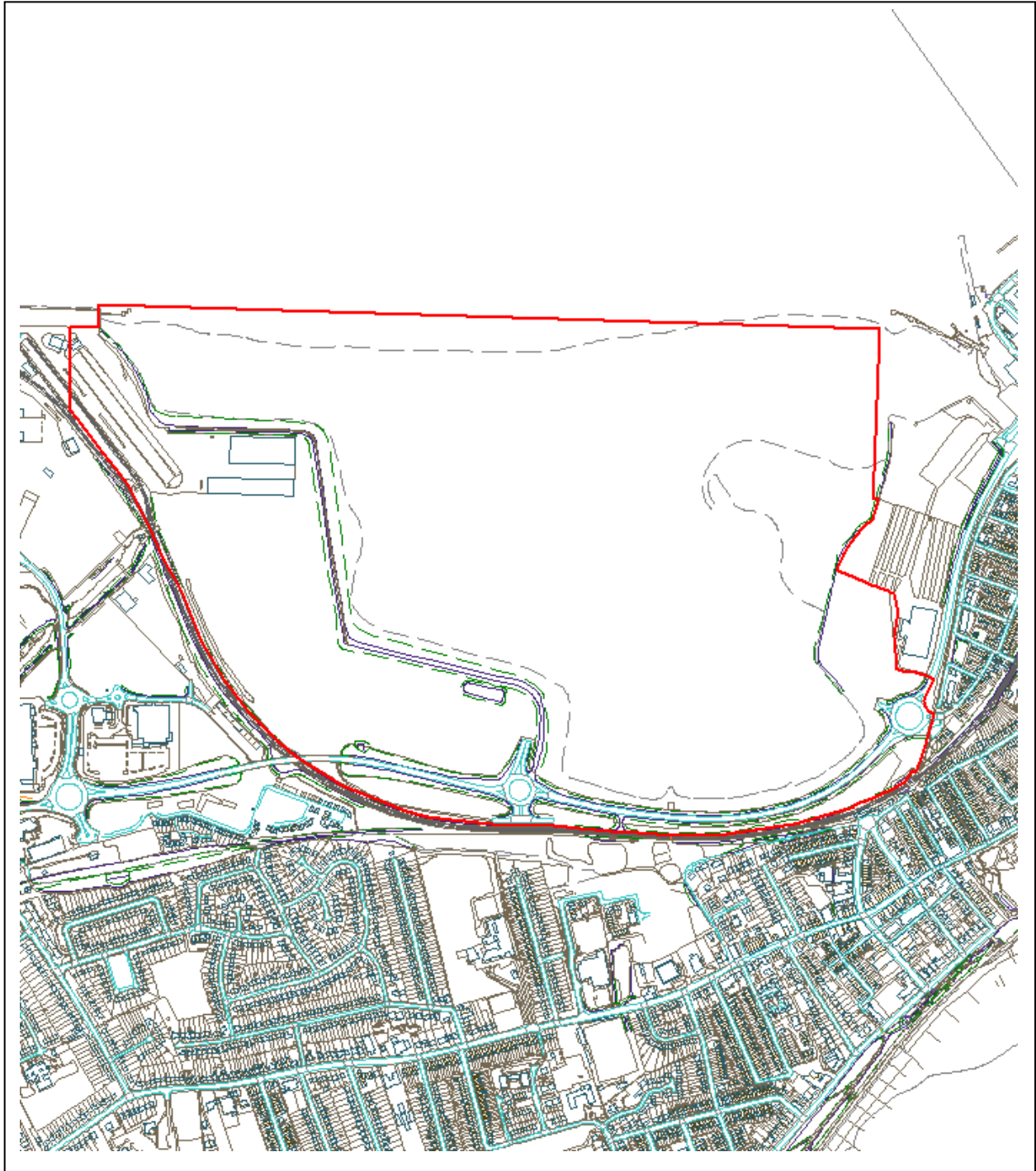


DEVELOPMENT CONTROL COMMITTEE

06 JANUARY 2011

REPORT OF THE INTERIM HEAD OF PLANNING

A.3 PLANNING APPLICATIONS – 10/00201/FUL - BATHSIDE BAY, STOUR ROAD, HARWICH



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Application:	10/00201/FUL	Town / Parish:	Harwich Town Council
Applicant:	Hutchinson Ports (UK) Ltd		
Address:	Bathside Bay Stour Road Harwich		
Development:	Application under Section 73 of The Town and Country Planning Act 1990 (as amended) to vary Conditions 3 (phasing), 45 (Highways), 46 (Highways) and 47 (Highways) and to delete and replace Conditions 41 (Highways), 42 (Highways), 43 (Highways) and 44 (Highways) attached to planning permission 03/00600/FUL.		

1. Executive Summary

- 1.1 The applicants have applied, under section 73 of the Town and Country Planning Act 1990 ("the Act"), for permission to develop Bathside Bay as a container port without complying with conditions 3 or 41-47 of the 2006 container port permission. Those conditions would be replaced in the new permission by fresh conditions. Members should note that the remaining 2006 permissions and the 2006 Listed Building Consent are unaffected by the present application
- 1.2 On a section 73 application, the Council should consider only the questions of the conditions to be imposed on the planning permission. Although consideration must also be given to the planning merits of the application, the Council is not entitled to re-write the original permission altogether.
- 1.3 The intention of this application is not to release HPUK from its obligations to mitigate the impacts of the proposed development. Instead it would allow the provision of off-site highway infrastructure to be phased so as to relate to the container terminal use rather than other uses without similar traffic generation effects.
- 1.4 The main considerations in the assessment of this application relate to the reasons for the application; the proper approach; planning policy, environmental and phasing/highway considerations; other material considerations and legal issues.
- 1.5 Officers are of the view that this application conforms to the material policies in the statutory development plan; that appropriate environmental assessments have been undertaken; that the previous decision of the Secretary of State is a highly relevant material consideration; that the proposed change of conditions does not upset the balance in favour of development reached by the Secretary of State after a lengthy public inquiry into the merits of a container port at Bathside Bay; and that the reason for the application in the current economic climate is also a significant material consideration.
- 1.6 The updates and justification provided accords with legislation and planning guidance. Accordingly, the application is recommended for approval.

Recommendation:

The Interim Head of Planning (or the equivalent authorised officer) be authorised to grant planning permission for the development subject to:

- A) Within 6 months of the date of the Committee's resolution to approve, completion of a legal agreement or agreements under the provisions of section 106 of the Town and Country Planning Act 1990 dealing with the following matters (and any further terms and conditions as the Interim Head of Planning (or the equivalent authorised**

officer) and/or the Head of Legal Services and Monitoring Officer in his or her discretion consider appropriate):

- **Monitoring fees**
- **Accretion land;**
- **Small Boat Harbour;**
- **Little Oakley Managed Realignment;**
- **Travel Plan;**
- **Air Quality/Noise Monitoring;**
- **Local Employment;**
- **Sound Insulation Grants;**
- **Wetland Zone;**
- **Tree Planting;**
- **Listed Building Maintenance and Conservation Area contribution;**
- **Cycling and Pedestrian Improvements;**
- **Harwich International Port (HIP) Lighting;**
- **Legal Fees; and**
- **Remote Railway works.**

and

- B) Planning conditions in accordance with those set out in Appendix A below (but with such amendments and additions, if any, to the detailed wording thereof as the Interim Head of Planning (or the equivalent authorised officer) in their discretion considers appropriate.**

Otherwise:

- (C) The Interim Head of Planning (or the equivalent authorised officer) be authorised to refuse planning permission and listed building consent in the event that such legal agreement or agreements are not completed within the period of six months, contrary to Policy QL12.**

Reason for Approval:

The Development Plan for the site comprises the East of England Plan 2008 and the Tendring District Local Plan 2007.

