

MERSEA ISLAND ENVIRONMENTAL ALLIANCE

ENVIRONMENTAL LAW FOUNDATION

Supporting Legal and Environmental Evidence

PP23: Land East of Dawes Lane, West Mersea

Marine Conservation Zone, Wastewater, Cumulative Effects and the Regulation 18 Evidence Base

A. Legal and plan-making framework — Sections 1–5

1. Introduction — the basis of this submission

This submission represents the combined work of the **Mersea Island Environmental Alliance (MIEA)** and the **Environmental Law Foundation (ELF)**, informed by MIEA's long-standing local environmental knowledge and direct participation in the Local Plan process through West Mersea Town Council (WMTC).

MIEA was established more than ten years ago in response to concerns about environmental threats facing Mersea Island and its surrounding estuarine environment.

Since that time, MIEA has worked to identify, understand and challenge environmental risks affecting the Blackwater Estuary and wider marine environment, including the cumulative consequences of development, wastewater and pollution.

MIEA has also shared its knowledge, evidence and experience with WMTC and assisted through membership of the WMTC Local Plan Working Group.

The Environmental Law Foundation has assisted the community, including through access to specialist legal and barrister support, in examining the legal and environmental implications of development and ensuring that environmental concerns are properly brought to the attention of decision-makers.

This document is therefore **supporting evidence and analysis**. It should be read alongside WMTC's separate Regulation 19 representations.

It does not replace those representations.

Its purpose is to assist the examination by bringing together the evidence concerning:

- the Blackwater, Crouch, Roach and Colne Estuaries Marine Conservation Zone (“MCZ”);
- PP23;
- West Mersea Water Recycling Centre (“WRC”);
- the foul sewer network;
- wastewater, bacterial and pollutant pathways;
- shellfish waters;
- cumulative development;
- native-oyster recovery;
- the Essex Native Oyster Restoration Initiative (“ENORI”);
- the Regulation 18 evidence and representations;
- subsequent advice and correspondence involving CCC, Natural England and the Marine Management Organisation (“MMO”); and
- subsequent regulatory evidence concerning West Mersea WRC.

The central issue is **not whether MIEA, ELF or WMTC can prove that PP23 will cause harm to the MCZ.**

The central issue is whether Colchester City Council (“CCC”), before deciding to allocate approximately 300 dwellings at PP23, had sufficient and proportionate evidence to identify and assess the potential implications of that allocation for the MCZ, including its protected features and conservation and recovery objectives.

Chronology of Relevant Evidence and Decisions

The following chronology is provided to assist the Inspector in understanding how the evidence concerning West Mersea wastewater infrastructure, the Marine Conservation Zone (MCZ), native-oyster recovery and PP23 developed over time.

It is particularly relevant to the question of what environmental information was available, or subsequently became available, when the effects of further development at West Mersea were assessed.

2017 – Environment Agency concerns regarding West Mersea WRC

Environment Agency investigations identified West Mersea WRC as a site requiring further investigation. Ofwat subsequently recorded concern that Anglian Water had not provided sufficient evidence demonstrating that sites identified by the Environment Agency had been fully investigated. [Ofwat evidence / relevant EV]

2018 – ENORI HRA and MCZ Stage 1 Assessment

Activities associated with management, monitoring and restoration of native oysters within the Blackwater, Crouch, Roach and Colne Estuaries MCZ were considered through an expressly identified **Habitats Regulations Assessment and MCZ Stage 1 Assessment**. [EV32]

This provides relevant local evidence of the assessment approach previously applied where activities potentially interacted with protected features of this particular MCZ.

2023 – CCC involvement with ENORI-related research

The University of Essex reported collaborative work involving **Colchester City Council, ENORI and University researchers** concerning oysters, natural coastal processes and coastal resilience. The research was presented during the visit of His Majesty The King to Colchester. [EV33]

This demonstrates CCC's direct familiarity with ENORI-related oyster and coastal-environment work before preparation of the Regulation 19 Plan.

2024 – West Mersea WRC improvement works

Works were undertaken at West Mersea WRC. Ofwat subsequently confirmed that the relevant U_IMP5 scheme was intended to increase **Flow to Full Treatment (FFT)** at a works identified as having a low permitted FFT/DWF ratio. Ofwat recorded a PR24 cost of approximately **£1.731 million** for this element of the works. [Ofwat evidence]

The significance is that these works concerned improvement of existing regulatory performance; they should not automatically be treated as evidence that additional treatment capacity was provided for future housing growth.

Dawes Lane and Brierley – earlier development

Development at Dawes Lane and Brierley preceded the proposed additional allocation at PP23 and forms part of the existing and committed development which must be considered when assessing cumulative environmental effects at West Mersea.

The significance is that PP23 is not being introduced into an undeveloped baseline. The additional population and wastewater arising from approximately 300 further dwellings must be considered cumulatively with Dawes Lane, Brierley and other existing and committed development using the same wastewater infrastructure and sensitive estuarine receiving environment.

MIEA/ELF therefore considers that the relevant assessment is not simply **PP23 in isolation**, but the cumulative development trajectory at West Mersea and its combined wastewater consequences.

2025 – PP23 Sustainability Appraisal

The Sustainability Appraisal assessed approximately 300 dwellings at PP23. Under **SA Objective 8 – Biodiversity and Geodiversity**, the initial negative effect was assessed as neutral following mitigation.

MIEA/ELF considers that the evidential basis for that conclusion requires examination in light of the wastewater and MCZ evidence.

