



Environmental Statement
CHAPTER 6 – Legislative Framework

Langstone FCERM Scheme

January 2026

Langstone FCERM Scheme Environmental Statement

Chapter 6

Legislative Framework

Contents

6.	Legislative Framework.....	6-3
6.1	Overview	6-3
6.2	Consents and Compliances.....	6-3
6.3	Planning Permission and Listed Building Consent.....	6-3
6.4	Marine Licence	6-4
6.5	Environmental Impact Assessment (EIA).....	6-4
6.5.1	Marine	6-4
6.5.2	Terrestrial	6-5
6.5.3	Environmental Statement	6-5
6.6	Other key consents.....	6-5
6.6.1	Harbour Works Licence – Chichester Harbour Conservancy	6-5
6.6.2	Environment Agency Consents.....	6-6
6.6.3	Land Owner Consents	6-6
6.7	Other Legislation of Relevance.....	6-6
6.7.1	Conservation of Habitats and Species Regulations 2017 (as amended).....	6-7
6.7.2	The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.....	6-7
6.7.3	Land Drainage Act 1991 and Water Resources Act 1991 and associated byelaws	6-8
6.7.4	Wildlife and Countryside Act 1981 (as amended)	6-8
6.7.5	Natural Environment and Rural Communities (NERC) Act 2006.....	6-8
6.7.6	Environment Act.....	6-8
6.7.7	Equalities Act.....	6-9

6. Legislative Framework

6.1 Overview

The proposed Langstone FCERM Scheme will be carried out under the powers of Section 14A of the Land Drainage Act 1991.

6.2 Consents and Compliances

This ES will support both the Planning Application and Marine Licence Application for the Langstone FCERM scheme to fulfil the requirements of the following legislation:

- The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended);
- Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended).

In addition to planning consent and a marine licence, the other key consents required include:

- Listed Building Consent
- Permission to stop up and divert a highway (Section 247 of the TCPA 1990)
- Permissions and agreements to alter, improve and set apparatus on a highway
- Harbour Works Licence
- Land owner consents, including the Crown Estate
- Environmental Permit (EA)

Compliance with, and assessment, is also required in accordance with the following key legislation:

- Conservation of Habitats and Species Regulations 2017 (as amended)
- The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
- The Environment Act
- Wildlife and Countryside Act 1981 (as amended)
- Natural Environment and Rural Communities (NERC) Act 2006

Each of these are discussed briefly in turn below, with more detailed information to be found within the relevant chapters of the Environmental Statement.

6.3 Planning Permission and Listed Building Consent

Planning permission is required from the Local Planning Authority for the elements of this development, which are above Mean Low Water (MLW), in accordance with the Town and Country Planning Act 1990.

Any works affecting Listed structures required Listed Building Consent, in accordance with the Planning (Listed Building and Conservation Area) Act 2010.

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states “If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”. The development plan in this case comprises:

- The Local Plan (made up of the Core Strategy (2011) and the Site Allocations Plan (2014).
- The Hampshire Minerals and Waste Plan
- The Emsworth Neighbourhood Plan

In terms of “other material planning considerations”, the National Planning Policy Framework and Guidance constitute material considerations of significant weight. In this instance, the South Marine Plan is also considered to be a key material consideration, along with the comments from Statutory consultees and adopted supplementary planning documents.

The Planning, Design and Access Statement submitted with the Planning, Marine Licence and Listed Building Consent Applications discusses the scheme in the context of the relevant planning policies and material considerations.

6.4 Marine Licence

A marine licence is required from the Marine Management Organisation [MMO] for works carried out below Mean High Water Springs [MHWS] under the Marine and Coastal Access Act 2009.

The Marine Policy Statement (MPS) is the framework for preparing Marine Plans and taking decisions affecting the marine environment. It provides the high level policy context within which national and sub-national Marine Plans are developed, implemented, monitored, amended and ensures appropriate consistency in marine planning across the UK marine area. Marine Plans set out how the MPS is implemented in specific areas and the South Marine Plan was adopted in July 2018.

The Local Plan is considered to be a material consideration in the assessment of any project under the South Marine Plan and vice versa.

Appendix B of the Planning, Design and Access Statement includes a list of all the policies stated within the South Marine Plan, and how they have been addressed within this submission, or why they're not deemed to be applicable.

6.5 Environmental Impact Assessment (EIA)

6.5.1 Marine

The Marine Works (Environmental Impact Assessment) Regulations 2007 (“the Regulations”) transposed Council Directive 2011/92/EU (as amended) into UK law for marine licence applications. The regulations aim to protect the environment and the

quality of life by ensuring that projects which are likely to have significant environmental effects by virtue of their nature, size or location are subject to an EIA before permission is granted.