Consideration of the proposal has taken full account of the following:

- The Secretary of State's letter (in which he was minded to approve planning permission) dated 21 December 2005;
- The Secretary of State's decision letter dated 29 March 2006 that granted planning permission for : the reclamation of Bathside Bay and development to provide an operational container port; a small boat harbour; creation of an estuarine and coastal habitat through a managed realignment of coastal defences; and, partial demolition and works to the listed Train Ferry Gantry;
- The report of the Inspector, K.G. Smith BSc (Hons) MRTPI, to which reference is made in the Secretary of State's letters;
- The Section 106 Legal Agreement and Deed of Variation (dated 15 October 2004 and 23 March 2006 respectively) that included, amongst other things, the provision of the small boat harbour; the delivery of the managed realignment; and the approval and

implementation of a package of works to widen the A120 Trunk Road;

- The documentation accompanying applications 03/00600/FUL; 03/00601/FUL 03/01200//FUL and 03/00602/FUL including the Environmental Statement dated April 2003 and Additional Information dated September 2003 provided under Regulation 19 of the Environmental Impact Assessment Regulations 1999;
- Harbour Revision Order dated 17 March 2010;
- The documentation accompanying applications 10/00201FUL; 10/00202FUL; 10/00203/FUL; and 10/00204/LBC including the Supplemental Environmental Statement dated 23 February 2010 and the Supplementary Traffic Assessment dated 23 February 2010;
- The current economic recession and reduction in global trade which has resulted in a temporary stagnation of demand for container traffic; and
- The consultation responses from all statutory and non statutory consultees and all other representations made in relation to the proposal.

Appropriate weight has been given to protected species and biodiversity interests of the Special Protection Area (SPA), made up of the Stour Estuary SSSI and the Orwell Estuary SSSI, and the wider environment in accordance with the requirements of the Conservation of Habitats and Species Regulations 2010; PPS 9 Biodiversity and Geological Conservation (2005); and the relevant policies of the Development Plan, with which the proposal complies.

Full account has been given to the impact of the proposal on the highway network. Regard has been had to the transport information provided in the Environmental Statement dated April 2003 and the Supplementary Traffic Assessment dated 23 February 2010. In consultation with the Highways Agency and Essex County Council (as the local highway authority) it is considered that, subject to the imposition of controlling conditions to secure improvements to the network and the phasing of development, the A120 (T) will be protected as part of the national strategic road network and the requirements of road safety for the A120 and connecting side roads will be maintained.

An assessment has been made that the proposals would adversely affect the integrity of the SPA. However, it is concluded that there is an overriding need for a container port at Bathside Bay to meet the national need for container capacity in the UK (Draft National Statement for Ports 2009) and that the proposal would bring significant economic and regeneration benefits to an area that is recognised as a Priority Area for Economic Regeneration. There are no alternative solutions. Imperative Reasons of Overriding Public Interest exist. Adequate compensatory measures have been proposed.

For these reasons the development proposal is seen as fulfilling a national need which seeks to achieve improved economic performance whilst balancing social, transport, historic environment; and environmental considerations.

2. Planning Policy

National Policy:

Draft National Statement for Ports (2009)

PPS1 Delivering Sustainable Development

PPS4	Planning for Sustainable Economic Growth
PPS5	Planning for the Historic Environment
PPS7	Sustainable Development in Rural Areas
PPS9	Biodiversity and Geological Conservation
PPG13	Transport
PPG20	Coastal Planning
PPS23	Planning and Pollution Control
PPG24	Planning and Noise
PPS25	Planning and Flood Risk

Regional Planning Policy:

East of England Plan (2008)

SS1	Achieving Sustainable Development
SS5	Priority Areas for Regeneration
SS9	The Coast
E1	Job Growth
E2	Provision of Land for Employment
T1	Regional Transport Strategy Objectives and Outcomes
T6	Strategic and Regional Road Networks
T9	Walking, Cycling and other Non-Motorised Transport
T10	Freight Movement
T11	Access to Ports
T14	Parking
T15	Transport Investment Priorities
ENV1	Green Infrastructure
ENV2	Landscape Conservation
ENV3	Biodiversity and Earth Heritage
ENV6	The Historic Environment
ENV7	Quality in the Built Environment

WAT1	Water Efficiency
WAT4	Flood Risk Management
HG1	Strategy for the Sub-Region
HG2	Employment Generating Development
HG3	Transport Infrastructure

Local Plan Policy:

Tendring District Local Plan (2007)

QL2	Promoting Transport Choice
QL3	Minimising and Managing Flood Risk
QL5	Economic Development and Strategic Development Sites
QL6	Urban Regeneration Areas
QL9	Design of New Development
QL10	Designing New Development to Meet Functional Needs
QL11	Environmental Impacts and Compatibility of Uses
QL12	Planning Obligations
ER16	Tourism and Leisure Uses
COM15	Coastal Water Recreation Facilities
COM20	Air Pollution/Air Quality
COM21	Light Pollution
COM22	Noise Pollution
COM23	General Pollution
COM29	Utilities
COM32	Sea Defences
COM33	Flood Protection
COM35	Managed Realignment
EN1	Landscape Character
EN6	Biodiversity
EN6b	Habitat Creation

EN11a	Protection of International Sites – European and Ramsar
EN11b	Protection of National Sites – SSSI
EN13	Sustainable Drainage Systems
EN17	Conservation Areas
EN20	Demolition within Conservation Areas
EN21	Demolition of a Listed Building
EN22	Extensions or Alterations to a Listed Building
EN23	Development within the Proximity of a Listed Building
EN29	Archaeology
TR1a	Development Affecting Highways
TR1	Transport Assessment
TR2	Travel Plans
TR5	Provision for Cycling
TR6	Provision for Public Transport Use
TR7	Vehicle Parking at New Development
TR10	Promoting Rail Freight
HAR1	Bathside Bay
HAR4a	Harwich Master Plan
HAR8	Tourism
HAR10	Waster Based Recreation and Marina Development
HAR16	Port Development

Tendring Local Development Framework Core Strategy and Development Policies – Proposed Submission Document

HA1	Harwich
SSP1	New Jobs
SSP3	Improving the Strategic Transport Network
CP3	Securing Facilities and Infrastructure
CP4	Transport and Accessibility
CP6	Tackling Climate Change

CP7	Flood Risk, Coastal Change and Water Conservation
CP8	Nature Conservation and Geo-Diversity
CP9	The Historic Environment
CP10	The Countryside Landscape
CP12	Regeneration Areas
CP13	Employment Sites
CP14	Freight Transport
DP1	Design of New Development
DP5	Landscape Impacts
DP7	Development in Conservation Areas
DP8	Development Affecting Listed Buildings
Project 12	Port Expansion at Bathside Bay

3. Relevant Planning History

89/02099/OUT	Proposed industry & warehousing area, business park, housing, retail park, hotel & leisure complex, open space, site for primary school, local shops and community centre, heritage centre, mooring basin, footpaths, associated roadworks, landscaping and reclamation of the southern end of Gas House Creek.	Approved	04.03.1992
00/00153/FUL	Variation to Condition 03(a) as modified by TEN/98/0052	Approved	29.03.2000
91/00985/DETAIL	Erection of 57 residential units	Approved	10.03.1992
95/01439/FUL	(Reclaimed Land at Bathside Bay, Harwich) Variation of 5 conditions (No's. 4, 7, 11, 22 and 27) and amendment to master plan land use allocations granted permission under reference TEN/2099/89	Approved	26.03.1996
96/01321/DETAIL	(Land at Bathside Bay, adjacent to Gas House Creek, off Stour Road, Harwich) Retail development comprising: Factory/Discount Outlets of varying sizes and public toilets	Approved	16.04.1997
98/00052/FUL	(Bathside Bay situated between Parkeston Quay and) Variation to condition 3(a) of	Approved	02.06.1998

consent TEN/2099/89 to read within a period of 8 years commencing on the date of this notice

03/00600/FUL	Reclamation of Bathside Bay and development to provide an operational container port; such works comprising:- Engineering and reclamation works including construction of a cofferdam and 1.4 km quay wharf; Construction of a concrete block paved container handling and stacking facility with 11 quayside cranes and 44 Rubber Tyre Gantry (RTG) cranes and associated workshop, customs control, Border Inspection Post and mess buildings, substations, fuelling station and mast and crane mounted lighting; Development of a 6.13 ha rail terminal with 3 rail gantry cranes and heavy duty container transfer area linked to existing rail facilities; Associated office building, logistics facility, car and HGV parking and driver facilities; Site works, including additional hardstanding, structural landscape and mounding, wetland buffer, access internal estate roads and perimeter fencing.	Approved	29.03.2006
03/00601/FUL	Development of a small boat harbour comprising; construction of a cofferdam wall and breakwater; reclamation; sheltered moorings for boats and wave wall; slipway and boat storage and tender compounds; public viewing and seating areas; Fisherman's store and fuel facility; and site works including access road, car parking and lighting, fencing and landscape mounds.	Approved	29.03.2006
03/00602/LBC	Partial demolition of the long berthing arm attached to the listed Train Ferry Gantry and associated remedial works.	Approved	29.03.2006

4. Consultations

Manningtree Town Council	The Councillors are interested to know how the whole project will affect the tidal surge and possible scouring in the upper reaches of the estuary.
Harwich Town Council	Harwich Town Council supports the replacement conditions as long as there is no change to the original planning permission given for the provision of a container port.
Mistley Parish Council	Providing the road improvements are completed prior to the Container Terminal becoming operational the Council does not seek to object to this application.
Wrabness Parish Council	No objection as long as there no more lorry movements on the A120 than at present and the A120 must be upgraded.

