and settlement settings;*
  - d) *native hedgerows, trees and woodlands;*
  - e) *protected lanes, other rural lanes, bridleways and footpaths; and*
  - f) *designated and non-designated heritage assets and historic landscapes including registered parks and gardens.*
- 6.46. The application site is primarily located within the Hamford Drained Marshes and Slopes Landscape Character Area (LCA), bordered by the Hamford Coastal Slopes LCA to the north and the Hamford Water Marshes LCA to the south. Although the site extends into the lower

reaches of the Hamford Coastal Slopes LCA, the Environmental Statement accurately describes its national context within the Greater Thames Estuary and Northern Thames Basin National Character Areas (NCA).

- 6.47. Typically, planning applications affecting local landscape character require technical information at the district level, often provided through a Landscape and Visual Impact Assessment (LVIA) adhering to industry guidelines. This assessment would identify viewpoints from which the site is visible, evaluate its impact on landscape character and visual qualities, and propose mitigation measures such as soft landscaping.
- 6.48. In the absence of an LVIA, it is evident that the proposed coastal defence realignment and habitat creation will significantly alter land use within the application site. However, the broader implication of the proposal involves a shift in the boundary between adjacent LCAs—specifically, a loss of part of the Hamford Drained Marshes LCA and an increase in the Hamford Water Marshes LCA.
- 6.49. The features that will be created in order to facilitate the realignment scheme include the new sea wall in the form of raised bunds/defences (with crest heights of up to 4.80m AOD). The new sea wall as well as the new biodiversity areas will appear similar to what is currently seen in the area and will therefore be entirely compatible with the prevailing landscape character of the area. Whilst some statutory and third parties have raised concerns in respect of the proposed viewing platforms to be constructed (details of which can be secured as part of planning conditions in the event of an approval), it is entirely possible to design such viewing platforms discreetly to ensure that they will seamlessly blend in with the landscape – as such a condition seeking further details of these elements (the viewing platforms) is considered necessary, reasonably and relevant. In addition to the above, considering the findings in the relevant section of the Environmental Statement, it is concluded that the application will not fundamentally change the overall nature, character, or user experience of the area – officers agree with this sentiment.
- 6.50. Ultimately from a Landscape character, appearance, Layout and scale (of the development proposal) perspective, the proposal, subject to conditions, result in no conflict with the relevant Local Plan policies set out above as well as all relevant provisions of the Framework.

#### Public Rights of Ways, Highway Safety/Access/Parking

- 6.51. The ninth bullet of Policy SP7 requires all new development includes parking facilities that are well integrated as part of the overall design. Policy CP1 states that proposals for new development must be sustainable in terms of transport and accessibility, and therefore should include and encourage opportunities for access to sustainable modes of transport, including walking, cycling and public transport. Part B of Policy SPL3, criterion a), requires that access to the site is practicable and the highway network will, following any required mitigation, be able to safely accommodate the additional traffic the proposal will generate and not lead to a severe traffic impact. Amongst other things, criterion f) requires adequate vehicle and cycle parking.
- 6.52. Paragraph 108 of the Framework states that transport issues should be considered from the earliest stages of development proposals, amongst other things, so that:
- the potential impacts of development on transport networks can be addressed;
  - opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised – for example in relation to the scale, location or density of development that can be accommodated;
  - opportunities to promote walking, cycling and public transport use are identified and pursued;
  - the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains; and



- patterns of movement, streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality places.

6.53. Paragraph 109 states that the planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making

6.54. Paragraph 115 of the Framework makes clear that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or if the residual cumulative impacts on the road network would be severe.

6.55. Within this context, Paragraph 116 states that applications for development should:

- a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;
- b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;
- c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;
- d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and
- e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.

6.56. Paragraph 117 states that all developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed.

6.57. Turning to the assessment insofar as various highways safety and access issues are concerned and starting with Public Rights of Way (PROW) considerations. The application proposal includes the diversion of two designated Public Rights of Way: Footpath 19 and Footpath 22. Currently these footpaths run along the top of the existing sea wall on the southern and eastern perimeters of the site. Developing the proposed estuarine and coastal habitat requires creating a breach in the existing sea wall (as set out in the 'Description of Proposal' section above) and would therefore disconnect the existing footpaths.

6.58. Important to note is that the length of the proposed diversion route is the same length as the current footpath route at 2.1 km and is illustrated most clearly on the 'Wider Context Plan' (drawing ref: 60718424-ACM-BB-LA-60-0001 rev. 01). Moreover, the submitted 'Illustrative Masterplan' (drawing no. 60718424-ACM-BB-LA-70-0001 rev. 01) and the associated perspective drawings (60718424-ACM-BB-LA-80-0001 to 003) show illustrate how users of the footpaths will essentially experience a walk next to a an area of ecological enhancement, rather than agricultural fields. As alluded to elsewhere in this report, the applicant is also proposing to:

- Install 5 viewing platforms, of which Viewing platform 1 will be designed to provide a covered activity shelter; and
- Provide permissive footpaths to Irlams beach

- 6.59. As can be seen in Natural England's (NE) various responses, for ecological reasons they (NE) will not agree to a bridge over the breach in the sea wall. It is therefore necessary to divert the public right of way around the realignment site. NE will also not agree to the diverted footpath being on top of the sea wall. This means it is not possible to retain the footpaths in their current alignment, instead they have to be re-provided as shown to enable the compensatory habitat to be created.
- 6.60. There have also been minimal changes from the previously agreed terms with the applicant both on-site and in the draft order plan. ECC Highways have noted that the only notable difference is a shorter southern permissive route no longer extends to the beach area. Since this route is classified as a 'permissive path' and does not form part of the PROW network, it does not raise concerns for the Highway Authority. However, if this change is implemented, adjustments would be needed in the draft plan to reflect the amendment. Consequently, the Highway Authority does not object to the submitted proposals, provided the recommended highway conditions relevant to PROWs and footpaths are adhered to. Subject to minor amendments to the wording of the suggested ECC Highways conditions (to ensure all the conditions recommended by the Highways Authority meet the NPPF tests for planning conditions) these will be included should the scheme be recommended for approval. Moreover, the Tree & Landscape officer commented that the proposed alterations to the PROW will maintain the integrity of the PROW network and the opportunity to provide viewing points may improve user's enjoyment of the area whilst reducing disturbance for wildfowl and wetland species using the newly created habitat.
- 6.61. In terms of other highways and parking considerations, in terms of access arrangements during construction:
- Public access to the site is limited due to the majority of the site being managed agricultural land, accessible only via a central farm track, which will remain unchanged during construction.
  - Safety is paramount, necessitating restricted public access to meet health and safety regulations. Personal protective equipment (PPE) is mandatory for all personnel and visitors.
  - The Little Oakley and District Wildfowlers Association has access along a track behind the existing seawall for conservation and monitoring purposes, which will be maintained during construction.
  - Public access along the footpath on the existing seawall will be maintained until the seawall breach (sufficient notice will have to be given – a requirement under separate legislation). Temporary closures may occur for safety reasons, managed through Public Path Diversion Orders (PPDOs) – again notice will be required to be given.
  - For construction purposes two new vehicular access tracks will be constructed as part of the scheme which will connect with existing farm tracks with the proposed scheme
  - Construction includes the creation of a new seawall, public footpath, and viewing platforms, ensuring accessibility for all users, including those with reduced mobility. The scheme does propose any public car park or specific parking areas close to or further way from the realignment scheme.
- 6.62. In terms of access during the ongoing operational phase of the development, clearly the proposed scheme is limited to the development of intertidal habitats within the realignment site. Access to the area within the realignment site will be restricted to the general public for the duration of the project, with the aim of facilitating the natural formation of coastal and estuarine habitats while minimizing disturbance to waterbird populations. However, a new realigned footpath will be accessible to the public, and five viewing platforms will offer opportunities for observing the area's natural beauty throughout the development's lifespan. The proposal entails permitting occasional (authorised) light vehicular access for the Little Oakley and District Wildfowlers Association along the upper section of the raised ground area behind the existing seawall, located southwest of the proposed breach. This access would extend up to the seawall breach, facilitating entry to Foulton Hall Point.