2025 – Further regulatory evidence concerning West Mersea WRC

Ofwat's enforcement conclusions identified West Mersea among sites where earlier evidence had raised potential compliance concerns. Ofwat also confirmed that West Mersea was not initially selected for the Excess Flow Management Plan, although it falls within Anglian Water's wider Remediation and Compliance Plan.

Separate AMP8 funding of approximately **£1.169 million** was identified for storm-overflow improvements intended to reduce spill frequency. **[Ofwat evidence]**

Regulation 18 – MIEA/WMTC concerns raised

Concerns were raised concerning the MCZ, wastewater infrastructure, cumulative development and the adequacy of the environmental assessment supporting further development at West Mersea. **[relevant EV/Regulation 18 representation]**

8 September 2026 – CCC response

CCC confirmed that the MCZ operates under a separate statutory regime from the Habitats Regulations. CCC stated that neither Natural England nor its HRA consultants had advised that a stand-alone strategic MCZ assessment was required.

CCC nevertheless stated that it would actively engage with Natural England and the MMO specifically concerning the Dawes Lane allocation and whether further action was required to demonstrate no impact upon MCZ objectives. **[EV31]**

Regulation 19 – strengthened recognition of the MCZ

The Regulation 19 Plan expressly recognises the MCZ in relation to Mersea Island. Policy LC4 introduces MCZ screening and, where indicated, further MCZ Assessment where potential impact pathways exist, including consideration of cumulative effects.

MIEA/ELF welcomes this change. However, it raises the central question addressed by this submission:

what equivalent strategic consideration of the MCZ, its protected features and conservation/recovery objectives informed the decision to allocate approximately 300 dwellings at PP23?

Significance of the chronology

The chronology does not establish that PP23 will necessarily cause harm to the MCZ.

It demonstrates why MIEA/ELF considers that the evidential chain requires clarification.

Environmental and regulatory evidence concerning West Mersea WRC, native-oyster recovery and the MCZ has developed over a number of years; CCC had direct knowledge of ENORI-related work; concerns were raised during plan preparation; and the Regulation 19 Plan itself now contains materially stronger MCZ provisions.

The examination should therefore establish **what information was considered when PP23 was selected and appraised, what assessment was undertaken of the wastewater-to-MCZ pathway and cumulative effects, and whether the evidence available is sufficient to justify the allocation.**

2. The central legal and evidential issue

The MCZ is protected through a statutory regime distinct from the Habitats Regulations.

The Habitats Regulations Assessment (“HRA”) is relevant to European habitat sites including the Essex Estuaries SAC and relevant SPAs.

The Blackwater, Crouch, Roach and Colne Estuaries MCZ is governed separately by the **Marine and Coastal Access Act 2009**.

Common evidence may plainly inform both regimes. However, consideration undertaken for one statutory purpose does not automatically demonstrate that the distinct questions arising in relation to the MCZ have been considered.

MIEA and ELF do not contend that the existence of a potential impact pathway automatically means that PP23 must be rejected.

Nor is the submission dependent upon demonstrating that a particular form of document bearing the title “MCZ Assessment” was legally mandatory.

The more fundamental question is:

What evidence and assessment supported CCC's strategic conclusion that approximately 300 additional dwellings at PP23 were suitable for allocation having regard to the MCZ, its protected features, its conservation and recovery objectives and the identified wastewater pathway?

That question is distinct from whether a future planning applicant can subsequently be required to undertake MCZ screening or further assessment.

PP23 is a strategic allocation.

The evidential basis for that strategic decision should therefore be capable of being identified and examined.

3. Marine and Coastal Access Act 2009

The statutory framework is important.

Section 125 of the Marine and Coastal Access Act 2009 concerns public authorities exercising functions capable of affecting, other than insignificantly, protected features of an MCZ or ecological or geomorphological processes upon which their conservation depends.

Where applicable, the statutory framework requires the authority, so far as consistent with the proper exercise of its functions, to exercise those functions in the manner it considers best

further the conservation objectives or, where that is not possible, least hinders their achievement.

The Act also provides for advice and guidance from the appropriate statutory conservation body.

MIEA and ELF do not seek through this submission to determine conclusively the precise application of every provision of the Act to the Local Plan process.

The important examination issue is narrower.

Where CCC had identified, or had been put on notice of, a potential pathway between development, wastewater and protected MCZ features, the evidence base should demonstrate **what consideration was actually given to the MCZ conservation objectives and how that consideration informed the allocation decision.**

4. Absence of a transparent MCZ evidential chain

A fundamental concern is the absence of an identifiable and transparent evidential chain showing:

- the relevant MCZ protected features;
- the applicable conservation objectives;
- the pressures and pathways considered;
- the environmental baseline;
- the cumulative development scenario considered;
- the evidence relied upon;
- the advice obtained;
- the conclusion reached; and
- how that conclusion informed the decision to allocate PP23.

This is important for effective examination and public scrutiny.

The issue is therefore not simply:

“Where is the document called an MCZ Assessment?”

The more important question is:

Where is the evidence and reasoning demonstrating how the MCZ issue was assessed?

A future project-level assessment cannot retrospectively provide the evidence explaining why CCC considered it appropriate to allocate approximately 300 dwellings at PP23 at plan-making stage.

MIEA and ELF therefore ask the examination to distinguish between:

a development-management safeguard for a future application

and

the evidence necessary to justify the strategic allocation itself.

The former does not necessarily establish the latter.

5. Regulation 18 evidence and the identified wastewater pathway

The documentary record indicates that CCC was repeatedly put on notice of a potential pathway between development at West Mersea, wastewater infrastructure, receiving waters and designated marine sites.

