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Subject: GYTRC MMO response to Deadline 4
Date: 10 December 2019 11:19:25
Attachments: [REDACTED]

Dear Dominic Young,

**Application by Norfolk County Council for an Order Granting Development Consent for the Great Yarmouth Third River Crossing
Marine Management Organisation (MMO) response to Deadline 4**

In accordance with the deadlines specified under the Examination Timetable for the proposed Great Yarmouth Third River Crossing, I am writing to provide the MMO's response to Deadline 4.

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

Yours sincerely,

Adam Tillotson | Marine Licensing Case Officer | Her Majesty's Government -
Marine Management Organisation

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Your reference:
TR010043
Our reference:
GYRM-SP010
Our internal reference:
DCO/2018/00010

By Email only

10 December 2019

Dear Dominic Young,

Application by Norfolk County Council for an Order Granting Development Consent for the Great Yarmouth Third River Crossing

Marine Management Organisation (MMO) response to Deadline 4

The MMO is an Interested Party (IP) for the examination of Development Consent Order (DCO) applications for Nationally Significant Infrastructure Projects (NSIPs) in the marine area.

The MMO has an interest in this project because the development includes the construction of a new double-leaf bascule bridge over the river Yare, 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 Great Yarmouth Third River Crossing, I am writing to provide the MMO's response to Deadline 4.

Deadline 4 consists of:

- Comments on Applicant's revised draft DCO
- Comments on revised Statement of Common Ground (SoCG) (if submitted)
- Comments on any additional information/submissions received by Deadline 3 (D3)
- Responses to any further information requested by the Examining Authority (ExA)

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

1. Comments on Applicant's revised dDCO



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1.1. The MMO have reviewed Document NCC/GY3RC/EX/040: Applicant's Revised draft Development Consent Order (tracked) – Revision 2. Few of the suggested dDCO/dDML changes have been made prior to D3. The following provide an update on the suggested changes that were identified in our D3 response:

Description of the works:

1.1.1. The MMO suggested that work numbers (e.g. Work No. 6A) and development description terminology used in Schedule 1 is used, as necessary, in the dDML, under 'Details of licensed marine activities,' so it is clear which elements of the development are within the marine area and licensable. This change has not been made, however the applicant has confirmed it is being progressed.

1.1.2. Design parameters of key components within the marine area should be added to DML. These changes have not been made, however the applicant has confirmed it is being progressed.

Dredging:

1.1.3. The MMO suggested that articles/paragraphs from dDCO/dDML that infer the undertaker can undertake capital dredging activities that will result in disposal to sea and/or maintenance dredging, for example Article 49 (1) (b) of the dDCO, should be amended or deleted.

1.1.4. The MMO notes that the applicant has added paragraph 19 in the dDML, which states '*This licence does not permit any dredging carried out under article 49(1)(b) (subsidiary works and operations in the river Yare) of the Order.*'

1.1.5. The applicant has advised, on a telephone call 05.12.2019, it is their preference to retain reference to specific activities, for example '*improve the bed of the river Yare*' in the dDCO, but clarify in the dDML that a separate marine licence is required prior to the commencement of any works considered dredging. The reason for this is, should it be necessary for the undertaker to carry out any dredging activities that will result in disposal to sea, the applicant will only need to apply for a new marine licence; not an amendment to the DCO.

1.1.6. Currently, the MMO does not support the applicant's preferred method to address dredging in the marine area in the dDCO/dDML and wishes to highlight that it can take over 6 months to apply for a marine licence to dredge. A conference call with the applicant will be arranged to discuss this matter further.

Written Scheme of Investigation (WSI):

1.1.7. The MMO suggested compliance with the WSI is conditioned in the dDML. This change has not been made.

Monitoring:

1.1.8. Within the Fisheries Memorandum the applicant has proposed to monitor underwater noise levels throughout the in-river piling activities. The MMO has identified aspects of the paper that need further consideration. Although

monitoring is generally encouraged, the MMO will confirm whether they consider it to be necessary once additional information has been provided. Should it be agreed that monitoring of works in the marine area is necessary, a suitable condition will need to be added to the dDML.

MCMS

1.1.9. The applicant has replaced 'by email' with 'using the MMO's marine case management system web portal' in Part 1 Article 2 (3) of the dDML. The MMO is satisfied with this change; no further action is required.

Navigation conditions

1.1.10. As detailed in the MMO's D3 response, it was noted in Issue Specific Hearing 1 that navigation of the river Yare will be temporarily suspended on up to three occasions for a maximum of 72 hours. The MMO suggested that an additional sub-condition is added to the dDML requiring the licence holder to issue a notice to mariners 21 days prior to navigation of the river Yare being suspended.

1.1.11. The applicant has advised, on a telephone call 05.12.2019, it is their preference to address this request by adding a sub-condition to the dDML requiring the licence holder to notify MMO local office each time navigation of the river Yare being suspended. It is suggested that the licence holder notifies the MMO local office before navigation of the river Yare is suspended and should also confirm notice to mariners has been issued in accordance with Article 23 of the dDCO.