- 6.63. Furthermore, while access along the 'redundant' arms of the seawall's top would be restricted for the general public, pedestrian access is proposed to be maintained specifically for wildfowling and related activities. The need for occasional pedestrian and strictly authorised vehicular access arises to enable wildfowling to reach their land parcels and sustain their activities.
- 6.64. In cases where access to the site is necessary for maintenance purposes, authorised personnel can utilise the existing farm track or the two newly established vehicular access points situated on either side of the realignment site. Additionally and over the long term, this access route would serve any third party tasked with the ongoing management of the site on a day-to-day basis, likely to be a nature conservation organisation that will function in collaboration with the applicant.
- 6.65. The two key highways and transport bodies (ECC Highways and Highways England) have scrutinised the application and all the relevant documents and plans. Both bodies raise no objection subject to conditions, including the requirement to submit a construction management plan including a traffic management plan. Such plans are expected to clearly outline strategies to effectively manage construction traffic, ensuring minimal highway impact. General measures will include road and footpath works, emissions control, site access management, and monitoring procedures. Site-specific measures will involve transporting topsoil by sea, limiting construction traffic, safety protocols for lorry drivers, and enforcement mechanisms. Such conditions are considered to be entirely necessary and reasonable and will be included should planning permission be forthcoming.
- 6.66. Operationally, subject to conditions the scheme is considered to be compliant with relevant NPPF paragraphs and local policies, including those concerning transport, sustainability, infrastructure, and accessibility, the scheme adequately mitigates construction traffic impacts while maintaining suitable access for all other users during the operational phase. Having regard to all of the above, subject to the said conditions no policy conflict can be identified insofar as public rights of ways, general highway safety, access and parking matters are concerned.

Habitats Regulation Assessment, Ecology and Biodiversity including impacts on RAMSAR/SPA sites and other environmental considerations

- 6.67. Paragraph 180 of the Framework states planning policies and decisions should contribute to and enhance the natural and local environment by:
- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan); and
  - b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;
  - c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;
  - d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
  - e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.
  - f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.
- 6.68. Paragraph 185 of the Framework states to protect and enhance biodiversity and geodiversity, plans should:

- a) Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation; and
- b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.

6.69. Paragraph 186 of the Framework states that when determining planning applications, local planning authorities should apply the following principles:

- a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
- b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;
- c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and
- d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.

6.70. Policy 187 of the Framework states that the following should be given the same protection as habitats sites:

- a) potential Special Protection Areas and possible Special Areas of Conservation;
- b) listed or proposed Ramsar sites; and
- c) sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.

6.71. Paragraph 188 of the Framework states that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

6.72. The Council is required under the Habitats Regulations to carry out an assessment of the implications of this proposal, and is prohibited from granting planning permission unless satisfied that:

- there is no alternative solution;
- the development must be carried out for imperative reasons of overriding public interest (IROPI);
- necessary compensatory measures have been secured that ensure that the overall coherence of the national site network of SACs and SPAs is protected.

6.73. Turning to relevant Local Plan policies, adopted Policy SP7 requires that all new development should incorporate biodiversity creation and enhancement measures. Adopted Policy SPL3 Part

A(d) includes that the design and layout of development should maintain or enhance ecological value.

6.74. As set out in the 'Consultation' section above, there has been extensive consultation with statutory bodies such as Natural England, the Marine and Fisheries Agency, Essex Wildlife Trust, Environment Agency, the Royal Society for the Protection of Birds, ECC Ecology, Hamford Water Management Committee, and the Marine Management Organisation. Most, but not all of these consultees have raised concerns that include a very wide range of matters including:

- Inadequate mitigation and compensation strategy provided;
- Proposal will result in the loss of habitat including bird breeding habitat, water vole habitat, reptile and bat habitat;
- Concerns about the sea wall crest levels;
- Further clarity sought on sand and shingle habitat provision, updated modelling, additional mitigation details, and support for compensation proposals;
- Addressing changes in design, access, of the area/site and potential disturbance impacts, including the need for monitoring and adaptive management strategies;
- Failure to provide comprehensive bird data and ensuring adequate compensation for habitat losses.
- A further requirement to utilise monitoring and adaptation to address evidence gaps and ensure project success;
- Ensuring the project does not negatively impact designated sites like Hamford Water and providing suitable foraging resources for displaced brent geese;
- Mitigating impacts on breeding bird habitat and developing an Ecological Mitigation Strategy;
- Considering Biodiversity Net Gain requirements and addressing outstanding information requests, particularly regarding coastal geomorphology data;
- need for a comprehensive breeding bird assemblage assessment and mitigation strategy within the broader ecological mitigation and compensation plan;
- Some of the above statutory consultees are of the view that a baseline survey should be conducted before any construction, followed by successive surveys to monitor changes to the navigable channel;
- If silting and shallowing of the channel occur, the developer should bear responsibility for dredging; and
- The existing sea wall at Fulton Hall must be maintained at its current standard indefinitely, as it is crucial in protecting the Walton Backwaters, salt marsh, and Hamford Water embayment from erosion by the North Sea.

Other matters raised that are not necessarily relevant to planning include:

- Activities below the mean high water mark may require a marine license;
- Works such as construction, dredging, or deposit/removal of substances require licensing;
- Wildlife licenses are also required for activities affecting protected marine species;
- Projects requiring a marine license must comply with the EIA Directive;
- The MMO ensures compliance with the Marine Works (Environmental Impact Assessment) Regulations; and
- For projects requiring both marine and terrestrial planning permission, applicants should submit a request to the MMO.

6.75. As can be seen from the above summary, the issues raised are wide ranging and most of them are detailed matters. It is important to note that none of these statutory consultees raise an in principle objection to the realignment and habitat creation scheme per se. Indeed, statutory consultees such as Natural England does not challenge the use or suitability of the application

site for the purpose as proposed, and at a high level, seems to argue or question whether the site provides adequate compensation by itself, or if additional compensation is needed for the habitat lost at Bathside Bay.

- 6.76. Under the Conservation of Habitats and Species Regulations 2017 (as amended) an appropriate assessment (sometimes called a Habitats Regulations Assessment (HRA)) of the implications of the proposed development on the SPA has to be carried out/provided. This has been provided in Chapter 17 of the ES Statement. As the appropriate nature conservation body, Natural England and indeed other statutory consultees (as set out in the paragraphs above) have an important role to play in this and due weight should be given to their advice.
- 6.77. However, in response to this and other points above, Condition 55 of the BBCT planning permission (LPA ref. 21/01810/VOC) was imposed to ensure the fulfilment of adequate compensatory measures. Additionally, the Habitats Regulations will govern the evaluation of the Marine Licence application. The Applicant has informed the LPA that the marine license application is soon to be submitted to the Marine Management Organisation (MMO). This MMO License submission together with the details yet to be submitted as part of the abovementioned condition 55, will include matters regarding the sufficiency of habitat compensation provision.
- 6.78. Turning to other matters, mainly the concerns about lack of sufficient reports and justifications for various matters as set out in the bullet pointed list above, the Applicant provided a response to these concerns in the additional information submitted in December 2023 (all included on the LPA's website), as well as the Supplementary Environmental Information (SEI) report prepared by the Applicant, this SEI report is dated 21 November 2023. The latter also includes additional evidence and survey information on:
- non-breeding and breeding waterbird usage of Bathside Bay and the Little Oakley site,
  - other breeding birds, botanical, Fisher's estuarine moth (repeating a 2021 survey), water voles, reptiles, bat and invertebrate surveys undertaken in 2022.
- 6.79. In January 2024 the LPA undertook a full re-consultation following the receipt of this information and some statutory consultees continue to request further information, specifically on how the proposals would meet the conservation objectives for the Stour & Orwell Estuaries and Hamford Water Special Protection Areas and ensure the ecological coherence of the national site network.
- 6.80. It is understandable that statutory consultees require comprehensive supporting information and reports, given the critical roles they fulfil. Understandably, they seek optimal data and information to inform their responses. However, the LPA holds the responsibility to evaluate and decide on the application – put differently, the LPA is duty bound to assess and determine the application, and these actions should be guided by, amongst other things, principles of reasonableness and proportionality whilst having regard to the relevant key and most important material planning considerations, relevant provisions of the development plan, the Framework and any other material planning considerations.
- 6.81. Insofar as the assessment of the considerations as set out under this sub-heading is concerned, key material planning considerations to have regard to include:
- The planning application relates to a question of land use and the works required to enable the creation of compensatory habitat, which in turn is triggered by a major container terminal permission (the BBCT permission) at Bathside Bay
  - The environmental information provided in the Hamford Water Realignment Environmental Statement (ES – dated 26 November 2021) and Supplementary Environmental Information (SEI) Report (15 December 2023) is, in officers opinion, considered to provide sufficient environmental information to enable TDC to determine

the application, having regard to the policy position as well as the planning history and the findings of the IROPI case.

