



Historic England

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Our ref: E/Ports/Tilbury2
Your ref: TR030003

Telephone:

5th July 2018

Dear Sir,

**Application by Port of Tilbury London Limited for an Order Granting
Development Consent for a Proposed Port Terminal at the Former Tilbury
Power Station ('Tilbury2'):
Written Responses – Issue Specific Hearings on 27th and 28th June 2018
Deadline 5**

We offer the following written response to the questions set by the Examining Authority as addressed at the Issue Specific Hearings on outstanding Environmental, Planning Policy and Socio-Economic Issues (27th June 2018) and on the draft Development Consent Order (28th June 2018).

Issue Specific Hearing on 27th June 2018

Question 3.13.4 Marine Archaeological Written Scheme of Investigation (WSI)

i. Would Historic England, as historic environment advisor and archaeological curator for the marine environment, and the Marine Management Organisation (MMO) as regulator, inform the Examination of their views of the fitness for purpose of the Marine Archaeological WSI, identifying any areas in their view need to be revised or enhanced?

- 1) The draft Marine Archaeological Written Scheme of Investigation V3 – Clean (Tilbury2 Document Ref: PoTLL/T2/EX/102) requires further revision and we have provided detailed comments to the Applicant (our letter dated 25th June 2018). In summary, if the Applicant wishes to produce a Marine WSI as a Certified



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Document (within the examination period) then it must detail how the proposed project is to be delivered. However, the Applicant is clear that they wish to maintain flexibility in accordance with “Rochdale Envelope” principles and therefore it is our advice that the Applicant produces an outline Marine WSI as appropriate to the examination of this proposed development.

- 2) We have continued to provide advice to the Applicant during this examination and it is apparent that the proposed mitigation measures included within the draft Marine WSI (as referenced above) and their proposed delivery requires amendment before it could be considered as a Certified Document for inclusion in Schedule II of the draft Development Consent Order (DCO). For example the following matters require attention:
 - the practicalities of how anomalies will be investigated prior to initiation of capital dredging and at defined phases during the capital dredging programme; and
 - the use of any “watching brief” as might be employed, as any stage, of this proposed project.
- 3) We add that we would be prepared to accept the draft Marine WSI prepared by the Applicant, as an outline version subject to the inclusion of conditions within the DCO for its production post consent (should consent be obtained). We are clear that this in no way duplicates any effort. The consent conditions are to steer the production of the WSI within an agreed timetable and the outline Marine WSI provides structural content given what is established now about how the project might be delivered.
- 4) We offer this advice based on our work with the ports’ sector to effectively optimise archaeological mitigation measures with timely delivery and decision-making, as demonstrated by our involvement with HMNB Portsmouth for the capital dredge programme for the Queen Elizabeth class aircraft carriers, for over ten years with DP World on London Gateway Port and the Port of Bristol (Deep Sea Container Terminal) Harbour Revision Order 2010. We have also commissioned and published guidance¹ for the sector (including a webinar) and held a training event for port operators, consultants and curators.

ii. With reference to Section 6 of the Marine Archaeological WSI, which considers potential impacts on the marine archaeology, and Section 7 which considers mitigation, as Historic England and MMO satisfied with these proposed mitigation measures?

- 1) Table 4 (mitigation measures), we are not satisfied inasmuch that the following text requires amendment because there are no “...remaining medium and low potential geophysical anomalies” as no AEZ have yet been identified for any in-situ archaeological remains of high archaeological potential. Therefore, all (potential)

¹ <https://content.historicengland.org.uk/images-books/publications/assessment-management-marine-archaeology-port-and-harbour-development/6801-ports-and-harbours.pdf/>



geophysical anomalies should be investigated as part of any seabed investigation campaign, for example, as might be associated with UXO investigation and clearance. Furthermore, the statements made in 5.4.22 regarding geophysical anomalies already identified requires more attention as part of this draft Marine WSI to address matters highlighted in section 5.3 regarding variable survey data quality.

