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To the Applicant

Your Ref: CDP/PREEX/1

Our Ref: EN010128

Date: 11 September 2024

Dear Sir/Madam

The Planning Act 2008 (as amended)

Application by Cory Environmental Holdings Limited for an Order Granting Development Consent for the Cory Decarbonisation Project

Notice by Applicant of Intention to Submit a Request for Proposed Changes to the Development Consent Order (DCO) Application

Proposed Change

Thank you for your letter dated 15 August 2024 [[AS-001](#)] providing an informative update on the Applicant's progress on matters including engagement. The Examining Authority (ExA) will respond to matters raised in due course, including the anticipated Statements of Common Ground and any requirement for progress trackers during the Examination. As well as these updates, the letter details the Applicant's Notification of Intention to Submit a Change Request (NISCR) for changes to the application. It has been published on the National Infrastructure Planning website and can be found using the above link. It sets out:

- the Applicant's description of the proposed change;
- the reasons and need for making the proposed change;
- a statement establishing that no additional land outside the proposed Order Limits would be required, and confirming that the Applicant is not seeking a request to include additional Compulsory Acquisition powers;
- a statement establishing that the Applicant does not expect the change to result in new or different likely significant environmental effects;
- the Applicant's view on how the proposed change relates to anticipated statutory timescales;
- the proposed consultation scope, approach, and timescales, and;
- the expected submission date for the Change Application.

The letter follows the approach set out in Step 1 of the recommended procedure in the Planning Inspectorate's ['Nationally Significant Infrastructure Projects: Changes to an application after it has been accepted for examination'](#) advice (the Advice).

The Applicant seeks advice from the ExA regarding the above matters, allowing them to decide how to progress the change application, although ultimately it will be a matter for the ExA to decide whether to accept a Change Application once one has been formally made.

The ExA notes the proposed change includes revising the design of the Proposed Jetty, and associated dredging, to facilitate a maximum vessel size of approximately 20,000m³, rather than the maximum 15,000m³ currently anticipated in the application documentation. This would entail:

- an increase in assumed capital dredging volume by approximately 40,000m³ to account for small changes in jetty design, which, although not a secured number, would need to be considered from an assessment perspective;
- a likely increase of the size of the sheet pile retaining wall either side of the dredge pocket by a combined approximately 70m, which, although not a secured parameter, would need to be considered from an assessment perspective; and
- the downwards limits of deviation for dredging set out in article 2 of the draft DCO being increased from minus 10.50 chart datum to minus 11.00 chart datum.

The ExA considers the Applicant's NISCR provides a clear description of the proposed change and sets out the Applicant's rationale and need for making the changes detailed in that document. On the basis of the information provided at this stage the ExA also considers that the proposed changes are unlikely to give rise to new or materially different likely significant effects, but will require the additional information, to reach a final opinion in this regard.

The Applicant states that the limits of the deviation shown on the Works Plans would not change as a result of the proposed change. The Applicant intends to update the Preliminary Navigational Risk Assessment [APP-115] and subsequently review Chapter 19 of the Environmental Statement (ES): Marine Navigation [APP-068]. With respect to ES Chapter 11: Water Environment and Flood Risk [APP-060] and Appendix 11-4: Coastal Modelling Studies [APP-109], the Applicant states that it has undertaken a sensitivity test of the model mesh and location of the Proposed Jetty within the coastal processes model, which shows that there would be no change in the significance of effects or mitigation measures proposed. The Applicant should submit the results of this sensitivity test as part of the Change Application.

The ExA notes that there is no specific reference in the Applicant's NISCR to further review of Chapter 8 of the ES: Marine Biodiversity. Having regard to the nature of the proposed changes, the ExA also considers it prudent for the Applicant to review in detail the implications of the proposed change in terms of the findings and conclusions of Chapter 8 of the ES: Marine Biodiversity and include a clear statement in the Change Application confirming the findings.

The ExA notes from the NISCR that the Applicant considers there would be no change to the conclusions of the Information to Inform Appropriate Assessment [APP-090] as a result of the proposed change. The Applicant will also need to confirm whether there would be any change to the conclusions of the Water Framework Directive Assessment [APP-106] and Flood Risk Assessment and Technical Note [APP-107, APP-142].

Consultation

The ExA notes the Applicant confirms that there would be no additional land outside of the Order Limits required for the proposed change and that there would be no upgrade required of the powers sought over the plots as shown on the Land Plans. The Proposed Change would not, therefore, require the inclusion of “additional land” as defined in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations) and consequently those Regulations would not be engaged.

On the basis that the Applicant advises that the Port of London Authority is the only land interest of the plots in which the Proposed Jetty and associated dredging would take place, the Applicant’s proposal not to write to any other land interest of other plots that would be unaffected would appear to be acceptable.