Natural England advised CCC in February 2025 that it wished the Local Plan to evidence adequate sewage-treatment infrastructure and WRC capacity to serve new development without increasing nutrient and pollutant loading from final-effluent discharges and without adverse effects upon sensitive designated sites, expressly including the Essex Estuaries SAC and the MCZ.

This issue therefore did not arise for the first time at Regulation 19 or at examination.

The potential wastewater-to-marine-environment pathway had been identified during preparation of the Plan and was subsequently reinforced through the Council's Water Cycle Study ("WCS"), Regulation 18 representations and other evidence.

The relevant potential pathway can be expressed simply:

additional development → additional population → additional wastewater generation → foul sewer network/WRC → potential additional discharge, pollutant and bacterial pressures → receiving estuarine waters → potential effects upon protected features and achievement of MCZ conservation objectives.

The question is not whether every stage in that pathway has been proved to cause harm.

The question is whether the pathway was sufficiently investigated before the allocation decision was made.

B. Wastewater, cumulative effects and receiving environment — Sections 6–16.

6) Cumulative effects

PP23 cannot rationally be considered as though it were the first development contributing wastewater to the West Mersea system.

The proposed approximately 300 dwellings would be added to:

- existing development;
- committed development;
- previous housing allocations;
- **Dawes Lane and Brierley development;**
- caravan and seasonal population pressures; and
- other relevant growth served by the same wastewater infrastructure and receiving environment.

The relevant question is therefore not simply:

Can PP23 connect to the sewerage system?

It is:

What is the combined effect of existing, committed and proposed development upon wastewater flows, network performance, West Mersea WRC loading, pollutant and bacterial pressures, receiving-water quality and the achievement of the MCZ conservation and recovery objectives?

The fact that earlier developments may not themselves have been subjected to MCZ screening does not remove their contribution from the environmental baseline.

Their wastewater and other relevant effects form part of the cumulative circumstances into which PP23 would be introduced.

This is particularly relevant to **Dawes Lane and Brierley**, because those developments form part of the development trajectory at West Mersea which preceded the proposed additional allocation of approximately 300 dwellings at PP23. The cumulative assessment should therefore demonstrate how their contribution, together with other existing and committed development, has been accounted for.

The **Food Standards Agency's evidence concerning the Blackwater provides particular support for considering development cumulatively**, identifying the relationship between increased population, wastewater infrastructure and increased bacterial loading to coastal receiving waters. [FSA evidence / relevant EV]

The evidence concerning **West Mersea WRC, the foul sewer network and the existing receiving-water environment** is also relevant. Existing treatment headroom cannot, by itself, establish that the sewer network or receiving marine environment has equivalent capacity to accommodate additional cumulative loading. [CCC-WCS; CCC-HRA; Anglian Water evidence; Ofwat evidence]

Nor can consideration of cumulative effects simply be deferred to individual developers.

A series of project-level assessments cannot necessarily substitute for consideration at plan-making stage of the combined development quantum which the Local Plan itself proposes or facilitates, particularly where development relies upon the **same wastewater infrastructure and ultimately affects the same sensitive receiving environment**.

CCC should therefore identify:

1. where cumulative development at West Mersea was assessed;
2. what development was included, **including Dawes Lane and Brierley**;
3. what wastewater-flow, network and WRC assumptions were applied;
4. what receiving-water and environmental-condition evidence was considered;
5. how the MCZ protected features and conservation/recovery objectives were taken into account; and
6. how the resulting assessment informed the decision to allocate PP23.

Central question

Has CCC demonstrated that the cumulative environmental effects of Dawes Lane, Brierley, PP23 and other existing and committed development at West Mersea have been adequately assessed in relation to wastewater infrastructure, sensitive receiving waters and the protected features and conservation/recovery objectives of the MCZ?

Principal supporting evidence: CCC Water Cycle Study; CCC Habitats Regulations Assessment; FSA 1 March 2024 correspondence / 2021 Blackwater Sanitary Survey; Anglian Water wastewater and West Mersea WRC evidence; Ofwat West Mersea WRC evidence; Regulation 19 Policy LC4; PP23; relevant Dawes Lane and Brierley planning/allocation evidence.

7. Anglian Water evidence — network capacity and pollution risk

A material piece of evidence is Anglian Water's objection to proposed development of approximately 52 dwellings at East Road, West Mersea.

Anglian Water stated that it objected to connection to the foul network because of **capacity constraints and pollution risk**. [EV01]

This is relevant because the development would use infrastructure associated with the same West Mersea wastewater system.

It does not establish that PP23 cannot be accommodated.

It does, however, mean that network capacity and pollution risk cannot safely be treated as theoretical issues or answered solely by reference to WRC treatment headroom.

The distinction is important:

WRC treatment capacity $\neq$ foul-network capacity $\neq$ receiving-water capacity $\neq$ MCZ ecological capacity.

CCC should therefore explain how Anglian Water's identified network-capacity and pollution concerns were reconciled with the assumptions supporting PP23.

This is particularly relevant when PP23 is considered cumulatively with Dawes Lane, Brierley and other existing and committed development served by the same wastewater system.

Principal supporting evidence: EV01; CCC-WCS; CCC-HRA; PP23.

8. Existing pollution baseline and Anglian Water surveys

The cumulative assessment must be informed by an adequate understanding of the **existing environmental baseline**.

Investigations undertaken by Anglian Water in response to Environment Agency concerns examined deteriorating water quality and microbial contamination affecting the waters around Mersea Island. [**Anglian Water river/estuarine survey evidence – EV**]

Those investigations are important because they provide evidence of an **existing pollution signal within the receiving environment**, while not, so far as MIEA/ELF can establish, conclusively identifying and quantifying all of the sources responsible.