- Some statutory consultees do not challenge the use or suitability of the application site for the creation of compensatory habitat through the managed realignment of the coastal defences at Little Oakley.
- NE is concerned about whether the Little Oakley site provides adequate compensation by itself.
- Sequentially, a planning decision on this proposal is key to enable Essex County Council to progress consultation on the Footpath Diversion Order and to start work to procure the works contract (or not – in the event of a refusal).

6.82. Furthermore, in addition to the aforementioned points, the combined concerns and requests as set out by the by the group of statutory consultees (outlined above) can be categorised into eight distinct groups included below (with concern or request by the statutory consultees presented in **Bold/Underline** followed by the LPA's assessment or response in *Italics*, along with pertinent references indicating where the information is detailed in the application):

1. **Robust Project-Specific Evidence:**

- **Provide robust project-specific evidence, collected within the last 3 years, demonstrating that the original deed/agreement for compensation is still fit for purpose.**

*The 2004 Compensation Mitigation and Monitoring Deed (CMMD) sets out the agreed habitat creation objectives and targets at the Little Oakley Managed Realignment Site. Section 3.2.2.1 of the SEI Report (dated 15 December 2023, by Royal HaskoningDHV) explains how the proposed application scheme meets the agreed compensation objectives and targets. The distribution and extent of the proposed habitats is shown on the submitted 'Planning Scheme' (drawing no. PC3294-RHD-ZZ-XX-DR-C-2001 S3 P04) and an explanation of how the proposed habitat creation meets the objectives is provided at Table 3.1 (page 9) of the SEI Report, as follows:*

Table 3.1 Objectives for habitat creation

Objective	Habitat creation target <sup>1</sup>
<b>Effect on the Stour and Orwell Estuaries SPA and Ramsar site</b>	
To compensate for the predicted adverse effect on integrity of the Stour and Orwell Estuaries SPA <sup>2</sup> arising from the loss of 66.2ha <sup>3</sup> of intertidal mudflat at Bathside Bay and 3ha throughout the estuarine system (due to the effect on tidal range <sup>4</sup> ) by providing alternative feeding habitat for the waterbirds displaced as a consequences of the Bathside Bay Container Terminal	Creation of at least 69ha of intertidal mudflat
To compensate for the predicted adverse effect on integrity of the Stour and Orwell Estuaries SPA arising from the loss of 2.8ha <sup>2</sup> of saltmarsh at Bathside Bay and to create a sustainable mudflat/saltmarsh system by providing alternative roosting and feeding habitat for the waterbirds displaced as a consequence of the Bathside Bay Container Terminal	Creation of between 10ha and 20ha of intertidal saltmarsh
To compensate for the predicted adverse effect on integrity of the Stour and Orwell Estuaries SPA arising from the loss of approximately 5ha of sand/shingle areas within Bathside Bay by providing alternative roosting habitat for the waterbirds displaced as a consequence of the Bathside Bay Container Terminal	Creation of up to 5ha of sand and shingle habitat within the site
<b>Effect on the Hamford Water SPA and Ramsar site<sup>5</sup></b>	
To offset any loss (due to inundation) of brackish/freshwater drains and associated communities	Creation of 5ha of brackish/freshwater habitat outside the site
To offset any loss (due to inundation) of existing habitat for certain terrestrial and brackish water species	Creation of seawall, borrow dyke and terrestrial habitat to provide suitable conditions for those species affected by the realignment

Having regard to the above it is considered that the application provides suitable project-specific evidence, collected within the last 3 years, to demonstrate that the original deed/agreement for compensation is still fit for purpose.

## 2. Scientific Evidence for Impact on Hamford Water Designated Sites:

- Present robust scientific evidence demonstrating that a detrimental impact to Hamford Water designated sites from the creation of compensatory habitats can be excluded and, if not, mitigated/compensated for.

The proposed design was amended to include two new internal seawalls specifically to avoid a direct impact on the internal faces of the existing seawalls that are designated as part of the Hamford Water SAC. Section 6 of the SEI Report concludes that there is no effect pathway for the qualifying feature of the SAC. For this reason officers consider that there is no likely significant effect (LSE) on the SAC.

With regard to the Hamford Water SPA and Ramsar site, Section 3 and Section 6 of the SEI Report provides scientific evidence to demonstrate that no adverse effect on the integrity of the SPA and Ramsar would occur as a result of the Little Oakley Managed Realignment scheme. It does not appear that any of the stator consultees dispute this finding.

## 3. Evidence for Supporting Habitats in Compensation Area:

- Provide more substantial evidence demonstrating that the compensation area will offer appropriate supporting habitats for the Stour and Orwell Estuaries Special Protected Area (SPA) species and abundance, displaced due to supporting habitat loss from BBCT alone or in combination with impacts to Hamford Water designated areas.



*The evidence is addressed in section 3 of the SEI Report and described in the response to point 1 above. It is considered that there is robust scientific evidence to demonstrate that the compensatory measures are sufficient and appropriate in light of the predicted effect of BBCT and Small Boats Harbour (SBH) on the Stour and Orwell Estuaries SPA. As explained in Section 3 of the SEI, the Little Oakley managed realignment site supports some non-breeding qualifying features of the Hamford Water SPA species, but this use is intermittent, suggesting that the site is not of core importance as a supporting habitat to the SPA. No SPA or Ramsar qualifying waterbirds were recorded as breeding within the proposed managed realignment site. Furthermore, the creation of new, sheltered intertidal habitat within Hamford Water would be of benefit to roosting and foraging waterbirds.*

*In summary, it is considered that the Little Oakley managed realignment scheme represents appropriate compensation for the effect of BBCT and the SBH on the Stour and Orwell Estuaries SPA, and the implementation of those measures will not adversely effect the integrity of the Hamford Water SPA, Ramsar site and SAC.*

**4. Address concerns related to the adequacy of proposed compensation measures, considering the agreement on compensation parameters in 2006.**

- **Conduct updated surveys, as the data presented for assessing impacts is mainly from 2003.**
- **Address the discrepancy in the ratio of compensation to loss (currently under 1:1, while NE proposes 2:1).**
- **Consider potential impacts on functionally linked land to the Hamford Water SPA and ensure adequate consideration in the shadow Habitats Regulations Assessment (HRA).**
- **Ensure proposed compensation aligns with Defra's draft 'Best practice guidance for developing compensatory measures in relation to Marine Protected Areas.'**
- **Obtain Marine Licenses for BBCT and compensation measures as required by Natural England.**

*The information included in the ES and SEI Report address these points. The SEI (section 3.2.2.2) also demonstrates how the application proposal aligns with DEFRA's draft best practice guidance (point 4 above). Moreover, the final point will be comprehensively addressed in the forthcoming Marine Licence application not least because this is not a material planning consideration and will instead be covered in the marine license application.*