Anglian Water Services Ltd	No response received.
Babergh District Council	No response received.
Campaign to Protect Rural England	No response received.
National Air Traffic Services	No safeguarding objections to this proposal
CEFAS	No response received.
EEDA	No response received.
East of England Local Government Association	Beyond noting the important role that the Haven Gateway ports play at a regional and national level and, that the development at Bathside Bay accords with policies T10, T11 and HG2 of the East of England Plan, the East of England LGA has no further comment to make at this time.
East of England Tourist Board	No response received.
English Heritage	See Agenda Item No.1.
EDF Energy Networks	No response received.
Environment Agency	No objection to the variation of the conditions as there are no flood risk implications associated with them.
Essex Bridleways East of	No response received.
Arch. Liaison Off, Essex Police	No response received.
Essex Wildlife Trust	No response received.
ECC Strategic Planner	No response received.
ECC Highways Dept	The Highway Authority would not wish to raise an objection to the above application subject to the following requirements: Were the local planning authority minded to grant planning permission it is in accordance with the Highways Agency's TR110 dated 28 July 2010.
Essex County Fire Officer	No response received.
Department For Environment Food and Rural Affairs	No response received.
Department For Business Innovation and Skills	No response received.
Harwich Haven Authority	No response received.

Haven Gateway Partnership	In accordance with the action plan approved by the Haven Gateway Board on 14 October 2010, I am writing in support of the current planning applications ref 10/00201/FUL, 10/00202/FUL, 10/00203/FUL and 10/00204 LBC. The proposed development of Bathside Bay is a crucial opportunity for the Haven Gateway to achieve its economic potential and the Haven Gateway Partnership is very supportive of the principle of ensuring that this opportunity is maintained and remains available to be taken forward as market demand dictates.
Health and Safety Executive	No response received.
Highways Agency	Directs conditions to be attached to any planning permission which may be granted.
HM Railway Inspectorate	No response received.
Marine and Fisheries Agency	No response received.
Natural England	Based on the information provided, Natural England does not object to the above S.73 applications to vary the time limit and make other changes to the conditions attached to the existing planning permission 03/00600/FUL. The reason for this view is that the proposed changes to the existing permission, either alone or in combination with other plans or projects, would not be likely to have a significant additional effect on the Stour and Orwell Estuaries SPA and Ramsar site.

Advisory Comments

Notwithstanding the above comments, Natural England regards it as essential that the planning authority are clear about the potential issues which could arise if the proposals contained in the applicants planning statement are brought forward.

a) If this S.73 application for variation of conditions is approved, the development platform could be constructed (with land-take from the European site and SSSI) prior to the construction of any road improvements and considerably in advance of the actual port development.

b) Construction of the development platform will damage the SPA and will trigger the requirements for the compensatory habitat creation measures as required by the existing permission 03/00600/FUL. Irrespective of any variation of conditions, it will be necessary for those Regulation 66 (formerly Reg 53) compensatory measures (specifically the managed realignment at Little Oakley to secure the coherence of the N2K site network in respect of landclaim within an SPA) to be implemented in full as per the original permission, concurrently with the landclaim.

c) It is anticipated that a further planning application will be submitted, for a temporary alternative use as a support base for offshore renewables industry (the interim development), before the major port facilities are constructed, so that some economic use is

made of the development platform in the period before the extended planning permission currently being sought (to 2021) expires.

d. In order to avoid, so far as is possible, the situation whereby the interim development becomes the ultimate development (notwithstanding the stated intentions of the applicant that the port will be delivered in due course) and thus potentially leading to the UK Government being in breach of EU law for permitting damage to an SPA on the basis of a development which has not been shown to satisfy the tests of Regulation 62 (formerly Reg 49), Natural England is likely to advise that any permission for the interim development is strictly time limited, and must have been removed before the expiry of that time limit.

Network Rail	No response received.
Essex Primary Care Trust	No response received.
Royal Society For The Protection of Birds	No response received.
Society For Protection of Ancient Buildings	No response received.
Shotley Parish Council	As these applications amount to a new development, it should be accompanied by a new Environmental Study. Shotley PC requests that it is consulted on the scoping opinion.

Whilst not seeking to change the Heads of Terms, there is a cumulative impact on this area as a result of Felixstowe South Evidence of shipping impact on health (the revised Environmental Statement did not revisit health)

Currently, Hutchinson's obligations are only described in a letter which we understand to be legally binding on Hutchinson, copy attached. These obligations are expected to be met before any work is started on the Container Terminal Development. However, to remove any doubt, we would want this incorporated into a sealed S106 Agreement with Hutchinson meeting any associated legal costs of Shotley PC.

Beneficial Placement of Materials (on foreshores of Shotley Peninsula) Improvements to Amenity and Environment (£40,000 to Shotley Parish Council) Community Projects (£35,000 for parish and community projects). On both financial settlements we are seeking an inflation uprating due to the delay in starting this development and under Community Projects we are seeking a further sum of £100,000 to ameliorate the impact of the cumulative developments and to address health related issues. Additionally, grants to Shotley Gate residents are also payable (depending on zone) for sound insulation measures. We would want to be reassured that under this Consent Variation, these amounts are still payable from the start of work i.e. development is still classed as a Container Terminal Development.

We would also require further understanding as to the impact of the proposed replacement development in terms of:

Noise: Similar commitment for shipping to be requested to turn off engines and onboard generation whilst berthed or as a result of site engineering works (e.g. possible welding or turbine testing activities).

Light: Any difference in light levels or type of lighting for the new port operations.

The exact nature of the work being proposed, what processes are involved, what time the operation will be working, whether the work will be in buildings or outside, will there be testing of the finished products, etc

Air Quality: Any additional adverse position as a result of change to type or volume of shipping and proposals for monitoring points at Shotley.

Shotley Marina

No response received.

Sport England

Sport England have no comment to make in relation to the above planning applications and comments contained within our consultation response (dated 30/05/03) to the previous planning applications (03/00600/FUL and 03/00601/FUL) still apply.

Suffolk Coastal Heaths Project

No response received.

Suffolk Coastal District Council

No response received.

Suffolk County Council

No response received.

Suffolk Wildlife Trust

No response received.

Crown Estates

No response received.

The Georgian Group

No response received.

Tendring Hundred Water Company

No response received.

The Ramblers Association

No response received.

The Victorian Society

No response received.

Technical & Procurement Services

No response received.

Leisure Services

Leisure Services has no comments to make in respect of this application

Environmental Health

No objections to the application as it stands, subject to the provision of a permanent, suitably sited, noise monitoring station and air quality station able to monitor compliance with operational conditions as part of consent for development. Would also look to control construction site noise, vibration and air quality through conditions as part of consent for development. Noise from demolition, construction works,

deliveries and the movement of vehicles and other plant both on and off the site has the potential to cause disturbance to neighbouring residents. This authority would therefore expect that any work audible beyond the boundary of the site should only be carried out between the hours of 7am to 7pm on Mondays to Fridays and 8 am to 1pm on Saturdays; there should be no noisy works carried out on Sundays or Bank Holidays or Public Holidays. These hours may be altered and further restricted for particularly noisy operations i.e. piling. Best practicable means to prevent noise from the site should also be employed as defined in the most recent version of British Standard BS 5228.

Regeneration

Support the above application. The application seeks to vary the conditions of the existing main permission for the port development and enable construction of the sub-structure of the container terminal development to be started. This will deliver a development platform that could facilitate a temporary alternative port use prior to the construction of the container terminal in line with current capacity demand projections.

Marine Management
Organisation

No response received.

5. Representations

5.1 A total of fifty three representations have been received as a result of the statutory consultation. Forty eight representations were received in objection to the application, one in support and four offering comments.