The Marine Management Organisation (MMO) have confirmed that the proposed works constitute EIA development under Schedule A2 (69) of The Marine Works EIA Regulations 2007 (as amended) specifically:

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

Under Part 3, Reg13 of these same Regulations, a Scoping Opinion was sought. A copy of the submitted Scoping Report can be made available on request. A **Scoping Opinion** was received from the MMO (EIA/2021/00002, May 2021), which can be found in **Appendix A**. This confirmed which topics are 'scoped in' and therefore are included in this Environmental Statement. Table 1.1 in Chapter 1 details these topics.

6.5.2 Terrestrial

In addition to marine EIA, Havant Borough Council as the Local Planning Authority (LPA) have concluded that the proposed development constitutes a project that falls under Schedule 2, Infrastructure Project, 10 (m) of the Town & Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended):

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

Following the submission of a Scoping Request to the LPA (again, a copy of the submitted Scoping Report can be made available on request), a formal Scoping Opinion was received (GEN/21/00064, March 2021). This confirmed which aspects are 'scoped in' and again this is set out in detail within **Table 1.1 in Chapter 1**.

6.5.3 Environmental Statement

As stated above, this Environmental Statement will support both the Planning Application and the Marine Licence Applications for the Langstone FCERM scheme. to fulfil the requirements of the following legislation:

Whilst a single pack of documents will be submitted in respect of both applications, unfortunately we are not able to submit under the Coastal Concordat. Havant Borough Council are not currently signed up to this initiative but we hope that, in the interests of efficiency, some form of collaborative working between the LPA and MMO will occur.

6.6 Other key consents

6.6.1 Harbour Works Licence – Chichester Harbour Conservancy

The Chichester Harbour Conservancy Act 1971 (Sections 45, 47 and 48) makes it an offence for any person to construct, alter, renew or extend any works on, under or over tidal waters or

tidal lands below the level of Mean High-Water Springs in Chichester Harbour unless licensed to do so by the Conservancy.

The only exceptions are works specifically authorised by an Act of Parliament or the renewal of works which were in place on 1st August 1970.

The Conservancy requires applications for works licences to confirm that the works either have, or do not require, planning permission. On this basis, we will apply for this consent following gaining planning permission.

6.6.2 Environment Agency Consents

You must follow the environmental permitting rules if you want to do work:

- on or near a main river
- on or near a flood defence structure
- in a flood plain
- on or near a sea defence

These works are regulated under environmental permits. There are 3 ways to get permission:

- register for an ‘exemption’ – you do not need a permit but you must still register your exemption with the Environment Agency
- apply for a ‘standard rules permit’ – permits that include a set of fixed rules for common activities
- apply for a ‘bespoke permit’ – for all other flood risk activities – permits that are tailored to the risks from your activities

Depending on the precise wording of the marine licence, when issued, it may be that this Scheme is exempt from needing a separate environmental (flood activity) permit. We will liaise with the Environment Agency on this matter at the appropriate time.

A flood risk statement is included within the **Planning, Design and Access Statement**, submitted with the Planning and Marine Licence applications.

6.6.3 Land Owner Consents

Whilst Havant Borough Council, as a Risk Management Authority, has powers under the Land Drainage Act 1991, land owner permissions will still be sought. Permission will also be sought for any works which fall under the ownership of the Crown Estate, as well as other statutory bodies such as Hampshire County Council.

6.7 Other Legislation of Relevance

Other key pieces of legislation of relevance to the Langstone FCERM Scheme are set out below. Each chapter will cover the all of the relevant legislation for their respective topics in more detail.

6.7.1 Conservation of Habitats and Species Regulations 2017 (as amended)

The 'Habitats Directive' (Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora) protects habitats and species of European nature conservation importance. Together with Council Directive 2009/147/EC on the conservation of wild birds (the 'Birds Directive'), the Habitats Directive establishes a network of internationally important sites designated for their ecological status. Special Areas of Conservation (SACs) and Sites of Community Importance (SCIs) are designated under the Habitats Directive and promote the protection of flora, fauna and habitats. Special Protection Areas (SPAs) are designated under the Birds Directive to protect rare, vulnerable and migratory birds. These sites combine to create a Europe-wide network of designated sites, referred to as 'European sites'. In the United Kingdom (UK), the Conservation of Habitats and Species Regulations 2017 (as amended) (the 'Habitats Regulations') incorporate all SPAs into the definition of European sites and, consequently, the protections afforded to European sites under the Habitats Directive apply to SPAs designated under the Birds Directive and both SACs/SCIs and SPAs are included within the UK National Site Network of European sites.

In addition to sites designated under the Habitats Regulations, UK Government policy (ODPM Circular 06/2005) states that internationally important wetlands designated under the Ramsar Convention 1971 (Ramsar sites) are afforded the same protection as SPAs and SACs for the purpose of considering development proposals that may affect them.

Regulation 63 of the Habitats Regulations defines the procedure for the assessment of the implications of plans or projects on European sites (the Habitats Regulations Assessment (HRA) process). Under this Regulation, if a proposed development is unconnected with site management and is likely to significantly affect the designated site, the competent authority must undertake an 'appropriate assessment' (Regulation 63(1)).