**5. Use of Conditions for Evidence Gaps:**

- **Address concerns regarding the proposed use of a condition to facilitate the development of a compensation scheme without fully evidencing its adequacy.**
- **Provide a full evidence base upfront to justify the compensation scheme.**

*A recent email from NE dated 14 February 2024 suggests that this is no longer a concern. In addition, the Applicant's position is that no conditions are being proposed to cover gaps in evidence. Officers consider the evidence submitted in the Environmental Statement (dated December 2021) and the SEI Report (dated 15 December 2023) to be complete for the determination of the Little Oakley planning application.*

**6. Adaptive Management Plans for Compensation:**

- **Justify the use of adaptive management plans for compensation and provide sufficient upfront confidence to justify the compensation scheme.**
- **Include baseline recreational disturbance information to support assessments and conclusions in monitoring reports associated with a Compensation Implementation and Management Plan (CIMP) and an Adaptive Management Plan (AMP).**

*IN the event that planning permission is granted conditions requiring a Compensation Implementation and Management Plan (CIMP) and an Adaptive Management Plan (AMP) is consider to address the concerns raised by the RSPB that the inclusion of the permissive paths to the beaches could disturb waterbirds. These conditions will place a requirement on applicant to use monitoring and adaptive management measures to anticipate and avoid the risk of disturbance undermining achievement of the compensation site's aims, objectives, targets and characteristics.*

*TDC also attached a planning condition to the s73 permissions for the BBCT and the SBH that sets out the circumstances under which it would be necessary to provide a CIMP and AMP to secure an alternative or additional compensation solution (see condition 55 of BBCT permission 21/01810/VOC and condition 33 of SBH permission 21/01792/VOC dated 28 March 2022). Essentially, if the evidence concerning non-breeding and breeding birds at Bathside Bay and the Little Oakley managed realignment site indicates that further or different compensatory measures and/or further monitoring of the effectiveness of compensatory measures are required, then this condition provides a means through which these compensation measures can be secured.*

**7. Hamford Water Designated Sites:**

- **Address concerns regarding the lack of information in the response from Savills related to Hamford Water designated areas and features.**
- **Provide further information to allow assessment of potential impacts on protected habitats and species in Hamford Water.**

*For the reasons set out in paragraphs above the information submitted in the Environmental Statement (dated December 2021) and the SEI Report (dated 15 December 2023) to be complete for the determination of the Little Oakley planning application.*

**8. Coastal Concordat and Regulator Join-Up:**

- **Ensure adherence to the principles of the Coastal Concordat for consistency and clear coordination among regulators.**
- **Facilitate join-up between regulators to reduce the risk of uncertainty and different approaches between consenting bodies.**

*The Applicant has held regular meetings with MMO, NE, RSPB, Essex Wildlife Trust and others, following the principles of the Coastal Concordat, to ensure regular join-up. It is through the discussion in this forum that applicant agreed to withdraw the marine licence application for the Little Oakley managed realignment scheme and to submit a single Marine Licence application to cover all marine works required for BBCT, Green Energy Hub, SBH and Little Oakley managed realignment. As referred to above, the LPA understands that this application will be submitted very shortly.*

- 6.83. Ultimately, having regard to all of the above, it is considered that the proposal, subject to conditions, will result in no conflict with the relevant Local Plan policies, the relevant provisions of the Framework and the Habitats Regulations, as such the proposal will not have an adverse effect on the integrity (AEoI) of the SAC.

**Impact on Residential Amenity**

- 6.84. The final bullet of Policy SP7 requires that all new development protects the amenity of existing and future residents and users with regard to noise, vibration, smell, loss of light, overbearing and overlooking.
- 6.85. Policy SPL3, Part B criterion e), requires development to be designed and orientated to ensure adequate daylight, outlook and privacy for future and existing residents. Part B, criterion f), necessitates provision is made for adequate private amenity space. Part C, criterion a), requires

that development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties.

- 6.86. Amongst other things, the relevant part of the Framework states that planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. The Framework also states planning decisions should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality. The Framework also includes that planning decisions should ensure that developments create places that are safe, inclusive and accessible, and which promote health and well-being with a high standard of amenity for existing and future users.
- 6.87. Due to the nature of the development (habitat creation that will result in a new nature reserve with newly (diverted) footpaths with new crests and bunds, as well as considerable distance away from nearby residential properties), it is not considered that the proposal will have any materially damaging impact on the privacy, daylight/sunlight or other amenities of occupiers of nearby properties.
- 6.88. In terms of noise, vibration, smell during the construction phase, in the event that planning permission is granted suitable planning conditions can secure details such as a construction traffic management plan, a construction and environmental management plan. During the ongoing operations phase of the development is not considered that the scheme will not have any adverse impact on noise, vibration or smell for nearby residential receptors due to the nature of the proposal (habitat creation).

#### Safeguarding of nearby Hazardous Substance Site

- 6.89. Part of the site is located within the safeguarded area for the adjacent Hazardous Substance Site.
- 6.90. Policy PPL15 is therefore relevant and states that the hazardous substance site located at Bramble Island to the east of Great Oakley and south west of Harwich is surrounded by a safeguarded area, within which certain proposals for development will be subject to consultation with the operator of the site. This may result in restrictions being imposed or planning permission being refused, if safety issues arise or the development could materially affect the proper functioning of the hazardous substance site. During the continued operation of Bramble Island as a high hazard site, planning permission within the area subject of the Health and Safety Executive licence will be granted where:
- a. the new development is required to ensure appropriate operation of the site;
  - b. development would not extend the area affected by the safeguarding zone;
  - c. it can be demonstrated that there would be no harmful effects upon the national, European and international environmental designations which exist; and
  - d. the proposal would comply with all other relevant national and local planning policies
- 6.91. With the exception of new viewing platforms, the proposal would not entail the erection of new buildings or other structures, merely the creation of a new nature reserve through managed realignment of the coast. The LPA has consulted with the operator of the site who has responded (response covered below), however in terms of the intent and wording of the above mentioned policy there is no conflict with the said policy because the proposal is primarily for a change in land use (habitat creation) on a site where this type of land use is not resisted by this policy or indeed any other policy insofar as the principle of development is concerned. In the event that planning permission is granted, appropriately worded planning conditions will be

secured to ensure the hazardous substance site can continue to operate freely for example details of construction access/construction vehicular movement etc. Moreover, the proposed development will not extend the area affected by the safeguarding zone. Other relevant parts of this report will cover matters such as whether the development will or will not have harmful effects upon the national, European and international environmental designations which exist in the area.

### Drainage

6.92. Both the Environment Agency and ECC Suds raise no objection to the proposal subject to conditions which will be secured through appropriately worded planning conditions and should planning permission be forthcoming. The proposal therefore raises no conflict with policy PPL1 of the Local Plan.

### Environmental Statement

6.93. The Environmental Statement (ES) prepared by the Applicant and accompanying this planning application includes:

- Detailed description of the proposed scheme, including construction methodology, program, and consideration of alternatives (Section 2).
- Outline of relevant legislation, planning policy, and consent requirements considered during the Environmental Impact Assessment (EIA) process (Section 3).
- Description of the EIA approach, Cumulative Impact Assessment (CIA), Habitats Regulations Assessment (HRA), and Water Framework Directive (WFD) compliance assessment (Section 4).
- Overview of consultation conducted to date, including EIA Scoping Opinions from TDC and MMO (Section 5).
- Technical assessments of potential impacts on scoped topics, baseline environment description, impact assessment during construction and operation, and proposed mitigation measures (Sections 6 to 15).
- Consideration of cumulative impacts alongside other plans or projects (Section 16).
- Shadow HRA (Section 17).
- WFD compliance assessment (Section 18).
- Discussion on scheme effectiveness as compensation (Section 19).
- Proposed management and monitoring approach post-scheme completion (Section 20).
- Data sources used for ES preparation (Section 21).

6.94. The ES and Supplementary ES have been fully considered as part of the detailed consideration of this planning application.

