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MMO Reference:
DCO/2018/00015
Planning Inspectorate Reference:
EN010092

By Email Only

12 April 2021

Dear Sir/Madam,

APPLICATION BY THURROCK POWER LIMITED (THE APPLICANT) FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE THURROCK FLEXIBLE GENERATION PLANT

Deadline 3 Response

This document comprises the Marine Management Organisation's (MMO) Deadline 3 response in respect to the above Development Consent Order (DCO) Application. This is without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This is also without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development.

The MMO reserves the right to modify its present advice or opinion in view of any additional matters or information that may come to our attention.

Yours faithfully,

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1. Responses to comments on Procedural Deadline D submissions

1.1. REP2-030/REP2-031 Thurrock Power Ltd Deadline 2 Submission - 6.6.1 - Environmental Statement Volume 6 - Appendix 2.1 Mitigation Enhancement and Monitoring Commitments (+ tracked)

1.1.1 In regard to Table 9 (table 5.1) The MMO note that the DCO will include bird monitoring as part of Requirement 19 (Schedule 2, Part 1), however, the reference needs to be updated following the removal of the requirement and transfer to the DML under part 2 (16)

1.1.2 The MMO suggests that a condition should be included that activities must be undertaken in accordance with application document A8.6 (outline code of construction practice) as per Table 15.1 or add the Applicant could add individual conditions.

1.2. REP2-032 Thurrock Power Ltd: Deadline 2 Submission - 7.7 - Other Consents and Licenses

1.2.1 The MMO suggest at this stage Table 1.1 should include the potential for wildlife licence as although Applicant has advised no Tentacled Lagoon Worm (TLW) has been found for Tilbury 2 but at this stage can't potentially rule out.

1.3 REP2-040 Thurrock Power Ltd Deadline 2 Submission - 8.11b - Written Scheme of Investigation for Marine and Intertidal Archaeological Mitigation - Rev 3

1.3.1 The MMO defer to Historic England (HE) in relation to the scope and note condition 15 for approval of the marine Written Scheme of Investigation (WSI). MMO will review the submission in consultation with HE unless evidence of HE's approval is provided by the Applicant.

1.3.2 In regard to paragraph 4.1.8. the MMO consider this should be updated in relation to the removal of saltmarsh creation/enhancement scheme as this aspect has been removed from the application.

1.3.3 The MMO suggest the inclusion of monitoring conditions within the DML to test the conclusions of the ES.

1.4 REP2-041 Thurrock Power Ltd Deadline 2 Submission - Applicant's Response to the ExA's First Written Questions

1.4.1 In regard to ExQ 1.14.2 – The MMO note that the dDCO does not provide authority for maintenance dredging. At this stage the MMO disagree and consider in its current format Article 37 (Power to dredge) within the DCO does not make this clear and suggests that maintenance dredging can take place.



1.4.2 In regard to ExQ 1.14.3, the MMO welcome further discussions with the Applicant.

1.5. REP2-056 Thurrock Power Ltd Deadline 2 Submission - Comments on Natural England's Procedural Deadline D Submission

1.5.1 The MMO have reviewed the Applicants comments on Natural England's (NE) Deadline D Submission and note that NE have suggested a Register of Environmental Actions (REAC) commitment (1c) could be worded to commit the developer to preferentially avoid the most sensitive months for Special Protection Area (SPA) birds. If this is included then the MMO would need to discuss with NE if conditions need to be included within the DML, e.g. seasonal restriction and/or a freezing conditions condition.

1.6. REP2-068 Winchworth Sherwood LLP on behalf of Port of London Authority

1.6.1 The MMO defer to our comments made in response to Deadline 2 and will continue to liaise with the Port of London Authority (PLA) as the Statutory Harbour Authority (SHA) throughout examination.

1.6.2 The MMO note that if Requirement 14(2) is amended to secure a monitoring programme for saltmarsh colonisation and mudflat habitats as this habitat is within the jurisdiction of the MMO, approval of the monitoring programme will be required from ourselves (in consultation with NE) and would require wording to condition onto the DML.

1.6.3 The MMO note that the PLA have requested in paragraph 10.1.7.1 wording to secure that the causeway is constructed in accordance with APP-130 and suggest that this is included within the DML.

1.7. REP2-070 Thurrock Council Deadline 2 Submission - Cover letter + REP2-071 written representation

1.7.1 The MMO note that Thurrock Council have requested restrictions of public access to the causeway. If the Applicant is minded to agree, and restrictions are required in the DML, then please contact the MMO case team to discuss.