Arbitration

1.1.12. Following review of Article 67, the MMO highlighted that the applicant had agreed 20 March 2019 to delete the arbitration clause from the dDML. The MMO highlighted at the Issue Specific Hearing 2 and in their D3 response that Article 67 should be amended to clarify that it is not applicable to the MMO. The MMO has since sent an alternative DCO arbitration clause to the applicant.

1.1.13. Within Document NCC/GY3RC/EX/038: Written summaries of oral submissions made at Issue Specific Hearing 2 on the draft Development Consent Order (ISH2) held on 20 November 2019, the Applicant has stated 'to exclude the operation of article 67 to the deemed marine licence...a new paragraph 20 [has been introduced] to Schedule 13.' Paragraph 20 of the dDML states '*The provisions of article 67 do not apply to any difference arising under any provision of this licence.*' Although the MMO welcomes inclusion of such an exclusion provision, the MMO has worked with developers as well as internal stakeholder to agree the following provision. The MMO strongly suggest that this provision is included within the DCO immediately after Article 67. If included, paragraph 20 in Schedule 13 is not required and can be deleted.

'Any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration.'

1.2. The applicant suggested, on a telephone call 05.12.2019, that a condition is added to the dDML requiring the licence holder to submit details of the expected location, start and end dates of impact pile driving to the Marine Noise Registry prior to the commencement of activities within the marine area which involve impact piling. The MMO supports the inclusion of such a condition.

1.3. The MMO welcomes inclusion of essential mitigation measures in the dDML and notes the applicant has added a paragraph regarding break periods in piling activities. As noted in paragraph 1.1.6, the MMO has reviewed the applicant's Fisheries Memorandum (version 3) and identified aspects of the paper that need further consideration. The mitigation measures associated with the in-river piling activities may need to be amended after discussions have concluded.

2. Comments on revised SoCG

2.1. The applicant has stated, in Document NCC/GY3RC/EX/034: Statement of Commonality for Statements of Common Ground at Deadline 3, that the MMO SoCG submitted at Deadline 1 has not been updated; matters remain outstanding.

2.2. Proposed amendments to the dDCO/dDML and a summary of comments regarding the Environmental Assessment are to be recorded in the MMO SoCG.

3. Comments on any additional information / submissions received by D3

3.1. The MMO noted in their D3 response that Norfolk County Council (NCC) have also recommended that the applicant considers specific species (River lamprey, European eel, Smelt) further in the ES. The MMO has reviewed the applicant's D3 response to NCC's Local Impact Assessment marine environment comments and agrees that discussions concerning fish and underwater noise have occurred, however these have not been concluded. As summarised in paragraph 3.3.1, the MMO has reviewed the applicant's Fisheries Memorandum (version 3) and identified aspects of the paper that need further consideration. It should be noted that the MMO are content that significant impacts to European eel are unlikely to occur providing no in-river piling works are undertaken between 19:00 and 07:00 as this species is known to undertake nocturnal migration.

3.2. The MMO has reviewed Document NCC/GY3RC/EX/038: Written summaries of oral submissions made at Issue Specific Hearing 2 on the draft Development Consent Order (ISH2) held on 20 November 2019. The MMO has responded in above to the proposed changes regarding arbitration (article 67) and dredging (article 49 (1) (b)).

3.3. The MMO has reviewed Document NCC/GY3RC/EX/035: Deadline 3: Applicant's comments on submissions received at Deadline 2, including Responses to Written Representations and Interested Parties' Responses to ExA's First Written Questions and have the following comments:

3.3.1. In response to paragraph 2.1.10, the MMO has reviewed the applicant's Fisheries Memorandum (version 3) and identified aspects of the paper that need further consideration. The necessary changes have been sent to the applicant and are summarised below:

- state the month that the referenced Environment Agency fisheries surveys were undertaken in;

- correctly identify Caister beach on the provided map;
- provide appropriate units to present the fisheries survey data;
- provide an indication of the type and the number of the piles required for the development;
- provide an indication of the expected energy levels generated by piling activity, along with a discussion on the expected noise propagation using examples from similar projects where noise levels have been recorded, to establish the likelihood of noise generating an acoustic barrier to fish movement;
- consider including a condition in the dDML preventing in-river piling activities to be undertaken during the sensitive spawning season of smelt (February to April inclusive); and
- If considered necessary, submit an appropriate monitoring proposal for review.

3.3.2. In response to paragraph 2.1.11, the MMO is yet to receive the evaluation of the scour conditions that could arise as a result of climate change.

3.3.3. In response to paragraphs 2.1.16 and 2.1.17, the MMO has provided comments on the dDCO/dDML above in section 1.

3.3.4. In response to paragraphs 2.1.25 to 2.1.27, the MMO confirmed in the D3 response that the MMO had no further comments regarding marine planning considerations, did not deem it necessary to include any further conditions in the dDML as a result of other IP concerns/comments, and acknowledged that it is unlikely the scope of the development will be amended.

4. Responses to any further information requested by the ExA

4.1. The MMO has reviewed the Examining Authority's written questions and requests for information, issued on 1 October 2019. None of the questions were directed to the MMO.

4.2. The MMO is not aware of any further request by the ExA for further information from the MMO after 1 October 2019.

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,



Adam Tillotson
Marine Licensing Case Officer



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