### Little Oakley Parish Council (LOPC) Objection and other third party comments:

6.95. LOPC primarily focuses on several key concerns regarding the proposed development, and which can be summarised as follows:

1. Loss of footpath along the sea wall: LOPC disagrees with diverting the Public Right of Way (PROW) to the landward side of the sea wall, arguing that walkers should maintain expansive views of the landscape and sea as seen in comparable sites like the RSPB reserve at Wallasea.
2. Loss of access from Little Oakley to Irlams Beach: While LOPC welcomes the retention of access to Irlams Beach, they are concerned about the transition to a permissive path, which could potentially lead to restricted access if not maintained properly. They propose attaching conditions to any planning consent to ensure ongoing access maintenance.

3. Additional infrastructure: LOPC opposes the addition of infrastructure such as viewing platforms and an activity shelter, believing that the area's wilderness is part of its appeal. They express concerns about maintenance, potential vandalism, and the visual impact of new structures.
4. Additional observations: LOPC notes that the proposed realignment site may only meet its design objectives in the short- to medium-term, with mudflats likely transitioning into saltmarsh over time, according to academic studies.

Officer response: *The issues raised by LOPC have been covered in the main body of the report, and where necessary, reasonable and relevant, any outstanding concerns of requirements for further information will be secured by appropriately worded planning conditions (and in the event that planning permission is granted).*

- 6.96. **The Leith Group**, writing on behalf of EPC-UK Ltd, has sent in a lengthy objection letter (included in full in the 'Consultation section above) – they express significant concerns regarding the proposed development near their hazardous installation in Great Oakley. They emphasise the importance of their operations to national industries and local employment. Their concerns include (summarised): potential impacts on marine traffic, access to their dock, increased logistics conflicts, and threats to community safety. They argue that the proposed development lacks consideration for its effects on their business and the environment.

Officers response: *The issues raised by the Leith Group have been comprehensively covered in the main body of the report, and where necessary, clarification provided in respect of access concerns. Moreover, the marine navigational concerns raised by the Leith Group writing on behalf of EPC-UK Ltd shall be addressed under the applicant's upcoming application for a marine licence to the Marine Management Organisation (MMO). EPC-UK are concerned about the impact of additional visitors, vehicle movements and general activity on land in and around the site at Little Oakley. The development is one of ecological mitigation and, whilst the applicant has taken into consideration the needs of existing users of the footpaths in and around the development, it is not the intent of the development to attract an increase in visitors, this is also very unlikely to become a reality over the long term because there are deliberately no parking facilities provided (to encourage an increase in visitors).*

- 6.97. A local seal medic, representing the British Divers Marine Life Rescue Team (BDMLR) has also written in objecting to this re-alignment proposal raising the following issues:

They are concerned about the proximity of the realignment to the Hamford Waters Seal Colony. They have provided data on the seal population in the area, emphasizing the importance of the colony, especially considering the breeding seasons of both grey and common seals. They have explained that with the increasing seal population, seal rescues have also risen, with a significant number of pups needing rehabilitation. They have further explained that there are only two seal rescue and rehabilitation units in East Anglia, both of which are frequently overwhelmed. They suggest that if planning permission is granted, Hutchinson Ports could help mitigate the impact on seals by funding the establishment and ongoing costs of a new seal rescue and rehabilitation unit in Tendering. This could be situated in locations like Little Oakley, Harwich, or Walton-on-the-Naze, where there are volunteers available.

Officer response: *The mitigation plans outlined in section 8 of 'Little Oakley Managed Realignment – Supplementary Environmental Information report (dated 15 December 2023) by Royal HaskoningDHV aim to prevent disturbance to seals during sensitive breeding periods (June- September for harbour seals, September-January for grey seals). Works on the foreshore would only proceed after confirming no seals are present and works on the intertidal would also be scheduled to avoid the harbour seal pupping season.*

6.98. In addition to the above, following 3 rounds of public consultations and public re-consultations including the publication of the application in the local press and on site (4 site notices), a considerable number of in excess of 140 third party objections have been received raising the following concerns:

1. Maintenance of existing sea wall: Critical for protecting Walton Backwaters.
2. Potential economic and social impact of silting up Hamford Water, Walton Channel, and Twizzle, including job losses and disruption to local amenities.
3. Need for baseline surveys and regular monitoring to address potential silting issues, with developers responsible for dredging costs if necessary.
4. Thorough assessment of impact on existing habitats, including seals and birds.
5. Concerns about the proposed breach in the sea wall and its potential effects on intertidal mudflats, salt marsh habitats, and flood defences.
6. Importation of silt/mud into habitats, suggesting sourcing from within the Backwaters.
7. Doubts regarding the necessity of the scheme and its environmental impact.
8. Loss of access to current footpaths and beaches, impacting local residents' well-being and recreational activities.
9. Criticisms of outdated data and insufficient consideration of wildlife populations and breeding seasons.
10. Opposition to the proposed development due to its negative effects on wildlife, habitats, and local communities.
11. Lack of clear benefits and reasoning for the proposed works, with concerns about potential damage to existing ecosystems and habitats.
12. Opposition to interference with the natural diversity of the area and reliance on outdated information.

6.99. A large percentage of the objection letters have repeat themes in them which are to emphasise the need for thorough assessment of this habitat creation proposal in a highly sensitive area, as well as mitigation of environmental impacts, and consideration of local wildlife and community well-being in any proposed development.

6.100. The majority of these points have been covered in the main body of the report, matters such as the benefits of the scheme will be covered in the 'Planning Balance and Conclusion' section below.

#### Section 106 legal agreement

6.101. Planning permission 03/01200/FUL for a similar development (and approved by the Secretary of State on 2903/2006) was accompanied by a unilateral undertaking securing:

- A compensation mitigation and monitoring agreement; and
- Managed realignment scheme to be implemented in accordance with an Environmental Mitigation Strategy

6.102. Having regard to this undertaking and the recommended planning conditions below officer consider that there is no requirement for a section 106 legal agreement/unilateral undertaking because all the necessary, relevant and reasonable additional information and documentation including the requirements secured in the previously unilateral undertaking referred to above, will be secured through planning conditions in the event that planning permission is granted.

#### Time limit for commencement of development

6.103. As referred to elsewhere in this report, planning permission for a similar realignment scheme was granted by the Secretary of State in March 2006 under reference 03/01200/FUL. This permission was subject to a 10-year time limit for commencement of works. The original permission from 2006 expired in 2016. The first phase of the BBCT development has

commenced on site as such officers consider that a time limit of 5 years for the commencement of works on the realignment scheme the subject of this report to be reasonable (and should planning permission be granted).

#### Referral to the Secretary of State (SoS)

- 6.104. The 2006 permission (03/01200/FUL) for Little Oakley was determined by the Secretary of State (SOS). However this was because the above mentioned application was submitted with suit of other application, including the BBCT and the SBH application, which had harmful implications for protected sites such as Special Protection Areas (SPA) and Ramsar sites. It's noteworthy that the Secretary of State had previously assessed and acknowledged that compensatory measures undertaken at Little Oakley were sufficient to offset the habitat loss incurred at Bathside Bay.
- 6.105. The current Little Oakley application is about the change of land use of the site to become a managed realignment site and judged to have no significant adverse impact on on the SPA and Ramsar sites (subject to conditions) – for these reasons there is no requirement to refer this case to the SoS (and in the event that Members decide to grant planning permission).