5.2 The main points of objection are summarised as follows:

- Inappropriate proximity, scale and character to residential and historic areas;
- Amenity loss;
- Flood risk;
- Inadequate road and rail access;
- Significant safety risk;
- Local job creation figures misleading;
- Environmental damage;
- Whole scheme should be reappraised;
- Request funding towards cycling provision;
- Highway network unable to cope;
- Concern over noise/light pollution;
- Concern over extent of dredging;
- A120 needs to be dual lane;
- Thought should be given to lorry stacking;
- Destruction of habitat;
- Deleterious effect on heritage sites and character of Harwich;
- Independent noise and vibration assessments required;
- Overprovision of port facilities prove that IROPI case cannot now be made;
- Any alteration would undermine the reason the specific project was approved;
- Object to permanent loss of SPA for a temporary use;
- New uses must prove an imperative need;
- There are many alternative site suitable for wind farm parts storage;
- Any alternative use must be subject to the Habitat Directive tests;

- Only by phasing the works as originally approved can we be certain that the SPA will be safeguarded;
- Extension of time fails to comply with Habitats Directive;
- Object to premature application to extend time limit;
- No new IROPI or EIA/ES information provided;
- Scheme should not have been approved originally;
- Applicants are 'hedging their bets';
- Road improvements should be carried out first;
- Proposals are for a new project;
- Object as specific project was protected from metamorphosing into another project;
- Question if TDC should have accepted these applications;
- Applicants do not want a container port;
- Applications not lawful;
- Variations should be subject to a further Public Inquiry;
- ES has omissions;
- Public expect TDC to put people and the environment before profit and greed;
- Application is not a non-material change;
- Off site road improvements required first in the interests of highway safety;
- S73 application not the right mechanism;
- Harbours Act will allow almost any activity to take place;
- Alternative use of a wind farm is opportunistic and presents several risks to the population;
- No IROPI for a Windport;
- S106 obligations can be altered on application after five years, not before;
- Case law supports that the effects of an amended scheme should be judged by reference to that amended scheme as a whole;
- Local Plan is over dependant on delivery of Bathside Bay Container Terminal;
- In time of recession new employment opportunities should be delivered quickly;
- Attempt to secure planning permission 'by stealth';
- Conflict in justification of existing time applications and the s73 application; and
- Difficult to find a clearer example of a proposal that breaches all of the tenets of European environmental law.

5.3 The main points of support are summarised as follows:

- No objection providing the provision of the small boat harbour is not prejudiced;
- Work and moral boost of development outweighs any worries; and
- Town needs a serious input from a major developer and this could put Harwich back to the status it once held.

6. Assessment

6.1 Overview

- 6.1.1 In 2003, Hutchison Ports (UK) Limited ("HPUK") applied for planning consent for the construction of a new container port. On 29th March 2006, permissions, inter alia, for a container port and a small boat harbour and listed building consent in respect of a train ferry gantry were granted by the Secretary of State following concurrent Public Inquiries held between 20 April 2004 and 21 October 2004.
- 6.1.2 There are 54 conditions attached to the 2006 permission for a container port. Condition 1 of all the planning permissions and of the listed building consent requires the particular development or the work to the listed building to be begun before 10 years from the date of the permission or consent - in other words, by 2016. HPUK is seeking by separate

applications (considered at Agenda Item 1 of this Report) to extend that time limit, but Members should note that, under this application, the time limit would be unchanged. Condition 3 of the container port permission relates to the provision of a phasing plan before any development can start on site. Conditions 41 – 47 (inclusive) of the container port permission refer to several highway improvements, principally but not exclusively, to the A120 Trunk road (A120 (T)). Such improvements are required in order to increase capacity having regard to the volume and type of traffic that would be likely to use the network in order to access the new port facilities. It should be noted by Members that the highway improvements are controlled by conditions attached to the planning permission and are not included as obligations in the accompanying Section 106 legal agreement.

- 6.1.3 The 2006 permissions are also subject to Agreements under Section 106 of the Town and Country Planning Act 1990 which impose a number of further obligations on HPUK.
- 6.1.4 HPUK have now applied, under section 73 of the Town and Country Planning Act 1990 (“the Act”), for permission to develop Bathside Bay as a container port without complying with conditions 3 or 41-47 of the 2006 container port permission. Those conditions would be replaced in the new permission by fresh conditions. Members should note that the remaining 2006 permissions and the 2006 Listed Building Consent are unaffected by the present application.
- 6.1.5 Members should also note that this application is additional to, not an alternative to, the applications considered at Agenda Item 1 of this Report. One objector has suggested, quoting Government Guidance “Greater Flexibility for Planning Permissions” (October 2010), that it is unlawful to apply concurrently to extend the time limits for implementing a planning permission and under section 73 of the Act. Officers agree with HPUK that such objection is a misreading of the Guidance which addresses only applications where the intention is that the new permission should benefit both from the extended time limit as well as from the varied conditions. That would not be the position in the present case, where the permissions would be mutually exclusive.
- 6.1.6 Having first outlined the context and background, this report will then address the proposals, HPUK’s reasons for this application, the main changes sought to the conditions and the proper approach to a section 73 application, before considering policy matters and other material considerations.
- 6.1.7 The main planning considerations are:
- Context and Background
 - Proposals
 - Reasons for the Application
 - The Proper Approach
 - Policy Considerations
 - Environmental Considerations
 - Phasing and Highway Considerations
 - Other Material Considerations
 - Legal Issues

6.2 Context and Background

- 6.2.1 HPUK was originally granted consent for:

a) the reclamation of Bathside Bay and development to provide an operational container port; comprising:- Engineering and reclamation works including construction of a cofferdam and 1400 metre quay wall; Construction of a concrete block paved container handling and stacking facility with 11 quayside cranes and 44 Rubber Tyre Gantry (RTG) cranes and

associated workshop, customs control, Border Inspection Post and mess buildings, substations, fuelling station and mast and crane mounted lighting; Development of a 6.13 ha rail terminal with 3 rail gantry cranes and heavy duty container area linked to existing rail facilities; Associated office buildings, logistics facility, car and HGV parking and driver facilities; Site works, including additional hardstanding, structural landscape and mounding, wetland buffer, internal estate roads and perimeter fencing (“the container port permission”) - planning permission 03/00600/FUL.

b) a small boat harbour (sic) comprising; engineering and reclamation works including construction of a cofferdam wall and breakwater; sheltered moorings for boats and wave wall; slipway and boat storage and tender compounds; public viewing and seating areas; Fisherman's store and fuel facility; and site works including access road, car parking and lighting, fencing and landscape mounds (“the small boat harbour permission”) – planning permission 03/00601/FUL.

c) the removal of vegetation, localized removal of topsoil, construction of a seawall, associated borrow dyke system and wave breaks and managed realignment of coastal flood defences by breaching the existing seawall to create estuarine and coastal habitat comprised of (sic) approximately 76ha of intertidal mudflat, approximately 19ha of intertidal mudflat/saltmarsh transition, approximately 10ha of saltmarsh, approximately 5ha of sand and shingle and approximately 7ha of fresh/brackish water borrow dykes, together with associated engineering (including diversion of footpath), drainage and earthworks (“the habitat permission”). This is the permission that provides for replacement habitat at Hamford Water, Little Oakley and is referred to again below.

d) the partial demolition of the long berthing arm attached to the listed Train Ferry Gantry and associated remedial works (“the LBC”) - listed building consent 03/00602/LBC.

6.2.2 Furthermore, the Secretary of State also:

- (i) Authorised the making of the Harwich Parkeston Quay Harbour Revision Order, in accordance with section 14(2) (b) of the Harbours Act 1964;
- (ii) Granted consent under section 11 of the Parkeston Quay Act 1983 for the construction of a quay wall and reclamation of the intertidal area at Bathside Bay;
- (iii) Granted consent under section 34 of the Coast Protection Act 1949 to breach the seawall and import rock armour, sand, gravels and mud for the managed realignment at Little Oakley, Hamford Water; and
- (iv) Granted consent under section 34 of the Coast Protection Act 1949 and under section 13 of Harwich Harbour Act 1974 for channel dredging and disposal of dredged arisings at Bathside Bay.

Planning permission 03/00600/FUL

6.2.3 Planning permission 03/00600/FUL detailed three main components of the construction of the container port proposals:

- Tidal works and reclamation within Bathside Bay;
- Deepening and widening of the existing approach to Harwich International Port; and
- Disposal of the dredged arising.