The UK left the European Union on 31 January 2020 under the terms set out in the European Union (Withdrawal Agreement) Act 2020 ("the Withdrawal Act"). However, the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 make it clear that the HRA process continues to apply following the UK's exit.

Appendix C of the ES contains the Information for Habitat Regulations Assessment.

6.7.2 The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017

The Water Framework Directive (2000/60/EC), transposed into law, and subsequently amended, in England and Wales as The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017' (the 2017 Regulations), established a legislative framework for the protection of surface waters (including rivers, lakes, transitional waters (estuaries and coastal waters) and ground water. For this scheme, permission is sought from the Environment Agency (EA) to ensure that the full scheme complies with the WFD/2017 Regs, with no deterioration to the existing status of the relevant water bodies. A scheme level WFD assessment has been prepared to demonstrate that the full scheme can be delivered, without resulting in a WFD deterioration. **Appendix D** of the ES contains the full WFD assessment.

6.7.3 Land Drainage Act 1991 and Water Resources Act 1991 and associated byelaws

Usually any coastal works will require an Environmental Permit under the Water Resources Act 1991 and/or the Southern Region Byelaws. Following changes to the Marine and Coastal Access Act, administered by the MMO, the Environment Agency can, in certain circumstances, waive the requirement for an Environmental Permit where a Marine Licence is also required.

In addition, where a development is proposed within an area shown to be located within a flood risk zone a Flood Risk Assessment (FRA) usually needs to be submitted with the planning application. In line with previous FCERM schemes, due the nature of the proposal being for flood defences a Flood Risk Statement is included within the Planning Design and Access Statement (Section 6). This is supported by the ES and its relevant appendices, which set out the proposed flood and coastal erosion defences in detail.

6.7.4 Wildlife and Countryside Act 1981 (as amended)

This legislation requires an assessment of the potential impact upon species within the application area protected by the Wildlife and Countryside Act 1981 (as amended).

Under the terms of Section 28(4)b of the Act, as amended by Schedule 9 to the Countryside and Rights Of Way (CROW) Act 2000, any operations within, or adjacent to, a Site of Special Scientific Interest (SSSI) require consent from Natural England.

Approval under Section 28 of the Wildlife and Countryside Act 1981 (as amended by the CROW Act 2000) would be included in Natural England's overall advice regarding the requirement (or otherwise) for an Appropriate Assessment under the Habitats Regulations and also Natural England's response to a marine licence application and planning application.

6.7.5 Natural Environment and Rural Communities (NERC) Act 2006

The Natural Environment and Rural Communities (NERC) Act 2006 requires 'every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'.

It is deemed that by complying with the EIA regulations and other legislation set out above this project will address the requirements of the NERC Act 2006.

6.7.6 Environment Act

In England, achieving a 10% net gain in biodiversity (referred to a BNG) is now mandatory for all non-exempt planning applications under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021). Schedule 7A makes provision for grants of planning permission in England to be subject to a condition to secure that the biodiversity gain objective is met.

Where an applicant believes the development would be subject to the biodiversity gain condition, the application must be accompanied by minimum information set out in Article 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015, which includes:

- the pre-development biodiversity value(s), either on the date of application or earlier proposed date (as appropriate);
- the completed metric calculation tool showing the calculations of the pre-development biodiversity value of the onsite habitat on the date of application (or proposed earlier date) including the publication date of the biodiversity metric used to calculate that value
- a description of any irreplaceable habitat (as set out in column 1 of the Schedule to the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024) on the land to which the application relates, that exists on the date of application, (or an earlier date); and
- plan(s), drawn to an identified scale and showing the direction of North, showing onsite habitat existing on the date of application (or earlier proposed date), including any irreplaceable habitat (if applicable).

6.7.7 Equalities Act

The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society.

Havant Borough Council seeks to ensure that equality considerations are imbedded in the decision-making process, giving due consideration to the effects of decisions/policies on the climate and on people in respect of wellbeing, safety and protected equality characteristics.

The full ES describes and assesses the impact on the environment, including the impact on human health, and the Planning, Design and Access Statement discusses the issue of access and how the scheme is proposing to improve this.

6.7.8 Highways Act 1980

The Highways Act 1980 covers the management and operation of the road network in England and Wales, including the provision and maintenance of highways, streets and bridges. Section 278 of the Highways Act 1980 allows a third party (usually a developer) to enter into a legal agreement with the Local Highway Authority (LHA) to make alterations or improvements to a public highway. This is usually necessary where planning permission has been granted for a development that requires improvements, or changes, to the existing roads and footways that form part of the publicly maintained highway. On the assumption that planning permission for the Langstone FCERM Scheme is granted, a S278 agreement will be entered into with Hampshire County Council (HCC) (Local Highway Authority) to account for temporary and permanent changes required to the highway as a result of the proposed development.

Chapter 13 (Traffic and Access) assesses the potential impacts of the scheme to the highway network, with mitigation measures included where necessary.