### **7. Planning Balance and Conclusion**

- 7.1. The Little Oakley Managed Realignment scheme is required to offer compensatory habitat for the BBCT development. The BBCT development was granted planning permission by TDC in February 2013 under reference 10/00202/FUL. An essential aspect of the environmental assessment conducted for this application revealed potential adverse impacts of the BBCT development on the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar site. Consequently, in accordance with the Conservation of Habitats and Species Regulations 2017 (as amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019), compensatory measures were deemed necessary.
- 7.2. Due to the habitat loss anticipated at Bathside Bay and its significance, managed realignment of coastal flood defences emerged as the most viable approach for creating compensatory habitat. This directly led to the proposal for managed realignment at Little Oakley in the Walton Backwaters, positioned south of the Stour and Orwell estuaries, approximately 2.6 kilometres from Bathside Bay. Planning permission for this scheme was granted by the Secretary of State in 2006 under reference 03/01200/FUL. The original permission from 2006 expired in 2016, necessitating the resubmission of the planning application for the compensatory habitat, which is the subject of the current planning application.
- 7.3. Having regard to the three strands of sustainable development it is considered that:
- The proposal supports the development of BBCT, thereby fostering economic growth and delivering benefits to both the local area and the wider UK economy;
  - Subject to further details, the development will contribute to the creation of a high-quality natural environment, including the establishment of a nature reserve that enhances the landscape. Moreover, there is a commitment to providing suitable public access to the new reserve, which will further benefit the local community and resulting in clear social benefits;
  - The proposal will create the necessary compensatory habitat for BBCT therefore fulfilling the environmental objective.
- 7.4. Whilst less than substantial harm to some designated heritage assets, a scheduled monument and some non-designated heritage assets have been identified, in accordance with paragraph 208 and 209 of the Framework this harm should be weighed against the public benefits of the scheme, or a balanced judgement will be required having regard to the scale of any harm or loss

and the significance of the non-designated heritage assets. The public benefits of the scheme include:

- Creation of a new nature reserve and new (diverted) PROWs – limited weight is afforded to this benefit because it is only required because of the BBCT scheme.
- The BBCT scheme was approved as a scheme of IROPI, and given the interlinked nature between the habitat creation scheme, and the BBCT scheme, as a collective, the public benefits that will stem from a new container terminal are considered to be very substantial.

7.5. While still consider harm in the balance, these public benefits are considered to outweigh the 'less than substantial' harm to the identified heritage assets, and the overriding need for the compensatory habitat to be provided in this location is judged to clearly outweigh the scale of the harm to the non-designated heritage assets.

7.6. The proposed scheme will result in the loss of approximately 130 hectares of agricultural land, characterized as poor or very poor in quality. While the quantity of land lost is significant, it is crucial to recognize that the agricultural productivity of this land is already compromised due to its subpar quality. Moreover, when weighed against the evident and substantial need for compensatory habitat in this specific location, the loss takes on a different perspective. Viewed in this context, alongside the undeniable necessity of the realignment proposal, which promises significant indirect benefits through the facilitation of BBCT development, the sacrifice of this agricultural land is deemed justifiable considering the overall direct and indirect advantages this proposal will deliver.

7.7. There are no other policy conflicts that cannot be resolved through carefully crafted planning conditions; therefore, the proposal is recommended for approval.

## **8. Recommendation**

8.1. The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives:

### **8.2. Conditions and Reasons**

#### **1 - COMPLIANCE REQUIRED: COMPLETION TIME LIMIT**

**CONDITION:** The development shall be commenced on or before 18th March 2029.

**REASON:** To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

#### **NOTE/S FOR CONDITION:**

1) Please note that any approval given to by the Council does not give an exemption from the requirements to comply with the Wildlife and Countryside Act 1981 (as amended), the Countryside and Rights of Way Act 2000, the Conservation (Natural Habitats etc.) Regulations 1994 or any Acts offering protection to wildlife. All birds (except those listed in schedule 2 of the Wildlife and Countryside Act 1981), their nests and eggs are protected by law. It is an offence to intentionally or recklessly kill, injure or take any wild bird, or damage, destroy or intentionally disturb the nest of any wild bird whilst it is in use or being built. For this reason tree work should not be undertaken during the nesting season (broadly March to August) unless a survey for nesting birds confirms their absence. Should you require any further information on nesting birds, please contact Natural England on 03000 603900.

2) You are advised that trees have the potential to support roosting bats. Bats and their roosts are legally protected. It is an offence to disturb or harm a bat, or damage, destroy or obstruct



any place used by bats for shelter, whether they are present or not. Trees should be inspected before any works commence and if the presence of bats is suspected works must cease and advice sought from The Bat Conservation Trust on 0845 1300228.

3) This decision is valid for the time limit as set out in the condition above. You are advised that the appropriate standards for tree work are set out in British Standard 3998:2010. Failure to ensure the proposed works are carried out to these standards may result in damage to the tree(s) and may result in legal action by the Council.

4) The council not objecting to/approving the proposal does not give the legal right for a person to enter another person's land to prune or fell their tree(s). Permission should be sought from the tree owner before works to a tree(s) are carried out.

## 2 - APPROVED PLANS & DOCUMENTS

CONDITION: The development hereby approved shall be implemented in accordance with the following plans, drawings and documents hereby approved:

Red Line Plan Drawing Nr FP1

PC3294-RHD-ZZ-XX-DR-C-2001 S3 P04 Planning Scheme

PC3294-RHD-ZZ-XX-DR-C-2002 S3 P02 Proposed Seawall and Site Sections

60718424-ACM-BB-LA-60-0001 rev. 01 Wider Context Plan

60718424-ACM-BB-LA-70-0001 rev. 01 Illustrative Masterplan

54/3630 Hamford Water Topographical Survey Sheets 1 to 4

Hamford Water Realignment Environmental Statement by Royal HaskoningDHV dated 26 November 2021

Little Oakley Managed Realignment – Supplementary Environmental Information report by Royal HaskoningDHV dated 15 December 2023

Design and Access Statement Little Oakley Managed Realignment by Royal HaskoningDHV Dated 24 November 2021

REASON: For the avoidance of doubt and in the interests of proper planning.

### NOTE/S FOR CONDITION:

The primary role of this condition is to confirm the approved plans and documents that form the planning decision. Any document or plan not listed in this condition is not approved, unless otherwise separately referenced in other conditions that also form this decision. The second role of this condition is to allow the potential process of Non Material Amendment if found necessary and such future applications shall be considered on their merits. Lastly, this condition also allows for a phasing plan to be submitted for consideration as a discharge of condition application should phasing be needed by the developer/s if not otherwise already approved as part of this permission. A phasing plan submission via this condition is optional and not a requirement.

Please note in the latest revision of the National Planning Policy Framework (NPPF) it provides that Local Planning Authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used). Accordingly, any future amendment of any kind will be considered in line with this paragraph, alongside the Development Plan and all other material considerations.

Any indication found on the approved plans and documents to describe the plans as approximate and/or not to be scaled and/or measurements to be checked on site or similar, will not be considered applicable and the scale and measurements shown shall be the approved details and used as necessary for compliance purposes and/or enforcement action.

### 3 – WILDLIFE COMPENSATION IMPLEMENTATION AND MANAGEMENT PLAN

CONDITION: 1) Prior to the commencement of the development hereby approved, a programme of monitoring of the potential disturbance of waterbirds within the managed realignment site due to public access along the redundant arms of the seawalls shall be prepared in consultation with the Royal Society for the Protection of Birds, Natural England, the Environment Agency, Essex Wildlife Trust and the Local Planning Authority, and submitted to and approved in writing by the Local Planning Authority in consultation with Natural England. The programme of monitoring will form part of a Compensation Implementation and Management Plan and shall comprise monitoring for a period of five years following the implementation of the development and thereafter, periodic repeat monitoring of potential disturbance of waterbirds at a frequency to be determined by the Royal Society for the Protection of Birds, Natural England, the Environment Agency, Essex Wildlife Trust and the Local Planning Authority, such frequency to be not less than every five years.

2) An Adaptive Management Plan will be prepared in consultation with the Royal Society for the Protection of Birds, Natural England, the Environment Agency, Essex Wildlife Trust and the Local Planning Authority and submitted to and approved in writing by the Local Planning Authority in consultation with Natural England. This will include identification of appropriate measures that could be implemented should monitoring indicate that disturbance to waterbirds within the realignment site is occurring due to public access, such disturbance potentially resulting in the aims, objectives and targets of the site not being met. The Adaptive Management Plan shall set out the role of the Royal Society for the Protection of Birds, Natural England, the Environment Agency, Essex Wildlife Trust and the Local Planning Authority in advising when adaptive management measures should be implemented.