1.8 REP2-081 Environment Agency

1.8.1 As noted in the MMO's Deadline 2 response (REP2-085) we will defer to Statutory Nature Conservation Body (SNCB) NE and the Environment Agency (EA) over the potential long-term impacts the permanency of the causeway may have on the marine environment, as well as impacts caused by habitat loss and disturbance related to dredging activities.



1.8.2 In regard to paragraph 11.2, and as noted in the MMO's Deadline 2 Response, the MMO defer to the EA regarding matters relating to the Water Framework Directive (WFD).

1.3.2 In regard to paragraph 9.5, the MMO recommend the Applicant include a condition on to the DML, so that dredging cannot take place at the same time as Tilbury 2, to prevent a barrier to migratory fish.

2. Comments on other submissions for Deadline 2

2.1 REP2-029 Environmental Statement Volume 5 – Chapter 32: Summary of Cumulative Effects (tracked)

2.1.1 In regard to Table 1.1 - Marine Environment: The MMO note that at this current time no details are available of the marine infrastructure to the Applicant related to the Lower Thames Crossing, and potential cumulative impacts to the Marine Environment. The MMO are aware that this is an iterative process and will provide comments throughout the DCO process as updates are provided.

2.1.2 The MMO suggest to the Applicant that cumulative impacts will also require assessing during the operation, maintenance and decommissioning of the causeway.

2.2. REP2-015 Development Consent Order Review Revision 4 Tracked

Schedule 2 (Requirements)

2.2.1 With regard to Schedule 2 – Part 1 (12): The MMO consider amendments should be made to highlight that the sample plan will be issued by the MMO following consultation with our technical advisers (Cefas) and the PLA. The Applicant must then undertake the sampling in accordance with the plan and provide results to the MMO. Further consultation will be undertaken by the MMO to determine the suitability of the material/dredge method. The MMO also suggest that another method can be put forward at this point as the Applicant will likely know the levels of contamination.

2.2.2 With regard to Schedule 2 (3) 'Notice of commencement': The MMO do not need to be included here as we have our own notification requirements until Schedule 8 of the DML.

2.2.3 With regard to Part 6 - Power to dredge (37): As noted in section 1.4.1 The inclusion of this article suggests that maintenance dredging is permitted, which has been agreed with the Applicant and PLA that this will be applied for separately. It notes that the powers of this article are subject to the requirements of schedule 9 (PLA protected provisions) should this also state schedule 8 (DML). If so, this may provide the MMO with more confidence that maintenance dredging would not be permitted.



- 2.2.4 With regard to schedule 2 (14) (2): In order to avoid unnecessary duplication, the MMO suggest that paragraph (2) is removed, as this will be included in the DML in Schedule 8.
- 2.2.5 Regarding schedule 2 (19) – Causeway decommissioning plan: As above in section 2.2.4, the MMO suggest that that this article is removed, as this will be included in the DML in Schedule 8.
- 2.2.6 With regard to schedule 2 (Part 2) ‘timescales for making decisions’: The MMO do not consider it appropriate to be applied to regulatory decisions by the MMO.
- 2.2.7 With regard to Schedule 2 Part 1 – Requirement 1: The MMO request the inclusion of the following wording:

Construction of Work no.10 must not commence until an archaeological written scheme of investigation has been submitted to and approved by the MMO in consultation with Historic England.

The MMO recommend a time frame is also included and consider 3 months to be appropriate.

- 2.2.8 With regard to Schedule 8 – Part 2 – Notifications: The MMO suggest Parts 15 (Marine archaeology), 16 (Bird monitoring) include timeframes, in which notifications are submitted to the MMO either in writing or through MCMS. As above in section 2.2.7 the MMO consider 3 months to be appropriate.

Schedule 8 (Deemed Marine Licence)

- 2.2.9 The MMO have reviewed the revised dDCO and DML and note that progress has been made following comments made by the MMO for Deadline D (PDD-005) and through discussions with the Applicant regarding the SOCG produced for Deadline 2 (REP2-085).
- 2.2.10 The MMO welcome the reduction in the area, the MMO also note that it is the responsibility of the Applicant to ensure the coordinates are adequate for covering the activities.
- 2.2.11 The MMO suggest the inclusion in Schedule 8 – Part 1 – ‘Contacts’ of the following wording:
- ‘All notifications must be sent by the undertaker to the MMO must be sent using the MMO’s Marine Casement Management System (MCMS) web portal.’*
- 2.2.12 The MMO note that if the area is being reduced that this may impact volumes and would be worth checking prior to subsequent PINS deadlines.