- 2) We also direct your attention to statements regarding “archaeological assessment of the footage...” which implies visual inspection although given zero visibility conditions, attention should be on geophysical interpretation and any audio recording of archaeological divers as they might examine identified anomalies. We add that a proposed “...sampling strategy and methodology...” is likely to be defined and outlined in a task specific Method Statement, post consent (should approval be obtained) and must be clear about what is to be targeted as identified from geophysical survey or ROV/diver survey or even selected at “random or systematic sample points across the dredge area.” We add that such action should be completed before capital dredging starts.
- 3) Reference is made to a watching brief to be conducted during “...any and all backhoe dredging work close to identified receptors of archaeological potential attended by a suitably qualified archaeologist.” However, we must again question the viability of this approach, especially in areas of identified high sediment contamination whereby a closed bucket on the backhoe dredger will be used with dumping occurring into a covered barge for secure disposal onshore.
- 4) Table 3 (Impact Zone of Influence) states that dredging may cause “indirect changes to sedimentary regimes due to removal of sediment” which is considered by HR Wallingford (in ES Appendix 16.D: Hydrodynamic Sediment Modelling; Document Ref: 6.2 16.D), to be “minor and localised”. In reference to draft Marine WSI Figure 6 (LiDAR survey of intertidal zone of MSA and bathymetry of subtidal zone of MSA), while this provides an illustration, it is not immediately apparent how this provides a measured elevation (or gradient) baseline against which any change might be measured.
- 6) The draft Marine WSI, paragraph 6.4.2, contains important statements regarding indirect and direct construction effects linked to sediment mobilisation and that it is anticipated, by HR Wallingford, that there will be minimal changes in either accretion or erosion within the foreshore, intertidal or riverbed zones within the Study Area. However, the Study Area is of considerable spatial extent whereby such a statement regarding “minimal changes” might be considered proportionate. It still remains an important matter to highlight that specific attention should be given to adjacent foreshore levels, especially to the west of the proposed development area. We also supplied comments regarding this matter in our Written Representation, which the Applicant has declared is not a relevant matter and one not requiring further attention in terms of a mitigation package. We do not agree with their position.



iii. In the event of an Archaeological Exclusion Zone (Section 7, Table 4) or Temporary Exclusion Zone (Section 9, paragraphs 9.13.18 and 9.13.27) being implemented within the dredging zones, would the Applicant State what its plans are for completing dredging to the necessary depths and completing subsequent works for the Proposed Development, with impacts on the timetable?

- 1) We appreciate that this question is directed to the Applicant, but we offer the following advice that more anomalies of possible archaeological interest might exist within the proposed development area. For example, paragraph 5.4.22 identifies 116 anomalies of archaeological potential, which merit further investigation. However, this assessment requires revision in consideration of the wider area identified for capital dredging as illustrated by *Revised Limits of Dredging Plan Tilbury 2* (Document Ref: POTLL/T2/EX/45), in particular see transect B. We suggest that Coordination with UXO assessment is clearly relevant given the statement made in the desk-based report *Detailed UXO Risk Assessment* (ES Appendix 15.E; Document Ref: 6.2.15.E) regarding German UXB risk, in the Executive Summary of this report, third bullet point, it states that: "It should be noted that of significant concern is the open stretch of water at the southern end of site."
- 2) The above referenced UXO assessment report identified the following mitigation measures inclusive of:
 - marine intrusive Magnetometer Survey of all borehole and pile locations down to a maximum bomb penetration depth;
 - for dredging in water a non-intrusive UXO survey using magnetometer; and
 - UXO Marine Specialist Presence on site to support shallow intrusive works (as described in Section 3 [role of commercial UXO contractors]).
- 3) Draft Marine WSI, Section 9.8 (Awareness Training), it is apparent to us that any awareness training for any dredging contractors must occur prior to any activity conducted to clear obstructions or any other identified anomalies, as necessary to facilitate any capital dredging works employing Water Injection Dredging or Backhoe dredging. This matter is briefly mentioned in paragraph 9.8.8 and this entire section should be revised to reflect the reality of the proposed pre-dredging clearance operations and the likelihood of any capital dredging phase to effectively implement any reporting protocol. Paragraph 9.8.12 should therefore be revised to equally capture periodic visits to any pre-dredge clearance operations.

iv. Would the Applicant state the measures that it proposes to put in place with regard to UXO during piling and dredging operations?

- 1) We appreciate that this question is directed to the Applicant, but we offer the advice that re-survey and analysis should be introduced at set dredge levels during the overall programme of bed lowering; this is an approach effectively implemented for other harbour capital dredging works. The UXO risk assessment report (Appendix 15.E) is desk-based and states that "the exact scope of intrusive works is not known."