MIEA/ELF does **not** rely upon these surveys as proving that West Mersea WRC is the source of the identified pollution.

Their significance is different.

They demonstrate that pollution was sufficiently concerning to warrant investigation and that uncertainty remained concerning its source and pathway.

That uncertainty is directly relevant to the environmental baseline against which further development should be assessed.

Where the existing source and magnitude of pollution have not been fully established, assessment of the effect of additional wastewater loading from **Dawes Lane, Brierley, PP23 and other development** cannot safely be reduced to theoretical WRC capacity or desktop flow calculations alone.

CCC should therefore identify:

1. whether the Anglian Water survey evidence was considered in assessing PP23;
2. what those investigations established concerning the existing pollution environment;

3. whether the source or sources subsequently identified have been established and quantified;
4. how any unresolved pollution was incorporated into the environmental baseline;
5. how this evidence was reconciled with the WCS and HRA; and
6. how additional cumulative wastewater loading was assessed against that baseline and the MCZ conservation and recovery objectives.

The Anglian Water surveys do not establish that PP23 will harm the MCZ. They do, however, reinforce the need for the allocation to be assessed against the **actual and potentially uncertain environmental baseline**, rather than solely against calculated wastewater-treatment capacity.

Principal supporting evidence: Anglian Water river/estuarine survey evidence [EVXX]; Environment Agency evidence [EVXX]; CCC-WCS; CCC-HRA; Anglian Water EIR evidence [EVXX]; relevant bathing-water monitoring evidence [EVXX].

9. West Mersea WRC and the Ofwat evidence

The HRA records available capacity at West Mersea WRC and relies upon that capacity in considering proposed growth.

Subsequent regulatory evidence provides important additional context.

Ofwat's response concerning West Mersea WRC records that the site was among sites where an external consultant commissioned by Anglian Water identified evidence of potential non-compliance following review of historic survey evidence.

The Environment Agency had in 2017 identified West Mersea as a site requiring further investigation, while Anglian Water's assessment was that it was treating the required wastewater before spilling to storm tanks.

Ofwat's response is important for balance.

It also records that West Mersea had appropriate monitoring equipment, had no exceedances of its Dry Weather Flow or Flow to Full Treatment permit conditions during the relevant investigation period, that its storm-tank capacity met the permit requirement, and that Ofwat found **no strong indications of capacity constraints**.

MIEA and ELF therefore do **not** rely upon the Ofwat evidence as demonstrating that West Mersea WRC was proven to be operating beyond its permitted capacity.

Its significance is different.

The evidence demonstrates a regulatory and operational history which is more complex than a simple statement that treatment “headroom” exists.

10. The 2024 works — what the investment actually addressed

Anglian Water has referred to approximately £2.4 million of works completed in 2024.

The subsequent Ofwat information provides greater clarity concerning the nature of those works.

Ofwat states that the relevant 2024 scheme delivered a **U_IMP5 environmental driver**, requiring increased **Flow to Full Treatment (“FFT”)** at wastewater treatment works identified as having a low permitted FFT/DWF ratio.

Ofwat records Anglian Water's stated cost for the West Mersea U_IMP5 scheme as approximately **£1.731 million in 2022/23 values**.

Ofwat separately notes that it did not hold information supporting the difference between that figure and the approximately £2.4 million figure referred to elsewhere.

This distinction is important.

Works undertaken to increase FFT and meet an environmental or regulatory requirement are not necessarily the same as works specifically designed to create additional treatment or network capacity for future housing growth.

Accordingly, the relevant questions are:

- what precisely were the 2024 works designed to achieve?
- what operational constraint or regulatory requirement did they address?
- what additional treatment capacity, if any, did they create?
- what additional foul-network capacity, if any, did they create?
- were they designed on the assumption of the development now proposed through PP23?
- and what environmental improvement was expected in the receiving waters?

The existence of substantial investment is acknowledged.

But the expenditure figure alone does not establish the environmental deliverability of PP23.

11. AMP8 and further spill-reduction investment

The Ofwat material also distinguishes the 2024 U_IMP5 scheme from subsequent AMP8 works directed towards spill reduction.

Ofwat records a separate allowance of approximately **£1.169 million in 2022/23 values** for the relevant West Mersea improvement.

This further illustrates why the chronology matters.

If the 2024 works conclusively resolved all relevant wastewater and environmental issues, the relationship between those works, subsequent spill-reduction investment and the assumptions supporting PP23 should be clearly explained.

Again, this does not prove that PP23 will cause environmental harm.

It demonstrates why the evidential basis for assuming adequate future environmental performance should be transparent.

12. Treatment headroom is not the complete environmental test

A central distinction runs throughout this submission:

engineering capacity and environmental capacity are not necessarily the same question.

A WRC may have hydraulic or permitted treatment headroom while separate issues remain concerning:

- foul sewer capacity;
- storm-overflow performance;
- final-effluent loading;
- bacterial loading;
- pollutant loading;
- receiving-water condition;
- shellfish-water quality; and
- achievement of MCZ conservation and recovery objectives.

Accordingly, evidence of treatment headroom is relevant but cannot logically be the sole answer to the marine-environment question.

The evidence supporting PP23 should demonstrate how the infrastructure assessment was connected to the condition and sensitivity of the receiving environment.

13. Post-upgrade bacterial evidence

Evidence has been obtained concerning high bacterial levels in the receiving environment following completion of the 2024 works.

MIEA and ELF do not suggest that this evidence, without source attribution, establishes that West Mersea WRC caused the recorded bacterial levels.

That would go beyond the evidence.

The significance is that the environmental condition of the receiving waters cannot be inferred solely from engineering calculations concerning treatment capacity.

