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**Your Reference:** TR030003  
**Our Planning Inspectorate  
Reference:** 20010091  
**Our Internal Reference:**  
DCO/2017/00001

**By email only**

30 April 2018

Dear Panel,

**RE: TILBURY2 – SECTION 89 AND THE INFRASTRUCTURE PLANNING  
(EXAMINATION PROCEDURE) RULES 2010: EXAMINING AUTHORITY’S “RULE 8  
LETTER”**

The Marine Management Organisation (MMO) has reviewed the Examining Authority’s (ExA) ‘Rule 8 Letter’ dated 26 February 2018 and the following constitutes the MMO’s formal response to deadline 3 as set out in this letter.

The 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 29 November 2017 stating that the Planning Inspectorate (PINS) (on behalf of the Secretary of State for Business, Energy and Industrial Strategy) has accepted an application from Port of Tilbury London Limited (the Applicant), for a DCO for the Tilbury2 port development.

The redevelopment of the Tilbury2 site itself will comprise the development of a new harbour facility in the form of an operational port. A number of key components are proposed within the port, with the two principal proposed uses being a Roll on Roll off (RoRo) terminal, located south of Substation Road, and a Construction Materials and Aggregates Terminal (CMAT) to the north of Substation Road.

The MMO has an interest in this project because the development contains the improvement and extensions to the existing river jetty and dredging of the River Thames within the tidal extent. 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. The DCO application also includes provisions changing the powers or duties of a harbour authority. Under article 145 of the Planning Act 2008 (as amended) (the 2008 Act), (5) a DCO may include provisions in relation to a harbour authority, in particular, (a) any provision which could be included in a harbour revision order under section 14 of the Harbours Act 1964 (the 1964 Act) by virtue of any provision under Schedule 2 of the 1964 Act. The MMO have delegated responsibility for harbour orders under the 1964 Act and as such will also provide comments on these aspects.

Deadline 3 consists of:

- Responses to any information requested by the Panel
- Comments to any information submitted by the Applicant or Interested Parties at Deadline 2
- Post hearing submissions including written submissions of oral cases
- Responses to any revised draft DCO (dDCO) or other documents submitted by the Applicant at earlier deadlines
- Revised draft DCO from Applicant (if required)
- Any revised or updated Statements of Common Ground (SoCG)

Of these items, the MMO considers the following relevant matters in relation to:

- Comments to any information submitted by the Applicant or Interested Parties at Deadline 2
- Post hearing submissions including written submissions of oral cases
- Responses to any revised draft DCO (dDCO) or other documents submitted by the Applicant at earlier deadlines

## **1. Comments to any information submitted by the Applicant or Interested Parties at Deadline 2**

### **1.1. Port of London Authority (PLA)**

- 1.1.1. Responding to the PLA response to their response to FWQ 1.2.31, the MMOs position is, in respect to seasonal restrictions and other mitigation measures which will be secured through conditioned adherence to the CEMP or through a separate DML condition, were in response to questions 1.2.30 and 1.2.32, not 1.2.31. Method statements are also required as per conditions in the DML. As such, the piling method will be assessed upon submission of the method statements and, if required, further mitigation will be considered. The DML and CEMP contain soft start procedures for percussive piling that are standard for this type of piling. This comment also applies to responses to FWQ 1.5.2.
- 1.1.2. FWQ 1.9.1. The MMO and PLA have discussed this matter and are in agreement that maintenance dredging should be controlled under both the PLA Protective Provisions and the DML, not as a power within the DCO.
- 1.1.3. FWQ 1.9.3. The MMO have included a seasonal restriction to dredging in the DML, which, after discussion with the applicant, will be amended to reflect that it applies to water injection dredging only.
- 1.1.4. FWQ 1.9.7. Discussions are to be had with the PLA
- 1.1.5. FWQ 1.9.17. The MMO had requested this condition as it was not clear from the information provided whether the requirement to notify the UKHO fell to the Applicant or the PLA. After reviewing the information provided by the PLA the MMO are satisfied that this condition is no longer required.
- 1.1.6. In response to PLA comments on Written Representations, the MMO have been in discussion with the PLA regarding their concerns and have assured them that the MMO is not seeking to interfere with their powers, in particular with respect to maintenance dredging. The MMO have licensing requirements of our own for dredging activities which are regulated by the DML regardless of whether or not they are included in the PLAs PPs. As above, discussions on this matter are ongoing with the PLA.

### **1.2. Port of Tilbury (the Applicant)**

- 1.2.1. The MMO agree with the Applicants responses to Natural England's (NE) comments that the CEMP and the DML can control the dredging activity.

