

A coastal concordat for England - draft v.6

1 Executive Summary

This coastal concordat is an agreement between the Department for Environment, Food and Rural Affairs (Defra), Department for Communities and Local Government (DCLG), the Department for Transport (DfT), the Marine Management Organisation (MMO), the Environment Agency (EA), Natural England (NE) and the Local Government Association (LGA). It sets out the principles according to which the signatories propose to work with Local Planning Authorities¹ (LPA) to enable sustainable growth in the coastal zone.

The concordat applies to the consenting² of coastal developments in England where several bodies have a regulatory function, and is designed to form the basis of agreements between signatories and coastal LPAs.

The concordat is based on five high level principles, as set out below:

1. Applicants seeking regulatory approval should be provided with a **single point of entry** into the regulatory system, guiding them to the organisations responsible for the range of consents, permissions and licences that may be required for their development.
2. Regulators should agree a **single lead authority** for coordinating the requirements of Environmental Impact Assessment Directive or Habitats Regulations Assessments.
3. Where opportunities for wholly **dispensing or deferring regulatory** responsibilities are legally possible and appropriate, they should be taken.
4. Where possible, at the pre-application stage, competent authorities and statutory advisors should agree the likely environmental assessment **evidence requirements** of all authorities at all stages of the consenting process.
5. Where possible regulators and statutory advisors should each provide **coordinated advice** to applicants from across their respective organisations.

¹ LPAs include Unitary or District Councils and National Park Authorities

² Consenting refers to the various consents, permissions and licences needed for a development to become operational. The consenting process has both advisory and decision making roles within it, and the concordat applies across both these roles.

2 Introduction

2.1 Background

This concordat is one of a suite of actions Government and its delivery bodies are taking to achieve more efficient, coordinated regulation. In autumn 2012, the Better Regulation Executive of the Department for Business Innovation and Skills conducted a Focus on Enforcement review of enforcement as it affects coastal projects and investments³. One of the main conclusions of this review was that businesses found it difficult to understand and deal with overlaps between regulators.

In consultation with the MMO and other relevant regulators, Defra published an action plan⁴ responding to the review's findings. The action plan included a commitment for Defra to lead on rapid agreement and conclusion of a Marine / Coastal Development Concordat between themselves DCLG, DfT, the MMO, the EA, NE and the LGA. This should, among other things, aim to provide applicants with a single point of entry spanning all of the regulatory systems.

The LGA, as a non-statutory body, will endorse the Concordat, and will advise its members to adopt the principles therein, but cannot so instruct them or require this.

The concordat provides a framework within which the separate processes for the consenting of coastal developments in England can be better coordinated. It offers benefits to applicants, regulators and advisors alike by reducing unnecessary regulatory duplication, providing better sign-posting, streamlining assessments and increasing transparency and consistency of advice.

2.2 Where the concordat applies

This concordat sets out principles for coordinating the consenting process in the coastal zone in England and provides a framework within which public bodies relevant to this process can deliver a more effective and efficient service.

The concordat applies to all applications for all coastal development, except those where coordination mechanisms are already in place, for example under the Planning Act 2008, the Transport and Works Act or Hybrid Bills. In this context coastal development means individual schemes which span the intertidal area in estuaries and on the coast and require multiple consents including both a marine licence and a planning permission from the LPA.

The concordat complements other Government-agency led initiatives to promote sustainable growth. Where it applies it will, however, take precedence over those other initiatives.

The concordat will not apply to development projects or strategies that are solely terrestrial, but working practices should be aligned as far as possible to ensure a consistent standard of service for the regulatory system.

³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/88425/bis-13-616-review-of-coastal-projects-and-investments-focus-on-enforcement.pdf

⁴<http://discuss.bis.gov.uk/focusonenforcement/files/2013/02/Defra-Response-to-Coastal-Projects-Review.pdf>

3 Principles

The concordat is based on five high level principles that the signatories will promote, as set out below:

1. Applicants seeking regulatory approval should be provided with a **single point of entry** into the regulatory system, guiding them to the organisations responsible for the range of consents, permissions and licences that may be required for their development.
2. Regulators should agree a **single lead authority** for coordinating the requirements of Environmental Impact Assessment (EIA) Directive or Habitats Regulations Assessments (HRA).
3. Where opportunities for wholly **dispensing or deferring regulatory** responsibilities are legally possible and appropriate, they should be taken.
4. Where possible, at the pre-application stage, competent authorities and statutory advisors should agree the likely environmental assessment **evidence requirements** of all authorities at all stages of the consenting process.
5. Where possible regulators and statutory advisors should each provide **coordinated advice** to applicants from across their respective organisations.