Where significant bacterial events continue to be observed, the appropriate response is to understand the sources and pathways and to determine whether further population growth could add to those pressures.

Accordingly, the examination should distinguish between:

whether the WRC has nominal capacity to treat additional flow

and

whether the evidence demonstrates that the additional development can be accommodated without unacceptable additional pressure upon the receiving environment.

14. Food Standards Agency evidence and shellfish waters

The Food Standards Agency (“FSA”) provided advice in correspondence dated 1 March 2024 referring to the 2021 Blackwater Sanitary Survey.

The FSA identified the relationship between population growth, wastewater infrastructure and bacterial loading to coastal receiving waters.

The FSA further expressed concern that increased housing within the West Mersea catchment, particularly on Mersea Island, could increase bacterial loading and adversely affect shellfish-harvesting classification unless wastewater infrastructure had improved. [EV23; EV24]

That evidence predates completion of the 2024 works and must therefore be treated fairly.

It does not prove that the identified risk remains unchanged.

But nor does completion of works, without post-improvement environmental evidence, automatically demonstrate that the identified pathway has ceased to be relevant.

The FSA evidence is important because it independently identifies substantially the same pathway:

population growth → wastewater → bacterial loading → receiving waters → shellfish consequences.

That pathway should be considered alongside the WCS, Natural England's advice, the WRC evidence and the MCZ conservation objectives.

15. Human health and shellfish food safety

The receiving environment is not relevant solely because of ecological designations.

It also supports shellfish harvesting.

Consequently, deterioration in microbiological water quality may have implications for shellfish classification, harvesting and food safety.

MIEA and ELF do not seek to turn the Local Plan examination into a determination of shellfish food-safety standards.

The point is narrower.

The FSA evidence reinforces the existence of a real environmental pathway between population, wastewater and the receiving estuarine environment.

It is therefore relevant evidence when assessing whether additional development has been adequately considered cumulatively.

16. Condition of the receiving environment

Sections 8, 13–15 demonstrate why assessment cannot stop at the boundary of the WRC. The ultimate receptor is the receiving estuarine environment.

CCC should therefore identify what evidence concerning actual receiving-water condition was used when assessing PP23 and how uncertainty concerning existing pollution sources was treated in reaching its conclusions.

C. HRA, MMO, ENORI and MCZ assessment — Sections 17–26

17. HRA and the separate MCZ regime

The HRA is an important part of the evidence base.

However, it performs a different statutory function from consideration of the MCZ.

The fact that wastewater pathways were considered for European sites does not, without further explanation, demonstrate how:

- MCZ protected features were identified;
- MCZ conservation objectives were considered;
- native-oyster recovery was considered;
- relevant pressures were assessed;
- cumulative effects were assessed against those objectives; or
- CCC reached its conclusion concerning the MCZ.

MIEA and ELF therefore do not argue that the HRA is irrelevant.

On the contrary, it may contain evidence directly relevant to the MCZ question.

The issue is whether CCC can identify the evidential bridge between that material and its conclusion concerning the MCZ.

18. Regulation 18 representations and subsequent Council action

On 14 January 2026 ELF, acting in support of MIEA and assisting with the WMTC Local Plan Working Group, wrote directly to CCC concerning PP23. [EV21]

The representation identified:

- West Mersea WRC;
- the wastewater pathway;
- the MCZ;
- the Essex Estuaries SAC;
- Natural England's advice;
- the Water Cycle Study;
- storm-overflow and sewer-spill risks;
- pollutant loading;
- cumulative development;
- the HRA;
- the Emerging Allocations Biodiversity Assessment; and
- the Sustainability Appraisal.

This was therefore not a generalised objection.

It identified specific evidential questions concerning the proposed allocation.

By the end of Regulation 18, CCC had therefore been expressly put on notice of the wastewater/MCZ issue.

19. CCC's subsequent approach to the MMO

CCC subsequently contacted the Marine Management Organisation concerning the MCZ and the Local Plan.

The Council's April 2026 correspondence recorded concerns raised by residents and councillors regarding the absence of the MCZ from the Draft Plan, cumulative effects and wastewater. [EV16]

CCC also indicated that officers had been unable to identify published examples of standalone strategic MCZ assessments supporting Local Plans and sought MMO advice concerning the appropriate approach.

That chronology is relevant.

It indicates that after Regulation 18 representations had identified the potential pathway, CCC was still seeking to establish how the MCZ should appropriately be addressed at Local Plan level.

That is not criticism of CCC for seeking advice.

Seeking specialist advice was sensible.

The examination question is what happened **after** that advice was sought:

Was the resulting policy response accompanied by sufficient evidence and assessment to close the gap identified at Regulation 18?

20. MMO advice and the evidential question

Subsequent MMO advice should be considered carefully.

MIEA and ELF do not suggest that the MMO was required to prescribe a particular form of strategic assessment merely because objectors requested one.

Nor is the issue whether the MMO used particular terminology.

The important questions are:

- what information was provided to the MMO?
- what pathways were identified to it?
- what evidence concerning wastewater and the MCZ was supplied?
- was cumulative development explained?
- were the MCZ conservation and recovery objectives before it?
- was the previous ENORI MCZ Stage 1 assessment known to or considered by the MMO?
- and what precisely did the MMO's advice establish?

If the advice is relied upon as demonstrating that no further plan-level MCZ consideration was necessary, the evidential basis for that interpretation should be identifiable.

21. Native oyster recovery and ENORI

The native oyster is an important protected feature of the MCZ.

The Essex Native Oyster Restoration Initiative is undertaking substantial work directed towards restoration of native oyster populations and native oyster-bed habitat.