3.13.5 Terrestrial Archaeology Written Scheme of Investigation (WSI). With regard to the Terrestrial Archaeology WSI submitted by the applicant at Deadline 4 [REP4-023]

i. Would Historic England, as historic environment advisor and archaeological curator for the terrestrial environment, TC as local authority, and ECC, where appropriate, inform the Examination of their views of the fitness for purpose of the Terrestrial Archaeological WSI, identifying any areas that in their view need to be revised or enhanced?

We can confirm that the Written Scheme of Investigation (WSI) for Terrestrial Archaeology submitted by the applicant has been agreed with Historic England and that there are no areas which need revision or enhancement.

ii. With reference to Section 5 of the Terrestrial WSI, which considers mitigation measures, are Historic England and TC satisfied with these proposed mitigation measures?

Historic England is satisfied with the proposed mitigation measures set out in Section 5 of the Terrestrial Archaeology WSI.

iii. With reference to Appendix 1 of the Terrestrial WSI, are Historic England and TC satisfied with the WSI for Geoarchaeological and Palaeoenvironmental Assessment? Historic England has agreed the WSI for Geoarchaeological and Palaeoenvironmental Assessment set out in Appendix 1 of the Terrestrial WSI.

It should be noted that while these documents have been recorded as being agreed in the unsigned Statement of Common Ground between Port of Tilbury London Limited and Historic Buildings and Monuments Commission for England (Historic England), Historic England continues to advise that their implementation should be secured by the requirements in the draft DCO which we set out in our Deadline 3 submission, Section 2.1.

3.15.2 Visual Impacts on Tilbury Fort. With reference to the Applicant's and Historic England's response at deadline 4 [REP4-009] and ExA's SWQs [PD-010] Q2.15.2, in which Historic England cites discussions with the Applicant concerning the scope for further mitigation in relation to Historic England's assessment of residual harm to the significance of Tilbury Fort.

Would Historic England update the Examination on the progress of these discussions on this matter?

The situation is as set out in our letter at Deadline 4 (2.15.2). The applicant and Historic England held a conference call on 18th May 2018. The areas of discussion included the layout of container stacking to reduce visual impact on the setting of Tilbury Fort and the use of an agreed palette of colours and finishes for structures within the development. No further meetings have taken place to date. While Historic England believes that none of the measures would mitigate the residual



effects of the development to a degree that would lead us to agree with the applicant's assessment, we welcome such measures and expect these discussions to continue.

Issues Specific Hearing on the Applicant's Draft Development Consent Order 28 June 2018

3.8.20 Schedule 2: Requirements R3 External Appearance and height of authorised development. With reference to Historic England's response at deadline 4 [REP 4-009] to ExA's SWQs [PD-010], Q2.8.37

i. Would Historic England update the Examination on the progress of their discussions?

The situation is as described by Historic England at Deadline 4. The applicant has consulted Historic England on a draft General Specification for Finishes within the Permitted Development of Tilbury2. There have been no further discussions to date, but Historic England expects further discussions regarding this matter will be forthcoming.

3.8.21 Schedule 2: Requirements, R6 Terrestrial written scheme of archaeological investigation. With reference to the revised Terrestrial Written Scheme of Investigation (WSI) submitted by the applicant at Deadline 4 [REP4-023]

i. Would Historic England confirm that it is content with the revised WSI?

Historic England is content with the revised WSI. We comment on how we advise it should be secured via the DCO under question 3.8.29.

3.8.27 Schedule 9 Deemed Marine Licence. With reference to the Applicant's, MMO's and Hist. E's responses at deadline 4 [REPO-020, REP4-003,] to ExA's SWQ [PD-010]:

i. Would the Applicant and MMO update the Examination on the status of Schedule 9, highlighting any areas still to be resolved?

We have no additional comment or other advice to offer.

ii. In particular, would the Applicant and MMO state whether agreement has now been reached on maintenance dredging (item iii), the 14 hour non-piling window (item v.), piling at weekends (item vi), boundaries for water injection dredging (item vii) and maximum dredging depths (item x)?

We have no additional comment or other advice to offer.



iii Re item xi, would Hist. England whether it is content with the Marine Written Scheme of Investigation (WSI) submitted by the Applicant at Deadline 4 [REPO4-021]?