3) An annual monitoring report presenting the findings of the monitoring undertaken in accordance with paragraph (1), and where necessary recommending the implementation of adaptive management measures, shall be submitted to and approved in writing by the Local Planning Authority in consultation with Natural England. Prior to submission of the annual report to the Local Planning Authority, HIPL shall consult the Royal Society for the Protection of Birds, Natural England, the Environment Agency, Essex Wildlife Trust and the Local Planning Authority on the draft monitoring report in order to identify whether it is necessary to recommend implementation of adaptive management measures to avoid the risk of significant disturbance to the waterbirds using the compensation site.

4) If the report submitted in accordance with paragraph (3) indicates that any further or different compensatory measures and/or further monitoring are needed to ensure the overall coherence of the national site network of SACs, SPAs and Ramsar sites is protected, such measures shall be reflected in an update to the Compensation Implementation and Management Plan which shall be prepared in consultation with the Royal Society for the Protection of Birds, Natural England, the Environment Agency, Essex Wildlife Trust and the Local Planning Authority and submitted to and approved in writing by the Local Planning Authority in consultation with Natural England.

REASON: To confirm that sufficient compensatory measures have been secured to ensure that the overall coherence of the national site network of SACs, SPA and Ramsar sites is protected.

### 4 - TRANSLOCATION OF SPECIES

CONDITION: Prior to the commencement of the development hereby approved, a scheme for the translocation of species of nature conservation interest (where reasonably practicable) shall be submitted to and approved in writing by the Local Planning Authority in consultation with Natural England.

REASON: To mitigate the ecological impact of construction works.

#### 5 – FURTHER DESIGN AND PLANTING DETAILS

CONDITION: Prior to the commencement of the development hereby approved, further design and planting details for the biodiversity area identified on drawing PC3294-RHD-ZZ-XX-DR-C-2001 S3 P04 'Planning Scheme' shall be submitted and approved by the Local Planning Authority.

REASON: To maximise the biodiversity value of the site.

#### 6 - COMPLIANCE WITH DETAILS AND TIMESCALE REQUIRED – DESIGN AND PLANTING SCHEME

CONDITION: All changes in ground levels, soft/hard landscaping shown on the approved design and planting details shall be carried out in full during the first planting and seeding season (October - March inclusive) following the commencement of the development, or in such other phased arrangement as may be approved, in writing, by the Local Planning Authority up to the first use/first occupation of the development. Any trees, hedges, shrubs or turf identified within the approved landscaping details (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 10 years of being planted, or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and same species unless otherwise agreed in writing by the Local Planning Authority.

REASON: To ensure that the approved landscaping scheme has sufficient time to establish, in the interests of visual amenity and the character and appearance of the area.

#### 7 – SITE LEVELS

CONDITION: Prior to the commencement of the development hereby approved, plans to show existing and final site levels of the managed realignment site and footpaths shall be submitted to and approved in writing by the Local Planning Authority and the development shall be completed strictly in accordance with the approved levels.

REASON: For the avoidance of doubt as the scope of this permission.

#### 8 – FURTHER DETAILS: VIEWING PLATFORMS

CONDITION: Detailed plan and elevation drawings of the viewing platforms depicted on drawing 60718424-ACM-BB-LA-70-0001 rev. 01 'Illustrative Masterplan' must be submitted to and approved in writing by the Local Planning Authority before work on this part of the development commences. The work must be carried out in accordance with these drawings.

REASON: In the interests of visual amenity.

#### 9 – CONSTRUCTION MANAGEMENT PLAN

CONDITION: Prior to the commencement of any work on the site, including any ground works or demolition, a Construction Management Plan as detailed in 'Appendix F Construction Traffic Management Plan' of the Environment Statement by Royal HaskoningDHV dated 26 November 2021, shall be submitted to and approved in writing by the Local Planning Authority and shall be adhered to by all ground works and construction traffic throughout the pre-construction and construction phases. The Plan shall provide for:

- i. the parking of vehicles of site operatives and visitors,
- ii. loading and unloading of plant and materials,
- iii. storage of plant and materials used in constructing the development,

- iv. wheel and underbody washing facilities.
- v. temporary road works entrance and exit/ construction traffic signage.

The said construction management plan as may be approved shall be implemented in its entirety and shall operate as may be approved at all times during construction.

REASON: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety.

#### NOTE/S FOR CONDITION:

You are strongly advised to discuss this condition with the Local Planning Authority and if possible/available local residents likely to be affected by this development prior to submission of details.

#### 10 – VISIBILITY SPLAYS

CONDITION: Before the site access at the B1414 (Harwich Road – as shown on Red Line Site Plan FP1) is first used by construction traffic, the road junction / access at its centre line shall be provided with a minimum clear to ground visibility splay with dimensions of 2.4 metres by 83 metres to the north-east and 2.4 metres by 86 metres to the south-west, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the road junction / access is first used by vehicular traffic and retained free of any obstruction at all times.

REASON: To provide adequate inter-visibility between vehicles using the road junction / access and those in the existing public highway in the interest of highway safety

#### 11 – NO UNBOUND MATERIAL

CONDITION: No unbound material shall be used in the surface treatment of the vehicular access within 15 metres of the highway boundary at Harwich Road access point.

REASON: To avoid displacement of loose material onto the highway in the interests of highway safety.

#### 12 – CONSTRUCTION TRAFFIC MANAGEMENT PLAN

CONDITION: Prior to the commencement of any work on the site, a Construction Traffic Management Plan (CTMP) shall be submitted to and approved in writing by the Local Planning Authority. The CTMP shall include:

- Measures to minimise the delivery of construction materials to the site/removal of soil and all other building /waste materials from site during peak periods
- Agreement on travel routes for all construction vehicles associated with the development hereby approved
- Full details of how mud and other debris will be prevented from reaching any public highway in the vicinity of the site and or further afield
- Full details of how the construction workforce will get to and from the site with the aim of minimising any congestion on local and trunk roads.

The said CTMP as may be approved shall be implemented in its entirety and shall operate as may be approved at all times during construction.

REASON: To control the location and direction of all vehicle movements associated with the construction phases of the development to and from the site and in the interests of highway safety.

#### 13 – PUBLIC RIGHTS OF WAY

CONDITION: No works that will affect any of the Public Rights of Way that will be affected by the development hereby approved, shall be permitted to commence on site until such time as an Order securing the diversion of the existing definitive right of way (public footpath nos. 19 and 22 Little Oakley\_ 174 and 177 respectively) has been confirmed and the new route has been constructed to the satisfaction of the Public Rights of Way team.

REASON: To ensure the continued safe passage of pedestrians on the public right of way and accessibility

#### 14 – PUBLIC RIGHTS OF WAY – MAINTAINED / UNOBSTRUCTED

CONDITION: The public's rights and ease of passage over public footpath nos. 19 and 22 (Little Oakley\_ 174 and 177) shall be maintained free and unobstructed at all times.

REASON: To ensure the continued safe passage of the public on the definitive right of way and accessibility.

#### 15 – DETAILS – GRAVEL HARDPACKED PATH

CONDITION: Prior to first use of the diverted footpaths 19 and 22, the gravel hardpacked path at the base of the footpath shall be fully installed in accordance with details to be submitted to and approved in writing by the Local Planning Authority, including details of a Surface Maintenance Regime (SMR) for the said gravel hardpacked path at the base of the footpath, the SMG to remain in place in perpetuity.

REASON: The footpath may occasionally be accessed by vehicles in order to maintain the site, this is to ensure the path remains well-drained and usable year-round and to enable the continued safe passage of the public on the definitive right of way and accessibility.

#### 16 – WRITTEN SCHEME OF INVESTIGATION

CONDITION: No development shall commence until the activities listed in parts 1 to 3 (inclusive) below have been completed.