That recovery context matters.

The environmental baseline is not simply an exercise in preventing immediate deterioration from the condition existing on a particular day.

Where the conservation objective includes recovery, consideration should also be given to whether additional pressures could hinder that recovery.

22. Previous ENORI HRA and MCZ Stage 1 Assessment

MIEA and ELF have identified an important local document prepared in connection with ENORI:

“Habitats Regulation Assessment and MCZ Stage 1 assessment: Management and monitoring of the *O. edulis* restoration box for the purpose of BCRC MCZ Conservation Management Plan.” [EV32]

The document relates to activities within the Essex Estuaries SAC, Mid-Essex Coast SPAs and the Blackwater, Crouch, Roach and Colne Estuaries MCZ.

It addresses activities associated with native-oyster restoration and monitoring.

Its significance should not be overstated.

MIEA and ELF do **not** contend that the ENORI works and PP23 are legally or factually identical.

Nor does EV32 establish that precisely the same assessment process was necessarily required for the Local Plan allocation.

Its relevance is evidential.

It demonstrates that **specific MCZ Stage 1 assessment has previously been undertaken locally where activities potentially interacted with protected features of this particular MCZ.**

That gives rise to a legitimate question:

How did CCC determine what level of MCZ consideration was appropriate for PP23?

23. CCC's direct familiarity with ENORI

The significance of EV32 is strengthened by separate evidence concerning CCC's familiarity with ENORI.

On 6 March 2023 the University of Essex reported that researchers were undertaking an innovative project **with Colchester City Council and ENORI** examining natural resources and coastal-defence development. [EV33]

Further University material described collaborative work involving local oyster fishermen, ENORI, Colchester City Council and University researchers.

This does not prove that the particular officers preparing the Local Plan had read EV32.

That inference should not be made without evidence.

It does, however, demonstrate that **CCC as an organisation was not remote from ENORI-related oyster and coastal-resilience work.**

The relevant question is consequently:

Was CCC aware of the previous ENORI HRA/MCZ Stage 1 assessment when considering PP23 and, if so, how did that local assessment experience inform the approach adopted?

If it was not considered, that too can simply be explained.

24. Relationship with Regulation 19 Policy LC4

The Regulation 19 Plan now expressly recognises the MCZ through Policy LC4.

LC4 introduces MCZ screening and, where appropriate, further assessment for proposals with relevant potential pathways, including consideration of cumulative effects.

MIEA and ELF welcome that development.

It represents a significant improvement upon the earlier position.

However, it also sharpens the strategic question.

If potential pathways to the MCZ are sufficiently important to require express screening provisions for future development proposals, then:

what consideration of the same potential pathway supported the strategic decision to allocate PP23?

The subsequent policy safeguard does not answer that question by itself.

25. The ENORI comparison — the proper legal/evidential use

The ENORI evidence should therefore be used carefully.

The proposition is **not**:

ENORI required an MCZ Stage 1 Assessment, therefore PP23 legally required an identical assessment.

The proposition is:

ENORI demonstrates previous local use of specific MCZ assessment in relation to activities potentially interacting with protected features; CCC was itself familiar with ENORI-related work; LC4 now expressly recognises MCZ screening where pathways exist; therefore CCC should be able to demonstrate the evidential reasoning by which it concluded that PP23 could appropriately be allocated.

That is a question of **consistency, transparency and adequacy of evidence**, rather than an assertion that two legally different processes must be identical.

26. Chemical and other pollutant pressures

The potential wastewater pathway is not necessarily limited to nutrients or conventional hydraulic capacity.

Wastewater can contain a range of contaminants.

MIEA and ELF consider it appropriate for the evidence base to explain what pollutant pressures were considered relevant to the MCZ protected features and why.

The earlier submission referred specifically to endocrine-active substances and potential effects upon shellfish.

That issue should be treated proportionately.

Unless a direct site-specific evidential link can be demonstrated, MIEA and ELF do not rely upon endocrine disruption as proof of an effect from PP23.

The broader and better-supported point is that **the environmental assessment should identify the pressures relevant to the protected features and recovery objectives rather than treating hydraulic capacity as a proxy for all environmental effects.**

D. Evidential conclusions and examination questions — Sections 27–31

27. What this submission does not allege

For clarity, MIEA and ELF do **not** contend through this supporting document that:

1. PP23 has been proved to damage the MCZ;
2. West Mersea WRC has been proved to be operating beyond its permitted hydraulic capacity;
3. West Mersea WRC has been proved to be the source of every recorded bacterial event;
4. the 2024 works were ineffective;
5. the HRA is irrelevant;
6. the MMO was legally required to demand a standalone strategic MCZ assessment;
7. EV32 proves that PP23 required precisely the same assessment procedure as ENORI;
or
8. the existence of environmental uncertainty automatically requires rejection of PP23.

Those would go beyond the evidence presently available.

The submission makes a more focused point.

CCC should be able to demonstrate the evidence and reasoning by which the identified wastewater-to-MCZ pathway was considered before approximately 300 additional dwellings were allocated.

28. The evidential sequence

Taken together, this evidence shows that the wastewater-to-MCZ pathway was not a new issue arising after allocation. It developed through Natural England advice, the WCS, Regulation 18 representations, Anglian Water and FSA evidence, subsequent MMO engagement and the strengthened Regulation 19 provisions. The examination question is whether CCC's evidence demonstrates how those matters were brought together when PP23 was assessed and carried forward.

29. Questions for the examination

MIEA and ELF respectfully suggest that the following matters require clear answers.

MCZ

1. What MCZ protected features and conservation objectives were considered when PP23 was assessed?
2. Where is that consideration recorded?
3. What potential impact pathways were identified?
4. What conclusion was reached concerning the wastewater pathway?