- 1) We provided a response regarding the draft marine WSI submitted at Deadline 4 in our response to Q 3.13.4 in that the present draft document (Ref: PoTLL/T2/EX/102) should not be considered as finalised. We therefore are satisfied that it is not included in Schedule 11 (Documents to be certified) as provided within the draft DCO (Revision 3 of the Draft Development Consent Order – Clean; Tilbury2 Document Ref: PoTLL/T2/Ex/109).
- 2) It is apparent from the draft document in paragraph 1.2.9 where it states that: “It is understood that the two options currently being considered are water injection dispersal (WID) dredging and backhoe dredging or a combination of these techniques.” We consider this matter is too uncertain to merit consideration of this document as a project specific Marine WSI i.e. a Certified Document; this matter was highlighted by the Applicant in the Issue Specific Hearing on 27th June 2018, whereby reference was made to how the (draft) Marine WSI provides an outline.
- 3) We are satisfied that as an outline (draft) Marine WSI the document (as referenced above) is sufficient to support the application through the examination process. The essential matter to be addressed is that adequate provision is included within the draft Deemed Marine Licence (DML) for the production of a project-specific Marine WSI in accordance with an agreed timetable for project delivery. We appreciate and accept that the Applicant has designed their application to accord with “Rochdale Envelope” (i.e. design envelope) principles and that there will be elements of the project and its delivery that will be finalised post consent (should approval be obtained).
- 4) At the Issue Specific Hearing on 27th June, we asked for detail regarding enactment of the WSI during the proposed capital dredging programme, but were told by the Applicant that this was a level of detail which was not yet prepared. We must take this to mean that the primary intention for this draft document is to illustrate how mitigation measures might be enacted post-consent and therefore this places the emphasis on including provisions within the Deemed Marine Licence (DML) for the production of a project-specific WSI.
- 5) We must also clarify a misconception at the Issue Specific Hearing on 27th June 2018, whereby the Applicant appeared to be under the impression that conditions in a DML would be used to produce an “outline” WSI post-consent; this is incorrect.
- 6) The outline WSI is included within the application to illustrate how archaeological mitigation could be delivered given the level of detail available at time of examination as proportionate to mitigate for possible significant effects. The use of conditions in a Deemed Marine Licence is to produce a project-specific WSI post consent, in consultation with national and local Curators, and in agreement with the regulatory authority, the Marine Management Organisation (MMO).



iv. Would PLA, NE, MMO Hist. E, and EA in particular give their views on the DML to be included in the Applicant's updated version of the dDCO requested to be submitted by 20th June 2018?

1) We previously provided conditions for how a marine WSI should be provided for in a DML in our submission at Deadline 3 (dated 30th April 2018). We continue to request that such conditions, subject to agreement with the MMO, are included within the draft Deemed Marine Licence, as offered here:

- A written scheme of archaeological investigation in relation to the Order limits seaward of mean low water, which must be submitted at least six months prior to commencement of the licensed activities and should accord with an outline Written Scheme of Investigation and industry good practice, in consultation with Historic England and the relevant planning authority to include—

(i) details of responsibilities of the undertaker, archaeological consultant and contractor;

(ii) a methodology for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;

(iii) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within three months of any survey being completed;

(iv) any archaeological reports produced in accordance with these conditions are to be agreed with the Historic Buildings and Monuments Commission for England and the relevant planning authority.

(v) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones;

(vi) monitoring of archaeological exclusion zones during and post construction;

(vii) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS (Online Access to the Index of archaeological investigationS') form with a digital copy of the report within six months of completion of construction of the authorised scheme, and to notify the MMO and the relevant planning authority that the OASIS form has been submitted to the National Record of the Historic Environment within two weeks of submission;

(viii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction and operation of the authorised scheme;



(ix) a timetable for all further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the Order Limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities.

(x) The Consent Holder shall not commence construction of a relevant work until the Consent Holder has appointed the Retained Archaeologist to ensure the delivery of the Scheme; and carried out the pre-construction archaeological work applicable to that relevant work. During delivery of a relevant work, the Consent Holder will secure the implementation of the measures on its part set out in or from time to time agreed pursuant to the Scheme applicable to that relevant work (other than the pre-construction and the post-construction archaeological work).

