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Our Ref: WW010001

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Dear James

The Thames Tunnel – outstanding matters from Meeting on 17 April

Thank you for your detailed agenda and list of questions which you sent in advance of the meeting on 17 April, with your colleague Sarah Beattie and members of the Thames Tunnel team. I apologise for not responding sooner.

This letter seeks to follow up 2 items that were discussed at the meeting and which were not covered in detail in the Meeting Note that has recently been published on our website. Those matters relate to your questions about temporary structures and also the definition of transboundary effects.

Temporary structures

The scope of the project for which you want to obtain development consent should be clear and should be the subject of pre application consultation and environmental impact assessment. On this basis the application should identify whether structures are temporary.

You will need to obtain your own legal advice upon which you can rely when deciding the appropriate approach but points to consider which may be helpful are:

- If you are seeking development consent for any permanent structure which is for the benefit of third parties and not solely for the construction and use of the NSIP consider whether the structures are associated development for which development consent may be granted under s115 or whether such structures should be consented under the Town and Country Planning Act 1990 at the appropriate time

- If structures may lawfully be consented under s115, consider whether development consent can lawfully be sought for a temporary option and a permanent option (providing flexibility) and how requirements (for example providing for removal/reinstatement as appropriate) would secure mitigation of impacts in both circumstances.

- Whatever approach is taken, the impacts of structures must be assessed at construction, operation and decommissioning stages. The impacts of a permanent structure may be different to the impacts of a temporary structure.

We would advise you to discuss this matter with the relevant LPA.

Off shore development and transboundary effects

"Offshore development" is not defined for the purposes of the publicity requirements in Regulation 4 of the APFP. "Marine area" is however defined (for the purposes of identifying prescribed consultees) as being waters in or adjacent to England up to the seaward limits of the territorial sea". One reasonable approach to defining "offshore development" might therefore be any development located in waters below the mean low water mark or boundary of inland waters up to the territorial limit.

It is noted that the project comprises certain elements (including temporary works) which extend below the low watermark of the Thames. On the basis of the above non statutory approach it could be considered that the application includes some offshore development and therefore "relates" to offshore development. What is more, if you conclude that the application includes development within the marine area and are consulting MMO in accordance with s42 (1) (aa) (because the development would affect, or would be likely to affect, waters in or adjacent to England up to the seaward limits of the territorial sea) and prescribed bodies such as the Maritime and Coastguard Agency because the circumstances in Column 1 of the APFP Schedule apply, then a consistent and reasonable approach would be to consider that the application also relates to offshore development for the purposes of Regulation 4 (2) (d).

The effect of undertaking publicity in accordance with Regulation 4 (2) (d) is to alert those who might otherwise not have been consulted to the development. This will allow any responses (for example on shipping or fishing impacts) to be addressed before the application is submitted.

If you take the view that the application does not relate to offshore development you should explain the basis (providing legal definitions) on which you take this view and explain the approach which has been taken to consultation and publicity in accordance with APFP in the consultation report. It will then be for the Secretary of State, before deciding whether or not to accept the application, to consider whether there has been compliance with pre application procedure.

It is not a statutory requirement to provide a marine plan or chart with the application. You may wish to confirm whether the MMO would find such a plan helpful.

You should also be aware that the Planning Inspectorate on the Secretary of State's behalf will be screening the application to determine whether there are any transboundary effects. Please refer to our Advice Note 12 on Transboundary Impacts Consultation: http://infrastructure.planningportal.gov.uk/wp-content/uploads/2012/03/Advice-note-12.pdf

A development which comprises offshore elements does not necessarily have significant effects on the environment of other EEA states and it would be helpful if you could use the screening matrix contained in Annex 4 of Advice note 12: http://infrastructure.planningportal.gov.uk/wp-content/uploads/2012/03/Advice-note-12-AnnexesV2.pdf

I hope the above information is helpful. Please contact us if you require further assistance.

Yours sincerely

Mark Wilson
Principal Case Manager

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.