Cumulative development

5. What existing and committed development was included in the cumulative assessment?
6. Were Dawes Lane and Brierley Paddocks included?
7. How was the approximately 300-dwelling PP23 allocation added to that baseline?

Wastewater infrastructure

8. What does the stated WRC headroom actually measure?
9. Does it relate solely to treatment capacity or also to foul-network constraints?
10. How was Anglian Water's evidence concerning network capacity and pollution risk considered?
11. What additional capacity, if any, resulted from the 2024 U_IMP5/FFT works?
12. Were those works designed to accommodate the growth now proposed through PP23?
13. How were subsequent AMP8 spill-reduction works taken into account?

Receiving environment

14. What evidence concerning actual receiving-water condition was considered?
15. How were bacterial and shellfish-water data treated?
16. How was uncertainty concerning pollution sources addressed?

ENORI/native oysters

17. Where were native-oyster recovery objectives considered?
18. Was ENORI's restoration work considered?
19. Was EV32, the previous ENORI HRA and MCZ Stage 1 Assessment, known to CCC?
20. If so, how did it inform CCC's approach?
21. If not, why was it not considered relevant?

MMO

22. What evidence was supplied to the MMO when its advice was sought?
23. Was EV32 before the MMO?
24. Were the wastewater pathway and cumulative development expressly presented?
25. What conclusion does CCC say the MMO advice establishes?

Plan-making versus project assessment

26. What assessment supported the **allocation itself**, as distinct from assessment which may be required from a future developer?
27. If no further strategic MCZ assessment was considered necessary, when was that conclusion reached, by whom, upon what evidence and for what reasons?

30. Soundness and the evidential issue

MIEA and ELF recognise that Local Plan evidence must be proportionate.

The submission does not seek an unlimited programme of investigation or proof that no conceivable environmental effect could ever occur.

The issue is whether the evidence is proportionate to the environmental sensitivity of the location and the identified pathway.

PP23 involves approximately 300 additional dwellings on an island served by an existing wastewater system discharging to a sensitive estuarine environment containing multiple designations and an MCZ whose protected native-oyster feature is subject to active recovery work.

Against that background, the question of wastewater and the MCZ is not peripheral.

Where an identified pathway has been raised repeatedly, the evidential reasoning for concluding that the allocation is nevertheless environmentally deliverable should be sufficiently clear to be examined.

31. Conclusion

MIEA and ELF do not ask the Inspector to determine the source of every bacterial event in the Blackwater.

They do not ask the Inspector to conclude that West Mersea WRC is operating unlawfully.

They do not ask the Inspector to infer that PP23 will necessarily damage native oysters.

Nor do they suggest that the absence of a document specifically entitled “Strategic MCZ Assessment” automatically makes the Plan unsound.

The concern is more fundamental.

The available evidence identifies a credible potential pathway between:

additional development → additional wastewater → wastewater infrastructure → receiving estuarine waters → protected MCZ features and conservation/recovery objectives.

That pathway was identified during the plan-making process.

Natural England raised wastewater and designated-site issues.

CCC's Water Cycle Study identified relevant pathways and risks.

The FSA identified a population/wastewater/bacterial/shellfish pathway.

Anglian Water has separately identified foul-network capacity and pollution concerns on Mersea.

Ofwat's subsequent evidence provides greater clarity concerning the history and purpose of works at West Mersea WRC.

The MCZ contains protected native-oyster features subject to active restoration.

ENORI activities within the same MCZ have previously been subject to an identifiable MCZ Stage 1 Assessment. [EV32]

CCC itself has participated in collaborative work involving ENORI and oyster/coastal-resilience research. [EV33]

And Regulation 19 LC4 now expressly recognises the need for MCZ screening where potential pathways exist.

Against that evidential background, MIEA and ELF respectfully consider that CCC should be able to demonstrate a **clear, transparent and reviewable evidential chain** showing how the MCZ issue was considered before PP23 was carried forward.

In particular, CCC should identify:

1. **what MCZ features and conservation/recovery objectives were considered;**
2. **what wastewater pathway was assessed;**
3. **what cumulative development was included;**
4. **how WRC treatment headroom was distinguished from network and environmental capacity;**
5. **how the condition of the receiving environment was considered;**
6. **how Natural England, FSA, Anglian Water and other relevant evidence was reconciled;**
7. **what consideration was given to native-oyster recovery and ENORI;**
8. **what information was before the MMO when its advice was obtained;**
9. **why the Council considered the resulting evidence sufficient to allocate PP23; and**
10. **why any remaining MCZ assessment could appropriately be deferred to development-management stage.**

The critical examination question is therefore not:

“Can MIEA/ELF prove that PP23 will harm the MCZ?”

It is:

“Has CCC demonstrated, through proportionate and reviewable evidence, that the potential implications of PP23 for the MCZ and its conservation and recovery objectives were adequately considered when the strategic allocation was made?”

If the answer is yes, the evidence and reasoning should be identifiable.

If that evidential chain cannot be demonstrated, MIEA and ELF respectfully submit that there remains a material question as to whether the environmental implications of PP23 were adequately understood and whether the allocation is sufficiently justified.

E. Evidence schedule, WMTC relationship and oral participation

Principal Supporting Evidence

EV01 – Anglian Water objection: foul-network capacity constraints and pollution risk.

EV02 / EV25 – MMO advice/correspondence concerning the MCZ and Local Plan.

EV03 / EV26 – Natural England advice and correspondence concerning the MCZ.

EV06 / EV18 / EV19 – Environment Agency bathing-water, bacterial and spill evidence.