- 1.2.2. With regards to the Applicants responses to the MMO responses, prior to the April Hearings the MMO had resolved our outstanding ecological concerns, however during the hearing the Applicant advised that there will be further clarifications regarding piling to deal with inconsistencies and so the MMO advised that these would need to be reconsidered by us before reaching a final conclusion on this.
- 1.2.3. With regards to responses to the PLA and MMO comments on ongoing discussions regarding maintenance dredging, as stated earlier in this letter, discussions are to be had with the PLA.
- 1.2.4. With regard to the Applicant's response to the MMO's response to FWQ1.9.1, the MMO are satisfied that maintenance dredging is to be within the DCO under PLA protected provisions in order for their regulatory functions to apply. The MMO maintains our position that all dredging (capital and maintenance) must also be contained within the DML so that the MMO's regulatory functions can apply including allowing the MMO to control the manner in which the dredging activities are conducted by including conditions on the DML as are necessary to protect the environment, human health, and to prevent the interference with legitimate uses of the sea.
- 1.2.5. The MMO is not contesting that the Applicant has a need to carry out maintenance dredging in order for them carry out day to day operations, the MMO is seeking to ensure that these activities are contained appropriately within the DCO and DML in order for them to be effectively regulated.
- 1.2.6. We understand that the Applicant does not see a "reason in policy or logic" as to why the exemption under section 75 of MCAA (as amended in 2011 <http://www.legislation.gov.uk/ukxi/2011/405>) cannot apply to powers under a DCO. It remains the MMOs view that the wording of the s75 MCAA cannot be interpreted to make a DCO fit the definitions of a "local Act" or "any order under section 14 or 16 of the Harbours Act 1964" as is required for the exemption in s75 to apply. All dredging activities must be regulated as marine licensable activities.
- 1.2.7. If the Applicant does not wish to include the maintenance dredging within the DML, it is open to it to deal with the marine licence outside of the DCO process and to apply to the MMO separately for a marine licence. Dredging constitutes a licensable activity under MCAA section 66(1)(9) and to dredge without that activity being either authorised under the DML provisions of the DCO or by way of a separate marine licence would result in the MMO investigating those activities with a view to taking enforcement action against the applicant.
- 1.2.8. Having reviewed the background legislation provided by the Applicant, the MMO seeks clarification as to how under the Ports Act 1991, the Port of London Act 1968 and the 1992 Transfer Scheme, the Applicant is a statutory harbour authority? It appears to the MMO that under the Ports Act 1991, the Applicant was created as a "Company" under the PLA, with the PLA maintained as the "Port Authority". The Transfer Scheme transferred functions under the PLA powers they are acting under. We are aware that the Applicant is a competent authority with pilotage functions, but cannot see what made them a statutory authority. Can the applicant please address this point.
- 1.2.9. With regards to the Applicants' response to our response to FWQ1.9.3 the MMO have advised the Applicant that the outcome of discussions regarding the placing of maintenance dredging within the DCO/DML will determine whether this condition is required.
- 1.2.10 With regards to the Applicants response to our response to FWQ1.9.7 the MMO has agreed with the Applicant that the exclusion zone co-ordinates

under Part 3 will explicitly state that no water injection dredging is to be carried out within this exclusion zone.

1.2.11 FWQ 1.9.17 and 1.9.18. As stated under the MMOs response to the PLA on the matter of UKHO notifications as it is now clear that this function will remain with the PLA then the MMO are satisfied that this condition is no longer required. The MMO note that the Applicant states they are a Statutory Harbour Authority and as such, as a Statutory Harbour Authority the Applicant will be responsible for issuing Notices to Mariners and so are satisfied that this condition is no longer required.

1.2.12 FWQ 1.9.23. The MMO has discussed this with the Applicant and understand that their response meant that the mitigation will be controlled through the CEMP which is conditioned under the DML. The MMO are satisfied with this approach.

1.2.13 With regards to the Limits of Dredging Plan, as detailed by the PLA in the issue specific hearing on the 18<sup>th</sup> April 2018, the MMO would agree with the PLA that definitive limits are required and not approximate or illustrative ones.

1.2.14 Applicants' response to EA response to FWQ 1.9.3 b and c, the current draft of the DML has had the method statement condition removed. If the Applicant still intends to submit method statements for approval then this condition should be reinserted.

1.2.15 With regard to the Applicant response to Historic England in relation to archaeological method statements, if this is to be secured through a DML condition the MMO should be informed and wording provided for agreement with the Applicant.

### **1.3. Historic England (HE)**

1.3.1. With regards to the request for the Marine Written Scheme of Investigations condition, if this has been agreed with the Applicant to be added then the DML should be updated and the MMO informed.

### **1.4. Environment Agency (EA)**

1.4.1. In response to the EAs comment within their deadline 2 response on the DML, the MMO can confirm that discussions on this are to be arranged.