6.2.4 The reclamation of Bathside Bay is dependent on the formation of a new quay wall. This new wall will retain the reclamation material (sands and gravels), pumped ashore from the deepening and widening of the approach channel. Once pumped ashore, the reclaimed material is to be levelled using mechanical plant and the area surcharged with sands and gravels. Wick drains will drain the site and in conjunction with the surcharging loads, will consolidate the reclaimed material. Once the area is satisfactorily consolidated, a fountain of cement bound material is to be laid and approximately 60ha of concrete block paving

would be formed for the stacking areas and roadways, creating a container storage capacity area for approximately 40,000 TEUs (i.e. 20 foot/6.09m equivalent containers). The approved quay wall is to extend in a straight line between the existing Harwich International Port quay wall in the west for approximately 1400m to a point 80m west of the train ferry berth pier at Harwich, returning to the existing Harwich Quay wall at Gas House Creek.

- 6.2.5 The approved container terminal development is proposed to be constructed in phases (shown as Phase 1A and 1B, Phase 2 and Phase 3 on the approved plans). The first phase comprises the construction of 700m of quay beginning in the west followed by further phases.
- 6.2.6 In operational terms, the container port is to support 11 quayside cranes, 40 rubber tyred gantry cranes and 2 rail gantry cranes. Land based works comprise the construction of a container handling and stacking facility with workshops, offices, warehousing and HGV parking etc., together with the construction of a 775m rail terminal with a heavy duty container transfer area linking to the existing rail facilities. The rail terminal is to consist of a number of parallel rail lines to the south west of the site and associated hard standing.
- 6.2.7 Additional lighting requiring the following is as approved:
- The mast lighting for the container storage area 30m high;
 - Lighting to car and lorry park area 6-8m high;
 - Quayside gantry crane lighting fixed at 42.5m high with safety lighting on the end of the crane booms extending up to 110m high;
 - Rail terminal column lighting 30m high and gantry crane lighting fixed at 14m high; and
 - The route off the A120 to be lit with column lighting 8m high.
- 6.2.8 Vehicle parking and holding areas are to be constructed to service the facility together with buildings, including workshops, inspection facilities and 1986 square metres gross of offices for staff (to be spread over three floors). Maximum building heights will generally be 12m.
- 6.2.9 An 18,500 square metre logistics building is also approved for the site, to be sited south of the rail transfer area.
- 6.2.10 At the time of approval it was estimated that the development will create around 770 direct jobs with a further 500 jobs being created in associated port activities. A further 430 jobs were considered to arise from multiplier effects as a result of the development. Of the total 1,700 jobs suggested, it was envisaged that at least 850 could be direct from the Tendring District.

Planning permission 03/00601/FUL

- 6.2.11 As part of the original proposals, a small boat harbour is to be formed to the east of the proposed container port. At present the site is based around Gas House Creek, which largely dries out at low tide. The main infilling will form the western part of the harbour and a division wall will extend north-eastwards for approximately 130m. Further wave protection will be provided by way of a floating wave barrier established to the south of the ferry gantry. These works necessitate the removal of part of one of the existing train ferry piers (subject of listed building consent 03/00602/LBC and proposal 10/00204/LBC). The area so enclosed will be partially dredged to provide piled moorings for approximately 80 craft yachts and small fishing boats. To the west a landscaped bund 4.5m above quay level will be formed with a public walkway on top. At the northern end a fisherman's store will be built into the bund. There are ramps and stairs to the top of the bund and public access providing views over the harbour and the main terminal. The bund also acts as a visual

buffer between the port and the container stacking areas and the Old Town to the east.

- 6.2.12 This small boat harbour is to be provided to offset the loss of swinging moorings either directly from the construction of the port or the need to keep the waterway free from obstruction. The small boat harbour will provide a water based recreation facility and an improved base for fishermen.
- 6.2.13 In terms of phasing, there is to be no implementation of tidal works for the Container Terminal Development until the Small Boat Harbour has been completed and is made available for use.

Listed building consent 03/00602/LBC

- 6.2.14 The train ferry gantry is a Grade II Listed structure situated to the entrance of Gas House Creek. Trinity Pier and Buoy Yard lie to the immediate north east of the structure with Harwich Quay beyond. To the south are the railway lines that previously served the gantry, leading in the direction of Harwich Station and beyond. There is no public access to the gantry at present.
- 6.2.15 The original berths and ferries were commissioned in 1924 at Harwich and the last train ferry service was in 1987.
- 6.2.16 To seaward of the gantry are two piers, which were used for the docking of the train ferries. The shorter northern arm is approximately 18m in length. The southern arm, subject of this consent, measures approximately 106m in length. The piers are generally made up of steel legs which support a wooden walkway with bollards etc to facilitate the mooring of ships. At the end of the long arm and approximately 35m from the end are concrete dolphins or caissons each measuring 8m in diameter. This application involved the dismantling and removal of the end 100m of the long pier, inclusive of the concrete dolphins to facilitate marine access to the approved small boat harbour.

Harbour Revision Orders (HRO)

- 6.2.17 On the same date as the above-mentioned permissions, the Secretary of State for Transport authorised the making of a Harwich Parkeston Quay Harbour Revision Order and concluded that the appropriate period for examining need for the Container Terminal was to at least 2030. In addition, he concluded that the evidence presented at the Public Inquiries demonstrated the continuing growth in demand for deep-sea container capacity during this period.
- 6.2.18 On 17 March 2010 The Harwich Parkeston Quay Harbour Revision Order 2010 came into force. This order authorizes the construction of a quay wall, culvert, harbour wall, a floating wavescreen and slipway and provides that these works are completed within 10 years (i.e. 2020) otherwise the powers granted cease to exist (or as otherwise extended by the SoS).

6.3 Proposals

- 6.3.1 On 24th February 2010, a total of four applications were received from HPUK seeking (in summary):
- a) The variation, deletion and replacement of conditions attached to planning permission 03/00600/FUL (10/00201/FUL refers); and
 - b) The replacement of the originally approved time limits (2016) with new time limits to 2021, pursuant to the Town and Country Planning (General Development

Procedure)(Amendment No 3)(England) Order 2009 (applications 10/00202/FUL, 10/00203/FUL 10/00204/LBC refer).

6.3.2 The application subject of this report (10/00201/FUL) is made under Section 73 of the Act to vary Conditions 3 (phasing), 45 (Highways), 46 (Highways) and 47 (Highways) and to delete and replace Conditions 41 (Highways), 42 (Highways), 43 (Highways) and 44 (Highways) attached to planning permission 03/00600/FUL. Throughout this report the conditions attached to the original planning permission (03/00600/FUL) are referred to as the 'old' conditions and those proposed by the current application (10/00201/FUL) are referred to as the 'new' conditions. An analysis of the new conditions and a comparison with the old conditions is made at paragraph 6.8.3 below.

6.4 Reasons for the Application

6.4.1 The current economic recession and reduction in global trade has severely impacted on the container trade and has lowered the volume of containers handled in UK ports. In turn that has eased the short term demand pressures for new terminal capacity.

6.4.2 Permission for this application would enable HPUK to commence construction of the sub-structure of the container terminal development and to deliver the development platform in readiness for further development. This would either be of the Container Terminal, in which case the highway works in question would come forward in more-or-less the same manner as would otherwise apply or (subject to obtaining a separate planning permission) be so as to facilitate temporary alternative port uses. One such use that HPUK is exploring is the use of the civil engineering sub-structure of the container terminal development to provide a temporary support function to the offshore renewables industry, thereby supporting the Government in meeting important national and international environmental and energy commitments and helping to meet a pressing national need. It would seem that as yet no firm decision has been taken by HPUK as regards that, or indeed any other, interim use.

6.4.3 The intention of this application is not to release HPUK from its obligations to mitigate the impacts of the proposed development. Nor is there any evidence, as some objectors have suggested, that HPUK is seeking to avoid completely those obligations. Instead it would allow the provision of off-site highway infrastructure to be phased so as to relate to the container terminal use rather than other uses without similar traffic generation effects.

6.4.4 HPUK asserts that it remains committed to the implementation of the Container Terminal development in the long term. However, it has reviewed its position in light of both the economic situation which has resulted in a temporary stagnation of demand for container traffic, and an emerging national need to see port development supporting sustainable development and providing additional capacity for the development of renewable energy.

6.5 The Proper Approach

6.5.1 Although a section 73 application is commonly referred to as an application to amend or vary conditions in a planning permission, in law approval of a section 73 permission results in an entirely new permission with new conditions attached, while leaving alive the old permission with the original conditions attached.

6.5.2 On a section 73 application, the Council should consider only the question of the conditions to be imposed on the planning permission. Although it must of course consider the planning merits of the application, it is not entitled to re-write the original permission altogether. Thus, it is important to appreciate (particularly in light of some of the objections) that, were this application to be approved, the description of the development would remain the same, namely: "the reclamation of Bathside Bay and development to provide an operational container port; comprising etc etc.."