(xi) Following the completion of construction of a relevant work, the Consent Holder will secure the implementation of all the post-construction archaeological work applicable to that relevant work; and

(xii) Any work executed or undertaken by or on behalf of the Consent Holder in accordance with the Scheme approved or deemed to be approved by MMO shall not relieve the Consent Holder of any liability.

- Plans and documentation:
 - (i) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive seabed works must only take place in accordance with a specific written scheme of investigation which has been submitted to and approved by the MMO.
 - (ii) Each programme, statement, plan, protocol or scheme required to be approved under Condition 2 must be submitted for approval at least four months prior to the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

It is Historic England's advice that these provision in the draft Deemed Marine Licence are justified for the following reasons:

1. The Applicant has explained that detailed design about how the project is to be delivered, should consent be obtained, will be decided post-consent and therefore the conditions in the Deemed Marine Licence will allow for a timely production of a WSI (based on the outline WSI used at time of examination) that is in place prior to commencement (as defined in DCO Art. 2) given that "environmental surveys and investigations" may occur before the project (formally) "commences".
2. The Marine WSI produced post consent can be prepared in recognition of any contracted party formally identified for the delivery of the project.



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3. It is only through the application of Consent Conditions that there is an explicit and enforceable mechanism to connect the WSI with the delivery of any consented project within a coordinated timetable and associated project delivery plan. These requirements within the Deemed Marine Licence make it clear that no survey, investigation or seabed/foreshore works may commence before the production of a Marine WSI agreed with the Regulator and thereby enacting subsequent Method Statements that direct the implementation of archaeological mitigation measures. The inclusion of such provision within the Deemed Marine Licence is the only identifiable mechanism to address the risks identified by this proposed project and in no way duplicates any of the detail provided within the WSI, which is specifically designed to define archaeological mitigation methodologies.

3.8.29 Updated dDCO at 20 June 2018. With reference to the Applicant's updated version of the draft DCO requested by the ExA to be submitted by 20 June 2018

Would Historic England give its views on the updated dDCO?

- 1) Those matters concerning Historic England are principally covered in Schedule 2:
- 2) R3. External Appearance and Height of Authorised Development: Historic England has commented on the progress of discussions regarding this under 3.8.20 above and has no further comment.
- 3) R12. Lighting Strategy: we have no further comment.
- 4) R6. Terrestrial Written Scheme of Investigation: Historic England continues to advise that the implementation of the Terrestrial written scheme of investigation should be secured by more detailed requirements than that currently in the dDCO. We set out what we consider these should be and the reasons for them in our Deadline 3 submission, following the previous issue specific hearing, and reproduce them here for ease of reference (no requirement regarding failure to agree a Written Scheme of Investigation is now needed since we have agreed the content of this document):
 - No archaeological investigations shall be carried out until a method statement, which shall accord with the approved Archaeological Scheme of Investigation (WSI), is submitted to and approved by the relevant planning authority in consultation with the HBMCE.
 - The authorised investigations shall be carried out in accordance with the approved details by a suitably qualified person or persons.
 - No ground works which are subject to a requirement for archaeological investigations can commence until the archaeological mitigation measures have been implemented in accordance with the approved method statement.



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- 5) Historic England believes that the requirements in the DCO are justified for the following reasons:
1. Requirement 1 relates to the approval by the relevant planning authority and Historic England of the individual method statements which will be drafted post DCO decision. It is necessary that this should be highlighted in the DCO for clarity of process.
 2. Requirement 2 is necessary given that the archaeological contractors are not specified in the WSI, and may change over the course of the project.
 3. Requirement 3 is necessary given that there is no statement to this effect in the WSI. The requirement via the DCO would make explicit that no ground works may commence before the implementation of any archaeological mitigation to which they are subject. To include this in the DCO highlights the necessity of all parties complying with this requirement, without which there is a risk that ground works might start without the implementation of the mitigation strategy.

Other Matters

Schedule 11: The reference for the terrestrial Written Scheme of Investigation is incorrect. This should refer to v3 (POTLL/T2/EX/104).

Yours sincerely,



Christopher Pater
Head of Marine Planning

Cc Debbie Priddy (Inspector of Ancient Monuments – Historic England, East of England)



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