1. A Written Scheme of Investigation (WSI) that includes a programme of archaeological evaluation shall be submitted to and approved in writing by the Local Planning Authority.
2. Evidence of the completion of the programme of archaeological evaluation identified in the approved WSI described in part 1 shall be submitted to and approved in writing by the Local Planning Authority.
3. Following the completion of the archaeological evaluation, a mitigation strategy detailing the excavation and/or preservation strategy shall be submitted to and approved in writing by the Local Planning Authority.

No development can commence on those areas of the site that the approved mitigation strategy (required under part 3) identifies as containing archaeological deposits, until the archaeological fieldwork detailed in the mitigation strategy has been completed. Within 6 months of the completion of the archaeological fieldwork, a post excavation assessment shall be submitted to the Local Planning Authority for approval. No development can commence in the areas of the site identified as containing archaeological deposits until the post excavation assessment has been approved by the Local Planning Authority. Following the approval of the post excavation

assessment, a full site archive and report shall be deposited at the local museum and a publication report shall be submitted to the Local Planning Authority.

REASON: To protect non-designated heritage assets with archaeological interest.

#### 17 – CREST LEVELS

CONDITION: The crest levels of the sea wall hereby approved and depicted on drawings PC3294-RHD-ZZ-XX-DR-C-2001 S3 P04 and PC3294-RHD-ZZ-XX-DR-C-2002 S3 P02 shall be maintained at a minimum of 4.80 metres Above Ordnance Datum Newlyn throughout the lifetime of the development.

REASON: To prevent increased off site flood risk.

#### 18 – CONSTRUCTION AND ENVIRONMENTAL MANAGEMENT PLAN

CONDITION: Prior to the commencement of the development hereby approved, a Construction Environmental Management Plan (CEMP), shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall provide details of protection measures to be carried out during the construction phase concerning the following green infrastructure:

- i. the Hamford Water Special Protection Area (SPA), Site of Special Scientific Interest (SSSI), Ramsar Site, and Special Area of Conservation (SAC); and
- ii. any on-site vegetation that is to be retained within the portion of the site that is not to be tidally inundated.

The approved CEMP shall be adhered to throughout the construction phase.

REASON: To ensure that the construction impacts of the development are kept within acceptable limits.

#### 19 – BIODIVERSITY GAIN PLAN

CONDITION: Prior to the commencement of the development hereby approved, a Biodiversity Gain Plan shall be submitted to and approved in writing by the Local Planning Authority. The content of the Biodiversity Gain Plan shall include the following:

- a) a biodiversity metric tool calculation;
- b) pre-development and post-development plans that show the location of on-site habitat;
- c) a timetable for implementation of the biodiversity enhancement measures; and
- d) details of initial aftercare and long-term maintenance (where relevant).

The development shall be implemented in accordance with the Biodiversity Gain Plan and shall be retained in that manner thereafter.

REASON: To provide a biodiversity net gain on site.

#### 20 – LANDSCAPE ECOLOGICAL MANAGEMENT PLAN

CONDITION: Prior to the commencement of the development hereby approved, a Landscape Ecological Management Plan (LEMP), which includes management responsibilities and maintenance schedules shall be submitted to and approved in writing by the Local Planning Authority. Following the first use of the development, for a minimum period of 10 years, the LEMP shall be carried out as approved and the applicant or any successor in title must maintain yearly logs of maintenance which must be available for inspection upon a request by the Local Planning Authority.

REASON: To ensure the management and maintenance of this green infrastructure asset.

## 21 – ECOLOGICAL MITIGATION AND COMPENSATION STRATEGY

CONDITION: Prior to the commencement of the development hereby approved, an Ecological Mitigation and Compensation Strategy shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall include detailed habitat and protected species surveys, description of effects of habitats and species, and specific mitigation measures for affected species. If effective mitigation for a particular protected species is not possible, on or off site compensation shall be defined. The development shall be implemented in accordance with the Ecological Mitigation and Compensation Strategy.

REASON: To minimise and, if necessary, offset impact on protected species.

## 9. Informatives

- Positive and Proactive Statement
- Essex County Council has a duty to maintain a register and record of assets which have a significant impact on the risk of flooding. In order to capture proposed SuDS which may form part of the future register, a copy of the SuDS assets in a GIS layer should be sent to [suds@essex.gov.uk](mailto:suds@essex.gov.uk).
- Any drainage features proposed for adoption by Essex County Council should be consulted on with the relevant Highways Development Management Office.
- Changes to existing water courses may require separate consent under the Land Drainage Act before works take place. More information about consenting can be found in the attached standing advice note.
- It is the applicant's responsibility to check that they are complying with common law if the drainage scheme proposes to discharge into an off-site ditch/pipe. The applicant should seek consent where appropriate from other downstream riparian landowners.
- The Ministerial Statement made on 18th December 2014 (ref. HCWS161) states that the final decision regarding the viability and reasonableness of maintenance requirements lies with the LPA. It is not within the scope of the LLFA to comment on the overall viability of a scheme as the decision is based on a range of issues which are outside of this authority's area of expertise.
- ECC Suds will advise on the acceptability of surface water and the information submitted on all planning applications submitted after the 15th of April 2015 based on the key documents listed within this letter. This includes applications which have been previously submitted as part of an earlier stage of the planning process and granted planning permission based on historic requirements. The Local Planning Authority should use the information submitted within this response in conjunction with any other relevant information submitted as part of this application or as part of preceding applications to make a balanced decision based on the available information

## 10. Additional Considerations

Public Sector Equality Duty (PSED)

- 10.1. In making this recommendation/decision regard must be had to the public sector equality duty (PSED) under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions that in summary include
- A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
  - B. Advance equality of opportunity between people who share a protected characteristic\* (See Table) and those who do not;
  - C. Foster good relations between people who share a protected characteristic\* and those who do not, including tackling prejudice and promoting understanding.
- 10.2. It is vital to note that the PSED and associated legislation are a significant consideration and material planning consideration in the decision-making process. This is applicable to all planning decisions including prior approvals, outline, full, adverts, listed buildings etc. It does not impose an obligation to achieve the outcomes outlined in Section 149. Section 149 represents just one of several factors to be weighed against other pertinent considerations.
- 10.3. In the present context, it has been carefully evaluated that the recommendation articulated in this report and the consequent decision are not expected to disproportionately affect any protected characteristic\* adversely. The PSED has been duly considered and given the necessary regard, as expounded below.

Protected Characteristics*	Analysis	Impact
Age	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Disability	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Gender Reassignment	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Marriage or Civil Partnership	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Pregnancy and Maternity	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Race (Including colour, nationality and ethnic or national origin)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sexual Orientation	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Sex (gender)	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral
Religion or Belief	The proposal put forward will not likely have direct equality impacts on this target group.	Neutral

- 10.4. The proposal overall shall have a neutral impact.
- 10.5. Consultations undertaken with the affected communities or groups have not been required in this case.
- 10.6. No mitigation measures required.

Human Rights



- 10.7. In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998 (as amended). Under the Act, it is unlawful for a public authority such as the Tendring District Council to act in a manner that is incompatible with the European Convention on Human Rights.
- 10.8. You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property) and Article 14 (right to freedom from discrimination).
- 10.9. It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence or freedom from discrimination except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

### Finance Implications

- 10.10. Local finance considerations are a matter to which local planning authorities are to have regard in determining planning applications, as far as they are material to the application.
- 10.11. The New Homes Bonus (NHB) is one local finance consideration capable of being a material consideration to which the weight given shall be determined by the decision maker. The NHB is a payment to local authorities to match the Council Tax of net new dwellings built, paid by Central Government over six consecutive years. In this instance, it is not considered to have any significant weight attached to it that would outweigh the other considerations.

## **11. Background Papers**

- 11.1. In making this recommendation, officers have considered all plans, documents, reports and supporting information submitted with the application together with any amended documentation. Additional information considered relevant to the assessment of the application (as referenced within the report) also form background papers. All such information is available to view on the planning file using the application reference number via the Council's Public Access system by following this link <https://idox.tendringdc.gov.uk/online-applications/>.