- 6.5.3 If the Council decides that the permission should be granted subject to conditions differing from those subject to which the original permission was granted (but not necessarily in the precise terms of the conditions sought by HPUK), it must grant the application subject to such conditions as it thinks appropriate. If, on the other hand, the Council concludes that planning permission should not be granted subject to any different conditions, then it should refuse the application.
- 6.5.4 Section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires applications to be determined in accordance with the development plan unless material considerations indicate otherwise, applies to this application.
- 6.5.5 Central Government guidance entitled "Greater Flexibility for Planning Permissions" states that: "the development which the application under S. 73 seeks to amend will by definition have been judged to be acceptable in principle at an earlier date. These applications should be determined in accordance with s.38(6) of the Planning and Compulsory Purchase Act 2004, but (local planning authorities) should, in making their decisions, focus their attention on national or local policies or other material considerations which may have changed significantly since the grant of permission, as well as the changes sought." Although that passage in the Guidance appears under the heading "minor material amendments", officers believe that it is relevant to this application and should be taken into account.
- 6.5.6 The material provisions of the development plan are set out below. Two principal material considerations upon which HPUK rely are:
- (a) The fact that the 2006 permission was granted by the Secretary of State after a lengthy public inquiry at which all major interested parties appeared and that there have been no material changes of circumstance since that time, other than the current economic recession.
 - (b) The reason for making the present application, as set out above.

6.6 Policy Considerations

- 6.6.1 The original Planning Inspector concluded that the Bathside Bay Container Terminal proposals would accord with the then development plan:
- "the details of the proposals, supported by the suite of suggested conditions, obligations and deeds, would ensure compliance with the vast majority of development plan policies. This would largely leave some visual and landscape policy matters incapable of being complied with. Overall, the proposals, as proposed to be mitigated and compensated, would accord with the broad thrust of development plan policies, particularly in respect of the Essex and Southend Replacement Structure Plan aim to develop Bathside Bay for improved port facilities, the Regional Planning Guidance aim to secure the sustainable development of seaports and the policies for the enhancement of the socio-economic and economic interests of the sub-region."*
- 6.6.2 In allowing the scheme in 2006, the Secretary of State also concluded that container terminal proposal would accord with the then development plan and subsequently granted consent.
- 6.6.3 At the time of writing the statutory development plan now comprises the East of England Plan (2008) and the Tendring District Local Plan (2007), although the broad thrust of policy remains unchanged.

National Planning Policy

Draft National Policy Statement for Ports (2009)

6.6.4 The imperative need for the container port remains. Such need is affirmed by the government in the draft National Policy Statement for Ports (NPS) dated November 2009. This document sets out the government's conclusions on the need for new port infrastructure and provides the most relevant guidance on this issue.

6.6.5 The NPS makes the following statements:

Paragraph 1.8.4 *"shipping will continue to provide the only effective way to move the vast majority of freight in and out of the UK and the provision of sufficient port capacity will remain an essential element on ensuring sustainable growth in the UK economy."*

Paragraph 1.11.4 *"the recession has led to a severe downturn in demand, especially for unitized cargo. The full extent of this recession effect on trade through ports cannot yet be fully quantified. However, the Government's view is that the long term effect will be to delay by a number of years but not ultimately reduce the eventual levels of demand for port capacity predicted in these forecasts."*

Paragraph 1.11.7 *"if all the above development were to be built (including Bathside Bay as detailed at Para 1.11.6) aggregate container capacity would be broadly in line with forecast demand over the next 20 years or so. However, the extent, and speed, with which these developments proceed in reality will depend upon the commercial judgments of the developers at the time."*

Paragraph 1.11.12 *"the Government believes that there is a compelling need for substantial additional port capacity over the next 20-30 years, to be met by a combination of development already consented, and development for which applications have yet to be received. Excluding the possibility of providing additional capacity for the movement of goods and commodities through new port development would be to accept limits on economic growth, and on the price, choice and availability of goods imported into the UK and available to consumers. It would also limit the local and regional economic benefits that new developments might bring. Such an outcome would be strongly against the public interest."*

6.6.6 The draft National Policy Statement recognises that demand for ports remains at the forefront in supporting the UK economy and the Statement specifies that the Bathside Bay development is included within this assessment. As such, there are no grounds to suggest that demand for the port at a national level is no longer required.

East of England Plan (2008)

6.6.7 Policy HG1 recognises Bathside Bay Container Terminal (as part of Harwich Port and the Haven Gateway) as a key centre for development and change with substantial potential to develop further as a major focus for economic development and growth.

6.6.8 Policy HG2 refers to Employment Generating Development and supports the maintenance and appropriate expansion of the ports and specifically the approved proposals for container handling capacity at Bathside Bay.

6.6.9 Policy SS9 (The Coast) states, amongst other things, that the strategy for the coast is to adopt an integrated approach that recognizes the economic and social role of the region's ports alongside the needs of environmental protection and enhancement.

Tendring District Local Plan (2007)

6.6.10 Local Plan policy HAR1 provides:

“Bathside Bay is a strategic employment site by virtue of Policy QL5. Permission has recently been granted, but not yet implemented, for the development of 122 Ha of land at Bathside Bay for the expansion of the existing container port facilities. No new planning permission will be granted unless it is for substantially similar development. In respect of any application for a new permission or for an extension to, or variation of, the existing permission, the Council will weigh the case for such new permission or for such extension or variation against the likely impact of the new, extended or varied development:

- i. upon local amenity, by reason of increased noise, vibration, air pollution or light pollution;*
- ii. Upon infrastructure, including the impact upon the road network and the public transport network;*
- iii. Upon nature conservation interests, including the Suffolk Coast and Heaths Area of Outstanding Natural Beauty, the Stour and Orwell Estuaries Special Protection Area and Ramsar site; and the Stour Estuary Site of Special Scientific Interest;*
- iv. Upon the Harwich and Dovercourt Conservation Areas, scheduled ancient monuments and listed buildings”.*

6.6.11 The current application is for development substantially similar to the existing permissions. Of the four criteria mentioned in the policy, there would be no change in the impact of the present proposals on criteria (i) or (iv) over and beyond those taken into account when the 2006 permissions were granted. At that time, the Secretary of State clearly judged that such impacts were acceptable in principle. Criteria (ii) and (iii) requires fuller consideration and are addressed below in reverse order.

6.6.12 Policy QL5 (Economic Development and Strategic Development Sites) identifies Bathside Bay as a strategic employment site which is allocated for development in order to encourage new economic activity and employment opportunities.

6.6.13 Policy QL6 (Urban Regeneration Areas) identifies Harwich as an Urban Regeneration Area, within which permission will be given for development that contributes towards regeneration and renewal. The present proposal contributes towards both regeneration and renewal as paragraph 2.39 notes: “In Harwichthe need to improve links with the port (including the new Bathside Bay development) are all central to regeneration.”

Tendring Local Development Framework (2010)

6.6.14 The Core Strategy and Development Policies Proposed Submission Document (Reg 27) was published for public consultation on 21st October 2010. The consultation period closed on 6th December 2010. The policies in the document carry a limited degree of material weight (compared with the Adopted Local Plan) in planning decisions; and those with fewer objections carry more weight. The Core Strategy Document supports the expansion of the port at Bathside Bay.

6.7 Environmental Considerations

6.7.1 The previous decision to grant planning consent on the range of applications was taken in the context of the setting of the site within a proposed (but now confirmed) Special Protection Area (SPA) and the Conservation (Natural Habitats &c) Regulations 1994, which implemented the Habitats Directive. These Regulations have now been replaced by the Conservation of Habitats and Species Regulations 2010.

