



Marine Management Organisation

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Your reference: TR010023

Our internal reference:

DCO/2017/00003

Our Planning Inspectorate

Reference: LLTC-SP079

The Planning Inspectorate
National Infrastructure Directorate

[By Email only]

08 January 2019

Dear Mr Morgan,

THE PLANNING ACT 2008 - SECTION 89 AND THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010: LAKE LOTHING THIRD CROSSING, LOWESTOFT ORDER – DEADLINE 3, EXAMINING AUTHORITY'S 'RULE 8 LETTER'

The Marine Management Organisation (MMO) has reviewed the Examining Authority's (ExA) 'Rule 8 Letter', dated 17 December 2018.

The Marine Management Organisation (MMO) is an Interested Party for the examination of Development Consent Order (DCO) applications for Nationally Significant Infrastructure Projects (NSIPs) in the marine area. The MMO received notification on 20 August 2018 stating that the Planning Inspectorate (PINS) (on behalf of the Secretary of State) has accepted an application from Suffolk County Council ("the Applicant"), for a DCO for the Lake Lothing Third Crossing, Lowestoft proposed development ("the development").

The MMO has an interest in this project because the development includes the construction of a new highway comprising a carriageway and cycleway over Lake Lothing, with associated licensable activities occurring both over and within the marine environment. The DCO application includes a Deemed Marine Licence (DML) under Section 65 of the Marine and Coastal Access Act 2009 (MCAA 2009) and should consent be granted for the project, the MMO will be responsible for monitoring, compliance and enforcement of DML conditions.

In accordance with the deadlines specified under the Examination Timetable for the proposed Lake Lothing Third Crossing, I am writing to provide the MMO's response to the ExA Deadline 3.

Deadline 3 consists of:

- Comments on Relevant Representations
- Summaries of all RRs exceeding 1500 words
- Written Representations



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- Summaries of all Written Representations exceeding 1500 words
- Responses to the ExA's Written Questions
- Applicant's first revised draft Development Consent Order (dDCO)
- An updated version of the Compulsory Acquisition Negotiations Tracker (APP-010)
- An updated Book of Reference reconciling the s59 certificate
- An updated Statement of Common Ground (SoCG) Report
- An Application Document Tracker
- Applicant's draft itinerary for the Accompanied Site Inspection scheduled for 12 February 2019
- Any further information requested by the ExA under Rule 17 of the Exam Rules

Of these items, the MMO considers the following relevant for inclusion in this response:

- Summaries of all Relevant Representations exceeding 1500 words
- Comments on Relevant Representations
- Written Representation
- Summaries of all Written Representations exceeding 1500 words
- Responses to the ExA's Written Questions

1. Summary of MMO's Relevant Representation:

1.1 Following receipt of a Section 56 notification, the MMO submitted our Relevant Representation to PINS on 24 September 2018. Due to the length of the Relevant Representation, the MMO was unable to submit its comments in full via the PINS website. Instead, a copy of the MMO's full representation has been submitted to PINS via email (LakeLothing@pins.gsi.gov.uk).

1.2 A summary of the main points raised in the MMO's Relevant Representation to PINS is provided below:

1.2.1 The MMO expressed the opinion that the Environmental Statement (ES) generally provided a thorough assessment of the potential impacts on the marine environment from the construction activities associated with the construction of the proposed bridge crossing at Lake Lothing. Despite this, the MMO identified several issues within the ES. Consequently, the MMO advised that further consideration of the likely environmental impacts of the proposed development was required.

1.2.2 Despite pre-application comments being made by the MMO, some aspects of the documents submitted to PINS in support of the DCO application remained unchanged since the MMO's last consultation response to the Applicant. Consequently, the MMO provided a number of comments related to the content and wording of the draft DML.

1.2.3 The MMO expressed the requirement for all the issues raised in our Relevant Representation to PINS to be addressed, should the proposal be granted development consent via a DCO.

1.2.4 In light of the required amendments to both the ES and dDCO, the MMO expressed their willingness for further engagement with the Applicant to ensure the timely resolution of all identified issues.

2. Comments on Relevant Representations

2.1 Historic England

The MMO note Historic England's (HE) requirement for the draft DCO to include provision for delivery of a project specific Written Scheme of Investigation (WSI). The MMO wish to advise that if this advice was received under a standard marine licence application, a condition would be added to ensure the Applicant follows the advice of HE. To this end, the MMO would welcome engagement with both HE and the Applicant should they wish to discuss the inclusion of conditions within the DML, or any other matters within the remit of the MMO.

2.2 Royal Yachting Association & Lowestoft Cruising Club

The MMO note the issues raised by the Royal Yachting Association (RYA) and Lowestoft Cruising Club in relation to the maintenance of existing navigation rights and the timings of the proposed three week closure window. The MMO wish to advise that if this advice was received under a standard marine licence application, a condition would be added to ensure the provision of an agreed programme of works. To this end, the MMO would welcome engagement with the Applicant and both Interested Parties, should they wish to discuss the inclusion of conditions within the DML, or any other matters within the remit of the MMO.

2.3 Environment Agency

The MMO note the Environment Agency's reference to the protective provisions under Schedule 13, Part 3 of the dDCO. Whilst it is recognised that this issue remains under consideration, the MMO wishes to highlight that any "specified works" captured within Schedule 13, Part 3 of the dDCO may have their own requirements for marine licensing, should they be undertaken within the UK Marine Area (Section 42, Marine and Coastal Access Act). Such activities, may therefore also hold relevance under the DML. The MMO would welcome further engagement with both the EA and the Applicant over this matter.

3. MMO Written Representation

3.1 The MMO confirms ongoing engagement with the Applicant since the submission of its Relevant Representation to the ExA on 24 September 2018. Specifically, the MMO notes that a Statement of Common Ground (SoCG) was agreed with the Applicant on 20 November 2018 (reference: SCC/LLTC/EX/5).

3.2 Whilst a number of points have been agreed between the MMO and the Applicant, there still remain a number of issues outstanding that were detailed within the MMO's Relevant Representation, submitted to the ExA on 24

September 2018. These outstanding issues are presented below and constitute the MMO's Written Representation.

3.3 General Comments

- 3.3.1** Overall, the MMO is of the opinion that the data and assessments presented in the ES are appropriate to the nature and scale of the works associated with this DCO application.
- 3.3.2** The draft DCO indicated that the Lowestoft Circular North offshore disposal site (TH005) will be utilised for the disposal of dredged sediment. Having reviewed the application, it does not appear that the impact of offshore disposal is considered within the submitted ES.
- 3.3.3** Whilst the MMO acknowledges that indicative depths and volumes of dredged material were provided by the Applicant during pre-application, it is noted that this information has not been included within the ES. Consequently, the MMO advises that the ES be amended to detail the anticipated depth and volume of dredged materials arising from the project and their associated impact. This assessment should consider cumulative impacts with concurrent disposal licenses on any offshore disposal site to be utilised.
- 3.3.4** Further to the point raised in **paragraph 3.3.3**, the MMO advise that the sedimentary data presented within Appendix 12B of the ES are broadly acceptable and may therefore be used within the ES to appropriately inform an assessment of the likely impact to the disposal site.
- 3.3.5** The MMO are provided advice on suitability for disposal at sea by our technical advisors at the Centre for Environment, Fisheries and Aquaculture Science (Cefas). The MMO advise that sediment suitability for disposal at sea is determined through consideration of dredge depth, volume of material, particle size analysis (PSA) data and chemical analysis data.
- 3.3.6** The MMO wishes to reiterate pre-application comments, in which the Applicant was advised that TH005 is currently used only for the disposal of silt material. Therefore should finer clay, or coarser sand/gravel materials be dredged, the MMO advises that TH005 may be not be an appropriate site for disposal at sea.
- 3.3.7** Further to the points raised above, sediment analysis for contaminants and particle size is required prior to any disposal at sea. The MMO wishes to highlight that sediment analysis must be undertaken by an MMO validated laboratory, and in accordance with an MMO approved sample plan. To date, the MMO has not received a Sample Plan Request from the Applicant. Until such information is provided, the suitability for disposal at sea cannot be determined.
- 3.3.8** The MMO acknowledges that sediment data analysis by an MMO validated laboratory may already be available for areas of Lake Lothing via the MMO's Public Register. However, where dredge aspects are likely to constitute a 'capital' dredge activity then a bespoke sample plan and analysis will likely be required. The MMO's Public Register can be accessed using the following link:

3.3.9 With the exception of the point raised in **paragraphs 4.3.2 to 4.3.8** the MMO is of the opinion that the study area accurately captures the area of interest to the MMO and agrees with the conclusions of the ES and proposed mitigation measures. Overall, the MMO is content with the radius defined for local environmental considerations and is of the opinion that the likely potential impacts to the marine environment have been adequately considered.

3.4 Chapter 11 (Nature Conservation)

3.4.1 Overall, the MMO agrees with the conclusion of the ES. This consideration is inclusive of the likely impacts to benthic ecology. However, the MMO wishes to highlight that whilst the ES considers the impact on benthic ecology in relation to dredge activities, consideration of temporary/permanent habitat loss is lacking. The MMO therefore advise that Table 11-6 be updated to capture the likely impacts of temporary/permanent habitat loss.

3.4.2 In relation to Section 11.5, the MMO advises that due to the limited temporal nature of the fish trawl surveys (Appendix 11F) it cannot be concluded that “the scheme will have no effect upon migratory fish”, as there is insufficient evidence to support this. Accordingly, the MMO advises that the ES be revised to acknowledge the temporary nature of the baseline beam trawl survey the magnitude of the likely impact of the project to migratory fish.

3.4.3 The MMO notes that a number of Invasive Non-Native (INN) species were identified during the benthic surveys. Specifically, the benthic survey report lists several other non-native benthic invertebrate species that were recorded within the footprint of the proposed development, namely the bivalve *Theora lubrica*, tube worm *Hydroides ezoensis*, the bryozoan *Bugula neritina*, and the barnacle *Austrominius modestus*. The MMO wishes to highlight that the INN species identified listed in this paragraph are notably absent from the proposed mitigation measures detailed within Table 11-6 and are not mentioned elsewhere within the ES. The Applicant is therefore advised to update Chapter 11 and Table 11-6 of the ES to recognise all identified INN species and to consider the appropriate mitigation measures required to prevent their further spreading.

3.5 Development Consent Order

3.5.1 In Part 2(15), the dDCO makes reference to the use of “any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development”. The MMO advises that the installation, or alteration, of pipes may have their own requirements for marine licensing should the activities in question be undertaken within the UK Marine Area (Section 42, Marine and Coastal Access Act). The MMO advise that any such activities to be undertaken within the UK Marine Area must be included within the DML.

3.6 Deemed Marine Licence

- 3.6.1** As stated within **paragraph 3.1**, the MMO notes that a Statement of Common Ground (SoCG) was agreed with the Applicant on 20 November 2018 (reference: SCC/LLTC/EX/5). Whilst it is agreed within the SoCG that the MMO and the Applicant will continue discussions regarding the content and wording of the DML, those issues which remain outstanding from our Relevant Representation are reiterated below.
- 3.6.2** The MMO will provide revised comments on the DML, following submission of the updated dDCO by the Applicant under Deadline 3 of the Examination.
- 3.6.3** Part 1(3) of the DML makes reference to the grid coordinates within which licensable activities contained within the DML are planned. Following review of the specified coordinates, a number of errors were identified. Specifically, the coordinates associated with 'reference point 1' and 'reference point 2' appear to be incorrect. Therefore, the MMO advises that the all referenced coordinates be reviewed and revised, where necessary, to correctly reflect the area within which the licensable activities contained within the DML are planned.
- 3.6.4** Further to the points raised in **paragraph 3.6.3**, the MMO considers that it would be beneficial for the Applicant to supply additional coordinates outlining the work area within which the proposed dredging activities will be undertaken (both maintenance and capital dredging). These coordinates are important as they will be used inform the required MMO approved Sample Plan and subsequent sampling methods (see **paragraphs 3.6.9, 3.6.11, 3.6.13, and 3.6.14** for further comments concerning the proposed dredging activities).
- 3.6.5** Part 1(3) of the DML makes reference to the grid coordinates within which licensable activities contained within the DML are planned. The MMO advises that the coordinates of the offshore disposal site(s) to be utilised must also be included within Part 1(3) of the DML, in order to capture the areas within which all of the licensable activities are planned.
- 3.6.6** Part 2(g) of the DML is missing the timeframe by which the condition return must be sent to the MMO. The MMO advises that a sub-paragraph be added as follows. "The MMO Marine Licensing Team must be sent a copy of the notifications required under sub-paragraph (g) within five working days".
- 3.6.7** Part 2(5) of the DML makes reference to "at least 8 weeks prior to the commencement of any construction activity". Given the scale and nature of the development, the MMO considers the specified timeframe to be inappropriate and advise that the wording of the paragraph be amended to "at least 4 months prior to the commencement of any construction activity", in accordance with standard MMO processing timeframes.
- 3.6.8** Part 2 (5(2c)) of the DML is not worded as previously recommended by the MMO during pre-application. The MMO advises that the wording be revised as follows. "Provision that within the marine environment vibro-piling must be used as standard, with percussive piling only used if required to drive a pile to its

design depth. If percussive piling is necessary soft-start procedures must be used to ensure incremental increase in pile power over a set time period until full operational power is achieved. The soft-start duration must be a period of not less than 20 minutes. Should piling cease for a period greater than 10 minutes, then the soft start procedure must be repeated.”

3.6.9 Part 2(5(d)) of the DML makes reference to “no dredged materials arising from capital dredging activity may be disposed of at sea unless sediment samples taken from the dredged materials have been provided to the MMO, and the MMO, having analysed such samples, has advised the licence holder that the dredged materials may be disposed of at sea”. It should be noted that it is the responsibility of the Applicant to analyse the samples required in support of any dredge activity through a validated MMO laboratory. The MMO advises that the wording of this section be revised, accordingly.

3.6.10 Part 3 of the DML makes reference to “CONDITIONS APPLYING TO MAINTENANCE DREDGING ACTIVITIES ONLY”. The MMO advises that that conditions are equally as relevant to capital dredging activities. The section should therefore be reworded to as follows, “CONDITIONS APPLYING TO DREDGING ACTIVITIES”. Equally, the MMO advises that all subsequent references to maintenance dredging within this section be reworded to “dredging activity(ies)”.

3.6.11 Part 3(8) of the DML relates to dredging activities. The MMO advises that the following sub paragraph be included within this condition. “Sediment sample analyses must be undertaken by a MMO validated laboratory and informed by an MMO sample plan. Dredging activities must be undertaken within three years of the date that sediment sample analyses were completed.

3.6.12 Part 3(8(1)) of the DML makes reference to “at least 6 weeks prior to the commencement of any maintenance dredging activity”. Given the scale and nature of the development, the MMO considers the specified timeframe to be inappropriate and that it should be revised to reflect standard processing timeframes. The MMO also considers the condition to be relevant to capital dredging activities. The MMO therefore advises that the condition be reworded as follows, “The licence holder must submit a method statement for approval by the MMO at least 4 months prior to the commencement of any dredging activity(ies).”

3.6.13 Part 3(9) of the DML makes reference to “at least 8 weeks prior” and “at least 6 weeks prior”. Given the scale and nature of the development, the MMO considers the specified timeframes to be inappropriate and advises that the wording of the paragraph be amended to “A sediment sample plan request must be submitted to the MMO at least 6 months prior to the commencement of any dredging activity”, in line with standard processing timeframes.

3.6.14 Part 3(10) of the DML makes reference to “no dredged materials arising from capital dredging activity may be disposed of at sea unless sediment samples taken from the dredged materials have been provided to the MMO, and the MMO, having analysed such samples, has advised the licence holder that the

dredged materials may be disposed of at sea”. It should be noted that it is the responsibility of the Applicant to analyse the samples required in support of any dredge activity through a validated MMO laboratory. The MMO advises that the wording of this section be revised, accordingly.

3.6.15 Part 4(11(1)) of the DML makes reference to “at least 8 weeks prior to the commencement of any licensed activity.” The MMO considers the specified timeframe to be inappropriate and that it should be revised to reflect standard processing timeframes. The MMO therefore advises that the condition be reworded as follows, “The licence holder must submit a marine pollution contingency plan to the MMO for approval at least four months prior to the commencement of any licensed activity, including construction and dredging activities.”

3.6.16 Part 4(15) of the DML is not worded as previously recommended by the MMO during pre-application. The MMO advises that the wording be revised as follows. “The licence holder must report all dropped objects to the MMO using the Dropped Objects Procedure Form within 24 hours, where possible, and in any event within 5 days of becoming aware of the incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the licence holder (such as side scan sonar), if reasonable to do so and the MMO may require.”

3.6.17 Part 4(16) of the DML makes reference to “disposal”. The MMO advises that all references to disposal be revised to “disposal at sea”, so as to accurately reflect the method of disposal. As referenced in point 3.1, the MMO advises that the coordinates of the offshore disposal site(s) to be utilised must be included within Part 1(3) of the DML.

3.6.18 Part 5(21(2)) and Part 5(23) both make reference to specified timeframes within which the MMO is required to issue determinations. With regards to determination timescales, the onus is on the licence holder to submit all relevant documents to the MMO in a timely manner in line the MMO’s processes for projects of a similar nature. The MMO therefore requires that both conditions be removed from the DML.

3.6.19 Part 5(24) of the DML makes reference to an arbitration clause. The MMO has its own frameworks and mechanisms in place for the legal challenge of decisions through the Judicial Review process. Given this, an arbitration clause is not considered to be either appropriate or necessary. The MMO therefore requires that this be removed from the DML.

4. Summary of Written Representation

4.1 Overall, the MMO is of the opinion that the data and assessments presented in the ES are appropriate to the nature and scale of the works associated with this DCO application. However, the MMO wish to highlight the need for the ES to more clearly consider the likely impacts of the proposed dredging and offshore disposal activities.

- 4.2 The MMO confirms that the wording for the DML remains under discussion between with the Applicant, but wishes to highlight that good progress has already been made to enable agreement to be reached in a timely manner. The principal outstanding issues relate to:
- I. Timescales for the discharge of DML returns (in particular with regard to dredge/ disposal activities)
 - II. Inclusion of disposal site coordinates
 - III. Wording of conditions/ and structuring of sections.
 - IV. Arbitration
- 4.3 The MMO confirms ongoing engagement with the Applicant since the submission of its Relevant Representation to the ExA on 24 September 2018. Specifically, the MMO notes that a Statement of Common Ground (SoCG) was agreed with the Applicant on 20 November 2018 (reference: SCC/LLTC/EX/5).
- 4.4 The MMO understands that the agreed SoCG will be updated to the Examination by the Application under Deadline 3.
- 4.5 The MMO wishes to express its interest in continuing to engage with the Applicant with regards to the drafting the DCO and the associated DML.

5. Response to the Examining Authority's Written Questions

- 5.1 Please see **Appendix A** for the MMO's response to the ExA Written Questions.

6. Concluding comments

- 6.1 The MMO has been working with the Applicant on the establishment of a Statement of Common Ground. The MMO understands that the agreed SoCG will be updated to the Examination by the Application under Deadline 3.
- 6.2 The MMO wishes to express its interest in continuing to engage with the Applicant with regards to the drafting the DCO and the associated DML.
- 6.2 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.

If you would like to discuss any specific matter further or require additional clarity, please do not hesitate to contact me directly.

Yours sincerely,



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Appendix A - Response to the Examining Authority's Written Questions

| Questions directed to the Marine Management Organisation | |
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| Question no. | MMO Response |
| 2.45 | With regards to the likely impact to groundwater quality, the MMO defers to the opinion of the Environment Agency, as the competent authority responsible for implementing the Water Framework Directive and managing groundwater quality. |
| 2.50 | With regards to the likely impact to European sites, the MMO defers to opinion of Natural England, as the Statutory Nature Conservation Body and competent authority for managing European site designations. |
| 2.76 | <p>The MMO wishes to highlight that no discussions have been held between ourselves and the Applicant with respect to the approach and conclusions of the updated HRA Report (AS-003). Thus, no formal agreement has been reached in this regard.</p> <p>The MMO would welcome any future discussion with both the Applicant and Natural England with respect to the approach and conclusions of the updated HRA Report.</p> |
| Questions directed to other Interest Parties | |
| Question no. | MMO Response |
| 1.4 | Whilst this question was not directed at the MMO, we wish to highlight that the temporary installation of cofferdams and piers within the UK Marine Area (Section 42, Marine and Coastal Access Act) are licensable activities and must therefore be captured included within the DML, should one be granted. |
| 2.33 | <p>Whilst this question was not directed at the MMO, we wish to highlight Section 4.3 of our Written Representation, under which it we state the need for the ES to consider the impact of dredging/disposal at sea activities. Specifically, the MMO notes that whilst the applicant has provided indicative depths and volumes of dredged material during pre-application this information has not been included within the ES.</p> <p>In addition to the above, sediment analysis for contaminants and particle size is required for any disposal at sea. Sediment analysis must be undertaken by an MMO validated laboratory, and in accordance with an MMO approved sample plan.</p> <p>Finally, the MMO wishes to reiterate pre-application advice, in which the Applicant was advised that TH005 is currently used for the disposal of silt material. Therefore should finer clay, or coarser sand/gravel materials be dredged, the MMO advises that TH005 may be not be an appropriate site for disposal at sea.</p> |

| Questions directed to the Marine Management Organisation | |
|---|---|
| 2.37 | <p>Whilst this question was not directed at the MMO, we wish to highlight that the Applicant has not obtained the required permission to dispose of dredged material at the TH005 offshore disposal site. Whilst the MMO has provided advice in this regard under Section 4.3 of our Written Representation, the considerations and requirements for disposal at sea are detailed below:</p> <ol style="list-style-type: none"> 1. Suitability for disposal at sea is informed via sediment analysis for contaminants and particle size. Sediment analysis must be undertaken by an MMO validated laboratory, and in accordance with an MMO approved sample plan. The MMO receives technical advice in this regard from Cefas. To date, a sample plan request has not been received. 2. Permission for disposal at sea would be granted by either a stand-alone marine licence or under a provision of the DML. This determination would be supported by the information listed under point 1 above. In this instance, the Applicant has indicated the intention to include provisions for disposal at sea under the DML which is reflected in the dDCO. |
| 2.65 | <p>Whilst this question was not directed at the MMO, we wish to highlight Section 4.3 of our Written Representation, under which it we state the need for the ES to consider the impact of dredging/disposal at sea activities. Specifically, the MMO notes that whilst the applicant has provided indicative depths and volumes of dredged material during pre-application this information has not been included within the ES.</p> <p>In addition to the above, sediment analysis for contaminants and particle size is required for any disposal at sea. Sediment analysis must be undertaken by an MMO validated laboratory, and in accordance with an MMO approved sample plan.</p> <p>Finally, the MMO wishes to reiterate pre-application advice, in which the Applicant was advised that TH005 is currently used for the disposal of silt material. Therefore should finer clay, or coarser sand/gravel materials be dredged, the MMO advises that TH005 may be not be an appropriate site for disposal at sea.</p> |