The specialist engagement with the Port of London Authority and CLdN with a navigational risk perspective proposed by the Applicant would appear essential as would engagement with other statutory bodies and users of the river. However, as Step 3 of the Advice requires consultation of all persons prescribed under PA2008 Section 42(1)(a) to (d) affected by a change, this should include the Marine Maritime Organisation (MMO), the Greater London Authority and the relevant local authorities. As the Applicant will be aware the MMO have made detailed comments regarding implications of piling and dredging in their Relevant Representation [RR-134].

In any formal Change Application, the Applicant must provide justification as to why any person under section 42(1)(a) to (d) is not affected by the proposed changes and has not therefore been consulted. Bearing all of the above in mind, the ExA reserves its position regarding this matter until the formal Change Application has been submitted.

Should such consultation be required, the Applicant would need to:

- engage all those persons identified in the Planning Act 2008 under section 42(a) to (d) who would be affected by the proposed changes (giving a minimum of 28 days), including any section 42 persons not originally consulted on the application but who may now be affected by the proposed changes;
- consider whether or not persons not already expecting to participate in the Examination (and not falling within section 42) might need an opportunity to comment (such as persons living or commercial entities operating outside the Order Limits); and
- whether or not any newspaper notices or site notices are necessary to inform these persons about the proposed changes.

When submitting the formal Change Application, it is recommended that the Applicant submits a statement that confirms no **new** persons (affected by the proposed change)

under section 42(1)(a) to (d) have been identified who need consulting. From the information provided, this is not anticipated. However, should any new persons affected by the proposed changes be identified, the Applicant is advised, as part of any formal Change Application to:

- provide a list of persons (affected by the changes) identifying any new persons (i.e. those who were consulted in relation to the proposed change but not in relation to the original application);
- identify (within the above list) those section 42(1)(d) persons who are “Affected Persons”, meaning those persons over whose land Compulsory Acquisition powers will be exercised. It is noted that if the procedure under the CA Regulations is to be followed the Applicant will also need to submit a request for additional land and identify the additional Affected Persons;
- provide justification as to why any person under section 42(1)(a) to (d) is not affected by the proposed changes and has not therefore been consulted;
- provide copies of any newspaper notices or site notices or justification as to why such general publicity is not required to ensure fairness, using case law as necessary to support the Applicant’s position; and
- append as an annex comprising any consultation responses received.

It would appear that the proportionate and targeted approach to notifying those who would need to know about the change would be appropriate. However, the Applicant should ensure that a clear visual illustration of the proposed change accompanying the information on the Applicant’s website would be beneficial to assist in parties understanding the scope of the change.

The Applicant’s proposals would provide for the minimum 28 days consultation period set out in the Advice. This would appear to give an appropriate period for those wishing to respond, provided that the information provided by the Applicant on the website is clear, explicit, and easily understood. As such the ExA considers the proposed consultations as set out in the NISCR should ensure the fair, appropriate and proportionate consultation that would be necessary.

However, given that this letter is later than the Applicant’s anticipated response, there is the potential that the timescales would not allow the ExA to determine whether or not to accept the changes in the period immediately before the Preliminary Meeting. The ExA will be mindful of any proposed Change Application formally submitted in considering whether a decision may be made at the Preliminary Meeting.

If the ExA decides to accept the proposed change into the Examination, all Interested Parties will have an opportunity to make representations on the changed application in writing or orally at hearings as might be appropriate as the Examination progresses. Nonetheless, if the ExA is not satisfied with the extent of non-statutory consultation undertaken by the Applicant, the ExA may request that further non-statutory consultation is carried out. This would be to safeguard the interests of and/or inform those potentially impacted by the changes who might not be already involved in the Examination.

Next steps

The ExA notes the Applicant's intention to submit the Change Application by mid-October, albeit the timescales may have changed as a result of this letter and consequently a brief update from the Applicant on any revised anticipated consultation and submission dates for the ExA's information would be welcome. In any event, The ExA strongly advises that the change application is submitted no less than 7 working days prior to the Preliminary Meeting in the interests of fairness and reasonableness. The ExA notes the list of application documents to be updated as a result of the proposed changes and expects that all such updates will be submitted at the same time as the Change Application.

The Applicant is asked to ensure that the Change Application responds fully to the points made above. Additionally, without prejudice to any view as to the materiality or merits of the proposed changes to the application, the ExA may wish to understand more about the nature of the changes and their impacts and may do so by asking questions at any hearings or in written questions when the Examination opens.

If you have any questions about any of the matters raised in this correspondence, please contact the Case Team using the details provided in this letter.

Yours faithfully

Geoff Underwood

Examining Authority

This communication does not constitute legal advice.

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