Environmental Impact Assessment

- 6.7.2 As noted above, the current application if permitted will result in the grant of a new planning permission. No one, much less HPUK, has suggested that it is not covered by the Town & Country Planning (Environmental Impact Assessment etc) Regulations 1999. However, as the Guidance makes clear, where an environmental impact assessment was carried out on the original application, the Council will need to consider if further information is required to be added to the original environmental statement to satisfy the requirements of the Regulations. The current application is for Schedule 1 development and thus is an application for planning permission for Environmental Impact Assessment (EIA) development within the meaning of Article 2 of the Regulations. The Council must not grant planning permission without first taking the environmental information provided by HPUK into consideration.
- 6.7.3 HPUK submitted a full Environmental Statement (ES) when it made its original applications (a copy of the Summary of Potential Environmental Impacts and Mitigation prepared by Royal Haskoning dated April 2003 is attached at Appendix B of Agenda Item 1 – reference should be made to it). The ES was taken into account by the Secretary of State when granting the 2006 Permissions. He concluded that the benefits of the proposal outweighed any adverse environmental impacts when the proposed mitigating measures were taken into account.
- 6.7.4 The original ES was submitted with this application, together with a Supplementary Environmental Report and a Transport Assessment to review and revise the previous assessments and update the effects that may have changed over time. The Supplementary Environmental Report concluded:
- “The EIA carried out in support of the previous application for a container terminal identified a range of impacts on environmental receptors. The ES reported on the assessment process, noting the nature and scale of the predicted impacts, the nature of mitigation activities, and the scale of the mitigated impact. The ES, together with supporting information submitted following a request by TDC, was accepted together with the previous application.
- “This current assessment has reviewed the previous ES and supporting material to determine whether the current application, under Section 73 TCPA, would bring about any changes in environmental impact such that the findings of the previous ES are no longer adequate.
- “Through this assessment of all technical elements of the ES it has been determined that altering the named conditions associated with the planned container terminal will not have a material impact on the environmental impacts predicted. The conclusions of the previous EIA are considered to remain relevant to the development consented under the current application and, as such, no further environmental assessments are considered necessary at this stage.”
- 6.7.5 Having reviewed the original ES, the Inspector’s report, the Secretary of State’s decision and the supplementary ES, officers concur with the judgment that the proposed changes to the conditions would not result in any material adverse impact over and above those set out in the original reports which were clearly judged by the Secretary of State to be acceptable in principle, when taken with the proposed mitigation measures.

Habitats Regulations 2010

The Secretary of State's original approach

6.7.6 In his letter of 21 December 2005 (paragraphs 9-23), the Secretary of State, in considering the report of the Planning Inspectorate into the Public Inquiry and as the competent authority, undertook an Appropriate Assessment. He followed the sequential approach required by the 1994 Habitat Regulations that were in force at the time and came to the following conclusions:

- the project was likely to have a significant effect on a European Site (the Stour and Estuaries SPA);
- there was no alternative solution to the project proposed by Bathside Bay;
- there were imperative reasons of overriding public interest (IROPI) for carrying out the development; and
- there were satisfactory mitigation measures (particularly the habitat creation proposal) pursuant to the then Regulation 53 requirement to ensure that the overall coherence of Natura 2000 was protected.

6.7.7 After reviewing the implications of the introduction of PPS 9 Biodiversity and Geological Conservation during the course of the consideration of the applications 00/00600/FUL, 03/00601/FUL, 03/01200/FUL and 03/00602/LBC, and in full consultation with Natural England, the Secretary of State in his final decision letter dated 29 March 2006 concluded that the initial Appropriate Assessment of 2005 remained unaffected and he granted the planning permissions and listed building consent.

The Regulations

6.7.8 As far as the present case is concerned, Regulation 61 is the central provision:

“(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—

- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of that site,

must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.”

Paragraph 3 specifies the need to consult with the appropriate nature conservation body and paragraph 4 refers to taking the opinion of the general public.

“(5) In the light of the conclusions of the assessment, and subject to regulation 62 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

“(6) In considering whether a plan or project will adversely affect the integrity of the site, the authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given.”

6.7.9 By Regulation 62:

“(1) If the competent authority are satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), they may agree to the plan or project notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).”

6.7.10 By Regulation 66:

"Where in accordance with Regulation 62 (considerations of overriding public interest)—

(a) a plan or project is agreed to, notwithstanding a negative assessment of the implications for a European site or a European offshore marine site,.....the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.”

The 2010 Application

6.7.11 The Environmental Statement and Transport Assessment submitted in connection with the original applications have been reviewed by HPUK and a Supplementary Environmental Report has been submitted which concludes that the current application will not have a material impact over and above the environmental impacts predicted in the original ES.

6.7.12 So far as the appropriate assessment is concerned, given the nature of the plan or project for which permission is sought, the Council, as the competent authority and in full consultation with Natural England, concludes that the SPA would be adversely affected to the same extent as it would have been affected under the 2006 permission. In other words, the proposed change of conditions would have no greater effect on the integrity of the SPA than the original permission would have had. The adverse effect of the original permission on the SPA was one of the factors that the Secretary of State took into account in carrying out his balancing exercise under the Habitat Regulations.

6.7.13 In approving the original applications the Secretary of State found there was a national need for container terminal capacity as part of the development of a modern competitive ports industry, which was of vital importance to the United Kingdom. Given that no alternative solutions were available, it was concluded that these factors constituted imperative reasons of overriding public interest (IROPI), and that adequate compensation measures had been proposed in response to the adverse affect on the integrity of the European Site. Those applications were of course assessed against the full range of national and local planning policy, and in light of all material considerations.

6.7.14 In carrying out its own determination under Regulation 62, the Council is entitled to have regard to the fact that the Secretary of State found that the Bathside Bay container terminal project should be carried out for IROPI, to the reasons for that conclusion set out in the decision letter, and to the advice given in the draft NPS on Ports referred to above. There have been no material changes since the Secretary of State's determination. Accordingly, the Council concludes that there are no alternative solutions available and that IROPI continue to exist. Objectors have suggested that IROPI no longer exist because HPUK is seeking to postpone the date of implementation of the 2006 permission. The one simply does not follow from the other. Notwithstanding the temporary stagnation of demand for container traffic as a result of the current economic climate, the overriding long-term public interest in the development of Bathside Bay as a container port, albeit at a later date, would still appear to exist, as evidenced by the extracts from the draft NPS.

6.7.15 Finally, the Secretary of State was satisfied that the proposed managed realignment site at Hamford Water, Little Oakley, as approved, represented the necessary compensatory measures required under the Habitats Regulations. At the time of writing, no application seeking any variation to that approval has been received. In the circumstances, the Council can be equally satisfied with such measures.

The objections

6.7.16 A number of objectors have objected to this application (and to the other applications seeking an extension of time) on the grounds that the approach advocated by HPUK in relation to the Habitats Regulations is unlawful because the clearly stated aim of the application is to allow the possibility of interim (possibly long-term) development within the SPA which in practice at least could not happen in the absence of this application. Thus, it is argued that the fact that HPUK intends at least in the interim different uses of the site (including use of the site other than as a container port) requires that a proper analysis under the Habitats Regulations be undertaken on the basis of those temporary uses. If that were done, it might prove impossible for HPUK to meet the IROPI test and the application would therefore have to be refused. As one objector put it: effectively HPUK is seeking to bypass the provisions of the Habitats Regulations.

6.7.17 The Council has been advised by Counsel as follows: A key issue in the present case is this: what is the “plan or project” in respect of which the Council is being asked to give its “consent, permission or other authorisation”? The words “plan or project” are not defined in the 2010 Regulations, although they have been considered in a number of cases, where it was said that they should be given a broad interpretation, consistent with the underlying purpose of the Habitats Directive to protect the European ecological network known as Natura 2000.

6.7.18 Even giving the words “plan or project” that broad interpretation, Counsel advises that, in the present case, the Council is being asked to give its permission for a plan or project for the reclamation of Bathside Bay and development to provide an operational container port etc, subject to conditions that differ from those imposed in the 2006 permission. Whatever HPUK’s future aspirations might be, they are not at present a “plan or project” currently before the Council or in respect of which the Council is being asked to give its permission. It follows that Counsel disagrees with the fundamental proposition advanced by the objectors that the Council must approach this case on the basis that HPUK intends different uses of the site from that specified by the 2006 permission. It may well do, but until a specific application for a change of use is on the table, the Council can hardly (a) assess the effects of that plan or project, whatever it may turn out to be and whatever form it might take, on the SPA; or (b) give or withhold its permission for that plan or project. On the basis of Counsel’s advice, officers are unable to accept those objections.

EU Pilot Project Case – Allegations of failure to comply with the provisions of Council Directive 1992/43/EEC

6.7.19 Since submission of the application, allegations have been made that there has been a failure to comply with the provisions in the Habitats Directive. This has led to an EU Pilot Project Case.