EV11–EV14 – Anglian Water spill, bathing-water, shellfish and WINEP investigation evidence.

EV15–EV16 – Natural England/CCC correspondence concerning the MCZ.

EV17 / EV23 / EV24 – FSA/Cefas sanitary-survey and shellfish evidence.

EV20–EV22 – ELF/legal material and correspondence concerning the MCZ and West Mersea WRC.

EV27–EV29 – further spill/bacterial/performance evidence, subject to any confidentiality restrictions applying to particular material.

EV30-R – Ofwat/Anglian Water evidence concerning the 2024 works and related regulatory position.

EV31 – CCC response concerning the MCZ, HRA, WCS and proposed engagement with Natural England/MMO.

EV32 – ENORI Habitats Regulations Assessment and MCZ Stage 1 Assessment.

EV33 – University of Essex evidence of collaborative work involving CCC and ENORI.

CCC-WCS – Colchester Water Cycle Study.

CCC-HRA – Habitats Regulations Assessment.

Regulation 19 LC4 – Islands / MCZ screening and assessment provisions.

PP23 – Land East of Dawes Lane allocation.

Relationship to WMTC representations

This document is submitted as **supporting legal and environmental evidence from MIEA and ELF**.

It should be read alongside WMTC's Regulation 19 representations, including those concerning:

EN1; EN2; EN3; LC1; LC4; NZ3; PP23; the Sustainability Appraisal; and other policies where the wastewater, marine-environment or cumulative-development evidence is relevant.

Request to participate in the examination hearing

Yes – MIEA/ELF wishes to participate in the oral examination.

MIEA and ELF consider oral participation would assist the Inspector because the representation raises interrelated legal and evidential issues concerning the Marine Conservation Zone, the Marine and Coastal Access Act 2009, wastewater infrastructure, cumulative effects and the evidential basis for the allocation of PP23.

The supporting submission raises specific questions concerning the relationship between the HRA, Water Cycle Study, MCZ conservation and recovery objectives, advice from Natural England and the MMO, and subsequent evidence from Anglian Water, Ofwat, the FSA and ENORI.

Oral participation would enable MIEA/ELF to respond to CCC's evidence and assist the Inspector in examining whether the identified MCZ and wastewater issues were adequately considered at plan-making stage rather than deferred to subsequent project-level assessment.

MIEA/ELF therefore requests participation in any hearing session concerning **PP23, the MCZ, wastewater/water infrastructure, biodiversity/HRA, cumulative environmental effects or related soundness matters.**

The purpose of this supporting document is to avoid unnecessarily reproducing the detailed evidential and legal analysis within each individual WMTC policy representation.

Then add for the sections 100-word summaries as follows:

EN1 – Nature Conservation Designated Sites

MIEA/ELF considers EN1 relevant to the issues raised concerning PP23, particularly the relationship between additional development, wastewater pathways, designated receiving waters and the Blackwater, Crouch, Roach and Colne Estuaries MCZ.

See the MIEA/ELF Regulation 19 representation concerning PP23 and the accompanying supporting document, which form the substantive basis of this representation.

EN3 – Biodiversity

MIEA/ELF considers EN3 relevant to PP23 because the supporting evidence raises issues concerning cumulative environmental effects, protected MCZ features, native-oyster recovery and potential wastewater pathways to the receiving estuarine environment.

See the MIEA/ELF Regulation 19 representation concerning PP23 and accompanying supporting document for the substantive evidence and analysis.

LC4 – Islands

MIEA/ELF welcomes the Regulation 19 recognition of the Marine Conservation Zone and the introduction of MCZ screening and assessment where potential impact pathways exist.

However, this raises the related strategic question of what equivalent consideration of the MCZ and its conservation and recovery objectives informed the decision to allocate PP23.

See the MIEA/ELF PP23 representation and accompanying supporting document.

NZ3 – Wastewater and Water Supply

MIEA/ELF considers NZ3 directly relevant to PP23 because the supporting evidence concerns cumulative wastewater generation, West Mersea WRC, foul-network capacity, receiving-water quality and potential pathways to designated estuarine and marine features.

See the MIEA/ELF PP23 representation and accompanying supporting document for the substantive evidence and analysis.

Sustainability Appraisal – MIEA/ELF Comment: UNSOUND (100 words)

MIEA/ELF considers that the Sustainability Appraisal does not transparently demonstrate how PP23's cumulative environmental effects were assessed in relation to wastewater pathways, sensitive receiving waters and the Marine Conservation Zone. This is particularly relevant to SA Objective 8, where the biodiversity effect of PP23 moves from negative to neutral following mitigation. Subsequent project-level MCZ screening under LC4 does not itself demonstrate adequate strategic assessment of the allocation. CCC should identify the evidence and reasoning supporting the SA conclusion, including cumulative development, wastewater infrastructure, MCZ protected features and conservation/recovery objectives. See the accompanying MIEA/ELF PP23 supporting submission.

Habitats Regulations Assessment – MIEA/ELF Comment (100 words)

MIEA/ELF recognises that the HRA and Marine Conservation Zone regime perform different statutory functions and does not suggest that the HRA substitutes for MCZ assessment. However, the HRA contains relevant evidence concerning West Mersea WRC, wastewater capacity, development growth and pathways to sensitive estuarine habitats. It is not clear

where this evidence was considered against the protected features and conservation/recovery objectives of the Blackwater, Crouch, Roach and Colne Estuaries MCZ when PP23 was allocated. CCC should identify the evidential link between the HRA wastewater assessment and its conclusion concerning the MCZ and PP23. See MIEA/ELF supporting submission.