3.1 Single point of entry to the regulatory system

The regulatory landscape at the coastal zone is a complex one. There are at least three main regulators (the Local Planning Authority (LPA), the MMO and the EA) with many other public bodies having regulatory powers in specific locations or circumstances (e.g. Department for Energy and Climate Change, Coast Protection Authorities, Natural England, harbour authorities, Maritime and Coastguard Agency, Trinity House).

The principle of having a single point of entry means that an applicant should only need contact one of the regulatory or advisory bodies who are signatories to this agreement who would then signpost the applicant to other relevant signatories, and where appropriate, would themselves make contact with relevant consenting bodies. The concept of a single point of entry is not intended to place additional demands on any party, rather it is means of providing a more efficient and effective way of working for all. The single point of entry can be further defined as:

- When someone applies for a consent, licence or permission from the LPA, the MMO, the EA or NE, or requests information regarding a consent, licence or permission from any of the aforementioned parties, the single point of entry to the regulatory system should be whichever one of these bodies the person first approaches.
- Upon entry to the regulatory system, based on the information submitted by the applicant at that time, the body acting as the single point of entry should inform the applicant they are likely to need further consents, licences or permissions from other bodies as relevant.
- Where relevant, the body acting as the single point of entry should inform the applicant of the concordat.
- The body acting as the single point of entry does not necessarily have to take the role of the lead authority for EIA or HRA assessments.
- Where appropriate, the body acting as the single point of entry should inform all other concordat signatories, and where they can be identified, other consenting bodies that an application or an advice request has been received. However, it remains the ultimate responsibility of the applicant to obtain all necessary consents.

- In order to deliver effectively upon this principle, all concordat signatories will need to be aware of each other's regulatory responsibilities and have established processes, which will ensure that the principle is implemented effectively.

3.2 One lead authority

The aim of this principle is to reduce the need for multiple regulation, in particular production of Environmental Statements under EIA Regulations or Habitats Regulations Assessment (HRA) for the same project by different regulators. This principle does not remove any of the statutory responsibilities or duties of any regulatory authority, but it does set out a mechanism by which the production of evidence supporting decision-making can be streamlined. In summary, upon identifying that applications for more than one consent, licence or permission require EIA or HRA a lead authority for coordinating relevant assessment processes should be identified and, where appropriate, parallel tracking⁵ of assessments should be recommended.

3.2.1 Environmental Impact Assessment

This principle can be further defined as:

- The relevant competent authorities should reach agreement on who is the most appropriate lead authority for coordinating EIA.
- The following guidance should be applied during determination of a lead authority to coordinate EIA, based upon Defra guidance on determining a lead competent authority under the Habitats Regulations⁶:
 - Where a single technical issue is more important than any other in assessing the impacts of a plan or project, the competent authority with the required technical expertise could lead;
 - Where there are a large number of complex cross-cutting issues, the competent authority with greatest capacity to undertake the work could lead;
 - Where a plan or project cuts across administrative boundaries (e.g. between planning authorities), the competent authority with the principal interest could lead.
- The lead competent authority will then coordinate a decision on whether a shared Environmental Statement can be produced, what the respective roles and responsibilities are, a timetable for work, and how work will be resourced. Each competent authority will need to be satisfied that the Environmental Statement contains the information that it requires.
- To reduce duplication of effort for all parties during the EIA process, where there is no legal mechanism to formally defer decision making from one competent authority to another (such as under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011), one competent authority should be appointed as the administrative lead. This means that consultation and assessment at the screening and scoping stages of the process is only carried out once and one Environmental Statement covers all relevant EIA regulations. Each competent

⁵ This is in line with the principles set out in the Environment Agency's "Guidance for developments requiring planning permission and environmental permits"

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69580/pb13809-habitats-guidance.pdf

authority will need to be satisfied that the Environmental Statement contains the information that it requires.

In practice, for a project that is mainly terrestrially based, the LPA may be the overall decision maker with regards to EIA, notwithstanding the fact that the MMO may need to issue separate consents based upon that EIA process. Similarly for a project that is mainly marine based the MMO may be the overall decision maker with regards to EIA. During the EIA process, the LPA would rely on the MMO to provide advice on marine aspects, the EA to provide advice on its regulatory responsibilities (including flood and coastal erosion risk management, pollution control and fisheries) and environmental duties such as for the Water Framework Directive, and NE to provide advice on its own regulatory responsibilities (e.g. terrestrial wildlife licensing) and terrestrial and marine conservation matters in a coordinated manner. This should result in an Environmental Statement that is robust enough that the MMO could defer their responsibilities under the Marine Works (EIA) Regulations and use the EIA consent decision of the LPA to inform their decision on any related marine licence. This procedure should apply regardless of which is the lead authority or under what regulations the EIA decision is being made.

3.2.2 Habitats Regulations Assessment

This principle can be further defined as:

- The relevant competent authorities should reach agreement on who is the most appropriate lead authority for coordinating HRA.
- In line with Defra guidance on determining a lead competent authority under the Habitats Regulations⁶, the following guidance should be applied to determination of a lead authority to coordinate HRA:
 - Where a single technical issue is more important than any other in assessing the impacts of a plan or project, the competent authority with the required technical expertise could lead;
 - Where there are a large number of complex cross-cutting issues, the competent authority with greatest capacity to undertake the work could lead;
 - Where a plan or project cuts across administrative boundaries (e.g. between planning authorities), the competent authority with the principal interest could lead.
- The lead competent authority will then coordinate a decision on whether a shared Appropriate Assessment can be produced, what the respective roles and responsibilities are, a timetable for work, and how work will be resourced.
- The lead competent authority for HRA does not necessarily need to be the same lead competent authority for EIA. For example, there may be a mainly terrestrial project where the only effects that need assessing under the Habitats Regulations are on a European Marine Site. In this instance the technical expertise needed to lead EIA and HRA will be different, and this should be reflected in the lead competent authorities for different regimes.

3.3 Dispensing or deferring regulatory responsibilities

The signatories should ensure that they explore the legal options available for streamlining within the regulatory process. Where opportunities for wholly dispensing or deferring regulatory responsibilities are legally possible and appropriate, they should be taken (e.g.

dispensing with flood defence consents where the terms and conditions of a marine licence mean that the requirement of such a consent can be dispensed with).

3.4 Certainty on evidence requirements

Applicants are encouraged to undertake early engagement to identify common evidence needs across different consenting regimes and enable the parallel tracking of any work required to satisfy evidence requirements where appropriate. Where possible, the information contained within any regulatory assessment should be sufficient for both the marine licence and the planning application approvals and may inform other relevant consents, licences and permissions.

3.5 Coordination of advice

Where either the LPA, the MMO, the EA or NE are acting in a regulatory or advisory capacity in the coastal zone, each body should ensure that it is providing coordinated advice across its organisation within agreed timescales.

4 Other considerations

4.1 Costs

Implementation of the concordat should generate long term efficiency savings for regulators, advisors and applicants. In order to realise these savings LPAs, the MMO, NE and EA may need to invest in training and awareness raising, for example in order to be able to provide the single point of entry. But overall they will benefit from making the regulatory process more coordinated and efficient for all parties within their current processes.

The costs to the applicant are expected to decrease through better working; there should be less time needed for individual discussions with all the bodies concerned. Where an applicant parallel tracks applications, evidence may only need to be produced once, rather than many times.

4.2 Charging

The concordat will not have any implications for the charging regimes of any of the signatories, who will each charge for any services within their own legal remits.

4.3 Enforcement

This concordat will not amend or remove the enforcement responsibilities of any signatory party.

5

5.1 Marine planning

In 2013, the MMO will be producing the first marine plans for England and will be implementing a system of plan-led management for the regulatory functions that they deliver. The terrestrial and marine planning systems will be coordinated effectively. The MMO will commit to provide support on how public bodies can carry out their regulatory duties either in accordance with or with regard to any relevant marine plan.

5.2 Shoreline Management Plans (SMPs)

Over the last 5 years SMPs have been produced for the whole of the coastline of England and Wales. These determine the best strategic approach to the management of flood and coastal erosion risks over the next 100 years. They will be used to inform the decisions of all the signatories to this concordat when determining coastal development proposals. There will be a general expectation that any development will not significantly prevent or damage the strategic objectives identified in the SMP.

5.3 River Basin Management Plans (RBMPs)

Long-term environmental objectives for water within the estuarine and coastal environment are set out in statutory River Basin Management Plans (RBMPs), as required by the Water Framework Directive. They identify the pressures on the environment at a river basin and catchment scale, and the actions required. They are produced every six years, and the next plans will be published by the Environment Agency in December 2015. All public bodies are required to have regard to the RBMPs and supplementary plans in exercising their functions. The Marine Strategy Framework Directive overlaps with the WFD in coastal waters; with the exception of standards related to litter and noise (which will be set by Defra) it will rely on the RBMPs to meet its objectives in coastal waters.

5.4 Coastal Change Management Areas (CCMAs)

In line with the National Planning Policy Framework these are being developed by local authorities in areas subject to significant coastal change. They are being developed as a response to both SMPs and the flood and erosion maps that have been developed by the Environment Agency. Their strategic intentions will be used to inform the decisions of all the signatories to this concordat when determining coastal development proposals. There will be a general expectation that any development will not significantly prevent or damage the strategic objectives identified for the CCMA.

6 Review of effectiveness

The effectiveness of the concordat will be reviewed 12 months after formal signing

Draft