6.7.20 Following enquiries by the Communities and Local Government Deputy Director, CLG responded to the European Commission stating that “*there were no grounds to either support or justify (the complaint)*” and that the Secretary of State “*is satisfied that the terms of the EC Habitats Directive were and will be complied with fully.*”

6.8 Phasing and Highway Considerations

- 6.8.1 Officers are of the opinion that, at present, the only highway issue is the impact on the highway network of the traffic associated with the construction of the container terminal.
- 6.8.2 The application supporting documents state that permission granted pursuant to this application will enable the applicants to commence reclamation of Bathside Bay and construction of the sub-structure of the container terminal development to deliver the platform in readiness for further development, either of Bathside Bay Container Terminal or, subject to separate permission, to facilitate temporary alternative port uses. To achieve this it is necessary for the applicants to vary the conditions of the original planning consent. Under the proposed new conditions, the container terminal could not be used as such until the highway improvements had been undertaken. Any temporary use of the sub-structure – for example, as a windport – would require a fresh planning application, when the impact of the proposed temporary use on the highway network could and would be considered.
- 6.8.3 The application is supported by a Supplementary Traffic Assessment which considered that there were no reasons in highway terms why the proposals to vary and delete the conditions should not be acceptable to the Council and the highway authority consultees. The Assessment concluded that the revised conditions which have been put forward would still require the highway works that were previously approved, but that it was not necessary to identify the detail of the highway improvements prior to construction of the Container Terminal commencing. The assessment further concluded:

“With regard to traffic levels associated with the construction phase of the development, this STA has shown that during typical network peak times, both workforce and HGV levels are low. This is because work on site will start at 0700 and finish at 1900 and thus avoid the typical periods of 0800 — 0900 and 1700— 1800.

“The report has also demonstrated that the implications of construction traffic on the wider highway network are low.”

- 6.8.3 The old conditions requested to be varied/deleted/replaced and the effect of the new conditions are summarised below:
- Old Condition 03 requires the submission of phasing details for the various stages of construction prior to any development commencing. **As proposed, the new condition provides for the civil infrastructure works to be treated as a separate phase.**
 - Old Condition 41 provides that **no part of the development is commenced** until details of improvement works to the A12(T)/A120(T)/A1232 Ardleigh Crown Interchange (ACI) have been approved in writing. **This would be varied and replaced by new condition 41 that would allow for the container terminal platform to be constructed but not to be operated in advance of the ACI and the Europa Way roundabout improvements having been completed and opened for traffic.**
 - Old Condition 42 provides that **no part of the development is commenced** until details of improvement works to the A120(T)/Parkeston Road/Station Road/Europa Way (Europa Way) roundabout have been approved in writing. **This would be varied and replaced by new condition 41 that would allow for the container terminal platform to be constructed but not to be operated in advance of the ACI and the Europa Way roundabout improvements having been completed and opened for traffic.**

- Old Condition 43 states that **no part of the development can be operated** until the works referred to in old Conditions 41 and 42 (above) have been completed and/or opened to traffic. **Old condition 43 is, therefore, deleted as it is now superseded by new condition 41.**
- Old condition 44 said that no development could **start** until: the preferred route of the A120(T) two lane carriageway and standard wide carriageway improvements had been announced by the SoS; the improvements from the A120 Parkeston Roundabout to the Morrisons Roundabout had been announced by the Local Highway Authority; a Section 278 had been concluded to secure funding of the improvement works; all necessary consents for the improvement works had been secured; and the highway works had been started by a 'material operation'
- Old condition 45 said that **certain areas could not be paved or equipped with cranes or used for any purpose that generated road traffic** until the two lane carriageway and standard wide carriageway improvements to the A120(T) and the Parkeston Roundabout to Morrisons Roundabout highway improvements had been opened for traffic.
- Old Condition 46 states that unless and until the two lane carriageway and standard wide carriageway improvements to the A120(T) and the Parkeston Roundabout to Morrisons Roundabout highway improvements referred to in old Condition 44 have been completed, the areas referred to in old Condition 45 could not be used for any purpose unless it was for the construction of the development or would not result in the arrival or departure of traffic to or from the site.
- **New condition 42 (varies and combines old conditions 44, 45 and 46) and proposes that the same areas (Green and Magenta as shown on Drawing No. H1001/02 Rev A) cannot be operated as a container terminal until the two lane carriageway and standard wide carriageway improvements to the A120(T) and the Parkeston Roundabout to Morrisons Roundabout highway improvements have been opened for traffic. The condition does allow for the construction of the development in these areas (i.e. Green and Magenta as shown on Drawing No. H1001/02 Rev A) but does not allow its use if it would result in the arrival or departure of traffic by road.**
- Old Condition 47 says that until the two lane carriageway and standard wide carriageway improvements to the A120(T) and the Parkeston Roundabout to Morrisons Roundabout highway improvements have been opened to traffic, when the condition would become defunct, the development would not be operated unless a traffic management and safety scheme had been approved. **The new condition (New Condition 43) essentially remains the same.**

6.8.4 A complete list of the proposed new conditions is to be found at the end of this Report at Appendix A. In short, the new conditions, if approved, would allow for the construction of the container terminal platform in advance of some of the highway improvements but would not allow its operation as a container terminal until all the originally approved highway improvements were complete and open for traffic.

6.9 **Other Material Considerations**

6.9.1 Go-East have advised that if the Council is minded to approve the applications then Go-East would require the opportunity to consider whether the applications should be determined by the Secretary of State, rather than Tendring District Council. This can only be done once the Council has reached any decision to approve.

- 6.9.2 In this regard Officers have requested that an Article 25 Notice (***Directions by Secretary of State as per The Town and Country Planning (Development Management Procedure) (England) Order 2010***) be issued, so that it is clear to all interested parties how matters are to proceed. On this basis Go-East have advised that they are unable to issue an Article 25 at the time of writing but confirm that an Article 25 will be issued. Members will be updated verbally at the meeting
- 6.9.3 Copies of the reports have been referred to Go-East prior to this meeting and they will be appraised of any decision to approve so that they can give consideration as to whether the applications are to be referred to the Secretary of State for determination.

6.10 Legal Issues

Section 106 agreements

- 6.10.1 Officers have assessed the existing s106 legal obligations in the context of this application. The priority is to ensure that such obligations are still fit for purpose and meet the necessary tests contained within Circular 05/05 and The Community Infrastructure Regulations Levy 2010 (Part 11).
- 6.10.2 The existing legal obligations provide for the following (as summarised):

S106 Agreement dated 15 October 2004 (No.1) as varied by Deed of Variation dated 23 March 2006

- Accretion land;
- Small Boat Harbour;
- Little Oakley Managed Realignment;
- Travel Plan;
- Air Quality;
- Local Employment;
- Sound Insulation Grants;
- Wetland Zone;
- Tree Planting;
- Listed Building Maintenance and Conservation Area contribution;
- Cycling and Pedestrian Improvements; and
- Harwich International Port (HIP) Lighting.

The Hamford Water Section 106 Agreement dated 15 October 2004

- Compensation mitigation and monitoring;
- Rights of way and viewing areas;
- Environmental mitigation strategy;
- Maintenance of sea wall; and
- Removal of topsoil by sea

- 6.10.3 Essentially, the areas still being discussed relate to monitoring fees (new provision), air quality/noise monitoring (new provision), and details of crèche definition. Discussions are on-going with regard to reaching full agreement on the specific terms. An update will be given at the meeting.
- 6.10.4 For information, the current agreements, undertakings and consents, which remain material considerations are as described below:

Agreement	Parties	Date
The Bathside Bay Container Terminal Section 106 Agreement	1. Harwich International Port Ltd 2. Tendring District Council 3. Essex County Council	15 October 2004
Deed of Variation made to the Bathside Bay Container Terminal Section 106 Agreement	1. Harwich International Port Ltd 2. Tendring District Council 3. Essex County Council	23 March 2006
The Hamford Water Section 106 Agreement	1. Treelane Limited 2. Harwich International Port Ltd 3. Edwin William, Ann Elizabeth and Andrew Edwin STRACHAN 4. Edwin Strachan Ltd 5. Andrew Scott Cullen 6. William Cullen Farms Ltd 7. Tendring District Council 8. Essex County Council	15 October 2004
The Compensation, Mitigation and Monitoring Deed	1. Harwich International Port Ltd 2. Harwich Haven Authority 3. The Environment Agency 4. English Nature	15 October 2004
The side agreement between HPUK, HIPL and the Environment Agency	1. Hutchison Ports (UK) Ltd 2. Harwich International Port Ltd 3. The Environment Agency	15 October 2004
The Agreement between HIPL and Shotley Parish Council	1. Harwich International Port Ltd 2. