



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]

29 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 4, 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’s Deadline 4.

Deadline 4 consists of:



**INVESTORS
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- Comments on Written Representations and responses to comments on Relevant Representations
- Comments on Local Impact Report(s)
- Comments on Responses to the ExA's Written Questions
- Statement of Common Grounds requested by the ExA
- Responses to the ExA's Written Questions
- Comments on any further information requested by the ExA and received to Deadline 3

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:

- Comments on Written Representations
- Responses to comments on Relevant Representations
- Comments on Local Impact Report(s)
- Comments on Responses to the ExA's Written Questions

1. Comments on Written Representations

1.1 Associated British Ports

1.1.1 The MMO has reviewed the Written Representation submitted to the ExA by Clyde & Co LLP on behalf of ABP and notes the Harbour Authority's concerns regarding the risk to operation presented by the proposed development.

1.1.2 The MMO wishes to highlight that we would welcome any engagement between ABP and the Applicant, should any operational impacts require the addition of conditions within the DML.

1.2 Historic England

1.2.1 The MMO has reviewed the Written Representation submitted to the ExA by Historic England and welcomes the inclusion of a Written Scheme of Investigation (WSI) under Schedule 2, Part 1(10(1)) of the dDCO.

1.2.2 The MMO has sought to engage with Historic England regarding the scope of the WSI, and the potential requirement for additional conditions within the DML.

1.2.3 Following discussion with Historic England (email dated: 21 January 2019), the MMO confirms that it is content with the scope of the WSI. The MMO however, remain in discussion with both the Applicant and Historic England with regards to securing this provision within the dDCO and its associated DML.

2. Response to comments on MMO Relevant Representation

2.1 The MMO confirms and welcomes 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).

2.2 The MMO wishes to inform the ExA that it is currently in the process of engaging with the Applicant on the content of the DCO and its associated DML, following submission of the dDCO under Deadline 3.

2.3 The MMO also wishes to inform the ExA that it continues to engage with the Applicant over issue resolution in the form of a revised SoCG.

2.2 The MMO has reviewed the Applicant's Response to Relevant Representations (PINS reference: SCC/LLTC/EX/2), our comments are detailed below.

2.3 DCO9

2.3.1 As noted within the agreed SoCG, discussions between the Applicant and the MMO are ongoing, particularly with regards to the content and wording of the draft DCO and associated DML. Notably, one principle outstanding issue concerns the inclusion of an arbitration clause within the dDCO (**paragraph 24 of Schedule 12**).

2.3.2 Whilst the MMO appreciates the Applicant's concerns regarding the inclusion of an arbitration clause within the dDCO, it remains the MMO's position that this paragraph should be removed. The reason behind the request for the removal of this clause is because arbitration has the potential to compromise the regulatory functions of the MMO as a decision maker.

2.3.3 The MMO is in agreement with the Applicant's statement that further engagement on the matter of arbitration is required and that both Parties will be in a better position to reach an agreement following the outcome of the Tillbury2 Examination (TR030003), due February 2019. The MMO have raised similar concerns with respect to this Examination.

2.3.4 The MMO is currently in the process of engaging with the Applicant on the content and wording of the DCO and its associated DML, following submission of the dDCO under Deadline 3.

2.4 DCO10

2.4.1 As noted within the agreed SoCG, discussions between the Applicant and the MMO is ongoing, particularly with regards to the content and wording of the draft DCO and associated DML. Notably, one principle outstanding issue concerns the time periods specified within the DML.

2.4.2 Whilst the MMO appreciates the Applicant's concerns regarding the advice of the MMO with respect to specified timescales pertaining to the submission and subsequent discharge of returns (including determination timescales), it remains the opinion of the MMO that the required timescales are not entirely appropriate.

2.4.3 The MMO notes the Applicant's reference to previous Examinations which are associated with shorter specified timescales, namely Silvertown (reference: TR010021) and Tillbury2. The MMO advises that the decision to include shorter timescales should be made on a case by case basis. Given the nature of the Lake Lothing Third Crossing, Lowestoft proposed development and the issues that currently remain outstanding, the MMO advises that longer time scales are required to enable the Organisation to perform its regulatory functions appropriately.

2.5 EN12 and EN13

2.5.1 As noted within the agreed SoCG, discussions between the Applicant and the MMO is ongoing, particularly with regards the scope of the Environmental Statement (ES), with respect to the impact assessment of the disposal of arisings from dredging activities at sea. Notably, the principle matters agreed under the SoCG are detailed below.

2.5.2 It is agreed that the assessment of impacts associated with disposal at sea have been broadly considered within the ES.

2.5.3 The MMO acknowledges the information presented within the ES, and the Applicant's response to the ExA questions. The MMO has reviewed, and broadly agrees with, Appendix A "Consideration Of Disposal At Sea In The Application", which indicates that the potential impacts associated with disposal at sea are likely to be within acceptable limits. However, at this stage, on the current level of assessment, the MMO considers that the available sampling and analysis is not sufficient to allow for detailed appraisal and approval of any disposal activity.

2.5.3 The MMO acknowledges the Applicant's position that the detail required to inform an MMO sample plan request is not yet available. In consideration of this, the controls within the DML, and that alternative means of disposal can be secured by the Applicant, should subsequent analysis prove it necessary, the MMO is content with the consideration given to disposal at sea, at this stage.

2.6 EN14, EN16, EN17, EN18 and EN19

2.6.1 The MMO acknowledges the Applicants responses to issues raised within the MMO's RR (SCC/LLTC/EX/2: Response to Relevant Representations). The above issue numbers are considered to be satisfactorily addressed.

2.6.2 It is the understanding of the MMO that the submission of a revised SOCG at deadline 4 will document the outcome of these discussions.

3. Comments on Local Impact Report(s)

3.1 Great Yarmouth Borough Council

- 3.1.1 The MMO has reviewed the Local Impact Report produced by Great Yarmouth Borough Council.
- 3.1.2 The MMO notes the Local Planning Authority's wish to highlight the positive socio-economic impact of the Lake Lothing Third Crossing proposed development, particularly with respect to improvements to connectivity between Great Yarmouth and Lowestoft.
- 3.1.3 The MMO has no further comments to make regarding the content and information detailed within Great Yarmouth Borough Council's Local Impact Report.

3.2 Suffolk County Council and Waveney District Council

- 3.2.1 The MMO has reviewed the Local Impact Report jointly produced by Suffolk County Council and Waveney District Council.
- 3.2.2 The MMO notes the Local Planning Authorities' consideration that the Lake Lothing Third Crossing proposed development is an integral part of solving regeneration and transportation issues within Lowestoft and the surrounding area.
- 3.2.3 The MMO has no further comments to make regarding the content and information detailed within Suffolk County Council and Waveney District Council's joint Local Impact report.

4. Comments on Responses to the ExA's Written Questions

- 4.1 Please see **Appendix A** for the MMO's comments on Responses to the ExA's Written Questions.

5. Concluding comments

- 5.1 The MMO has been working with the Applicant on the establishment of a revised Statement of Common Ground and DCO. The MMO understands that the agreed SoCG will be updated to the Examination by the Application under Deadline 4.
- 5.2 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	
Question no.	MMO Response
2.45	<p>Further to our initial response to this question, the MMO acknowledges the Environment Agency's agreement with the conclusions of the Applicant's risk assessment for the proposed piling works within Lake Lothing.</p> <p>The MMO has nothing further to add with respect to this particular question.</p>
2.76	<p>Further to our initial response to this question, the MMO wishes to inform that ExA that it is currently seeking engagement with Natural England with respect to the scope and content of the updated HRA Report (AS-003).</p> <p>Whilst the MMO would expect the accepted HRA to identify all sensitive receptors associated with existing Natura 2000 site designations, and considers the likely pathways to impact, the MMO defers to the opinion of Natural England, as the Statutory Nature Conservation Body, with respect to the conclusions of the HRA.</p> <p>Where mitigation measures are required to avoid any adverse impact to site integrity, the MMO will require such measures to be attached as conditions within the DML, or included within an approved method statement.</p>

Questions directed to other Interest Parties	
Question no.	MMO Response
1.4	<p>Further to our initial response, the MMO acknowledges the Applicant's response to the ExA's question and welcomes the inclusion of a condition within the DML requiring the submission of a method statement for approval prior to the commencement of the works.</p> <p>The MMO wishes to note that the exact wording and content of the DML remains under discussion with the Applicant, but that good progress is being made in this regard.</p>
2.33	<p>The MMO acknowledges the Applicant's response to the ExA's question and welcomes the provision of further information with respect to the anticipated dredging methods and expected volume of material to be dredged.</p>

Questions directed to other Interest Parties

2.37

The MMO has reviewed the Applicant's response to this question and confirms that it is broadly in agreement with the statement made.

The MMO wish to reiterate our previous response to this question by repeating the requirements for disposal at sea below:

1. Suitability for disposal at sea is informed via sediment sampling and analysis for contaminants and particle size. Sediment analyses must be undertaken by an MMO validated laboratory, and in accordance with an MMO Sample Plan. The results of these analyses must then be submitted in support of an application to dredge and dispose at sea, within a specified disposal area. At this stage the MMO will either grant or refuse the right to dispose at sea.

The MMO receives technical advice in this regard from Cefas. To date, no Sample Plan Request has been submitted.

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 must be supported by the information listed under point 1, above. In this instance, the MMO acknowledges the Applicant's inclusion of the relevant provisions for dredge and disposal at sea under the DML and confirms that it remains in discussion over the most appropriate drafting.