## **2. Post hearing submissions including written submissions of oral cases**

### **2.1. Response to 16.1 v**

2.1.1. Whilst the MMO did not comment on this point during the hearing we would like to confirm points raised, in response to 5.1, on day two of the hearings that the revised piling documents will need to be reconsidered by the MMO to determine the changes in impacts.

### **2.2. Response to 16.2**

2.2.1. The MMO advised that they too are a licencing authority for dredging activities and that as part of the review of dredging method statements the environmental impacts, including underwater noise, will be considered by the MMO as well as the PLA.

### **2.3. Response to 13.1 vi**

2.3.1. The MMO advised that we have been in discussion with the applicant and welcome further discussions with the applicant and HE.

### **2.4. Response to 2.3**

2.4.1. The MMO advised that as currently drafted, the Ecological Mitigation and Compensation Plan (EMCP) does not have sufficient information with regards to intertidal habitat and saltmarsh for an assessment to be made of the impacts of the proposed development.

### **2.5. Response to 2.6**

2.5.1. The MMO advised that as no further concerns have been raised with regards to marine ecology then it is agreed that the approach and assessment methodology is appropriate. It is understood that this will be reflected within the next revision of the SoCG.

**2.6. Response to NE response to 11.3**

2.6.1. The MMO advised that as sediment contamination and dredging are within their remit, they should be involved in any discussions on these points.

**2.7. Response to 9.2**

2.7.1. MMO confirmed the statement made by the Applicant, in relation to imposing conditions on dredging activities, and that the method statement will be reviewed by the MMO and its consultees to ensure it is appropriate.

**2.8. Response to 9.6**

2.8.1. Whilst the MMO did not comment on this matter in the hearing, upon reflection the MMO would like to advise that they agree with the PLA concerns and would also advise that the maximum dredge depths should be based on the sampling carried out to inform the ES. Any depth exceeding that previously sampled for would not have been analysed for sediment contamination or environmental impacts. As there is a known area of contamination within the proposed boundaries of the development, any increase in depth beyond that sampled, risks disturbing contaminated sediment.

**2.9. Response to 5.1**

2.9.1. i. The MMO advised that whilst they are happy with the information currently provided and that exact details will be reviewed upon submission of the piling method statement. The MMO advised that as per the statement of the Applicants noise and vibration specialist in relation to updated piling information being submitted at deadline 3, reconsideration of this activity will be required by the MMO.

2.9.2. ii. The MMO advised that this has been included as a condition of the DML and so as it is controlled in this way it is not required to be included in the Construction Environmental Management Plan (CEMP).

2.9.3. iii. The MMO advised that discussions are ongoing and after review of the piling information to be submitted at deadline 3, any amendments to mitigation will be made if required.

2.9.4. iv. The MMO confirmed that the Applicant has agreed to update this in the next revision of the DML.

**3. Responses to any revised draft DCO (dDCO) or other documents submitted by the Applicant at earlier deadlines**

**3.1. Ecological Mitigation and Compensation Plan (EMCP)**

3.1.1. The MMO had requested sight of this document due to habitats being considered that fall below mean high water springs and therefore within the remit of the MMO. The MMO has reviewed this plan and note that the section on intertidal mud is still under discussion and that despite references to saltmarsh mitigation/compensation being discussed in previous submissions by the Applicant, it has not been included within this plan. The MMO understand that this is a draft and will be updated as discussions with the EA progress, however at this time there is insufficient information to enable the MMO to undertake an assessment of its contents. The MMO note that the discussions are being held with the EA only and have advised the Applicant that NE should also be consulted on any mitigation and/or compensation of important/protected habitats. In its deadline 2 response, the MMO advised that under the Habitats Directive, mitigation/compensation would need to be

considered carefully and in respect to current case law and that NE, as the Statutory Nature Conservation Body, must be consulted.

**3.2. Draft DCO**

3.2.1. The MMO has given comments on the latest draft at deadline 2 and will provide further comments on the next revision of the draft Order.

**3.3. Limits of dredging plan**

3.3.1. The plan submitted at deadline 1 shows the areas of proposed dredging within the red line boundary, however there appears to be inconsistencies between the above works diagram and the cross sections. In the above works plan at C, a non-dredge gap is shown between the berth and approach channel dredge areas however this gap does not appear to be present on the cross section of C. Can the Applicant clarify this?

3.3.2. The MMO would also recommend that, as stated by the PLA, that definite limits are shown rather than proposed or illustrative ones.

**3.4. Sheet 3 of works plans**

3.4.1. It is the MMO's understanding that this document will be updated to align the boundary of the dredging exclusion zone with the red line boundary.

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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