- 2.2.13 With regard to Schedule 8 – Part 1 – Contacts: The MMO have been unable to confirm that the contact telephone numbers are correct as the information has been redacted.
- 2.2.14 With regard to Schedule 8 – Part 1 – Interpretation: The MMO has moved away from ‘the licence holder’ on standard marine licences and advise that this phrase be replaced when referenced with ‘the undertaker’. The MMO have referenced this where possible but should be amended for the remainder of the Schedule.
- 2.2.15 With regard to Schedule 8 Part 1 3(2)(a): The sentence as made does not read clearly and may need revising for future drafts.
- 2.2.16 With regard to Schedule 8 – Part 1 - Requirement 4 (6): The MMO consider the phrasing ‘generally in accordance’ not suitable as too vague and could allow for deviation away from the design. In its current iteration it does not meet the MMO’s five tests for condition wording:
1. The condition must be Necessary.
 2. The condition must Relate to the activity or development.
 3. The condition must be Precise.
 4. The condition must be Enforceable.
 5. The condition must be Reasonable.
- 2.2.17 With regard to Schedule 8 – Part 2 (16) – Bird Monitoring: As above in section 2.2.16 the MMO consider the phrasing ‘reasonable standard’ not suitable as too vague and that it does not meet the MMO’s five tests of (see section 2.2.16) so would not be enforceable.
- 2.2.18 With regard to Schedule 8 – Part 2 (19) & (21): The MMO do not consider it acceptable to place determination periods as this impacts the MMO’s ability to consult with technical/statutory consultees, regulate marine activities and protect the marine environment, and suggest that these timeframes are removed.
- 2.2.19 With regard to Schedule 8 - Part 2 (14): The MMO suggests an amendment to the wording as the MMO cannot defer to another authority We recommend the wording should be changed to:
- ‘to be submitted to the MMO for approval in consultation with PLA’*
- 2.2.20 With regard to Schedule 8 – Part 2 (16): The MMO welcome the inclusion of bird monitoring within the DML and would like to see included a timeframe in which the report should be submitted to the MMO. The MMO would consider 3 months to be appropriate to enable sufficient time for the MMO to consult with bodies such as NE and allow for contingency for the Project schedule in case further iterations or consultations are required. Three months should be sufficient providing further revisions of submitted documentation or further consultations are not required.



2.2.21 With regard to Schedule 8 – Part 2 – Table 2: It appears that the volume of material to be removed has been removed without justification. The MMO suggest it should be included for future revisions.

2.2.22 With regard to Schedule 8 – Part 2 (12b): The MMO note that there is a spelling error in the revised wording. As such 'Pollution' should be amended to 'Pollution' for future revisions.

2.2.23 With regard to Schedule 8 – Part 2 (13) – Conditions Applying to Construction Activities: The word 'licence holder' should be replaced with 'undertaker'.

2.2.24 With regard to Schedule 8 – Part 2 (14): The MMO welcome the inclusion of sediment sampling as a condition within the DML. The MMO have revised their wording for conditions and kindly request the inclusion of timescales in which sample plans are to be requested from the MMO and suggest the following wording:

'A sediment sampling plan must be requested from the MMO at least 6 months prior to the commencement of dredging. The sediment sampling and analysis must be completed by a laboratory validated by the MMO at least 6 weeks prior to the commencement of dredging. The licensed activities must not commence until written approval is provided by the MMO'.

2.2.25 With regard to Schedule 8 – Part 3 – Arbitration: The MMO welcome the inclusion of an arbitration article within the DML, which sets out that Arbitration does not apply to the MMO, as this has formed part of the discussions between the MMO and Applicant's SOCG thus far.

2.3. REP2-096 Port of Tilbury London Limited (POTLL) Deadline 2 Submission - Written Representation and response to ExA's first written questions

2.3.1 In regard to Paragraph 3.5.1 (c) that the MMO should be consulted by the Secretary of State prior to any consent for transfer of benefit being granted – The MMO can confirm that we would need to be consulted as this may require an amendment to be made to the DML

2.3.2 The MMO note Port of Tilbury London Limited's request in question number 1.7.29, recommending their inclusion within the Causeway decommissioning plan (Requirement 19) as a consultee and agree that they should be added.



- 3.1 No update on the SOCG has been made following the MMO's Deadline 2 submission and Applicant's submission of the SOCG. As advised in our Deadline 2 response the SOCG will be updated as discussions progress and submitted at the relevant deadlines until a final version has been agreed.

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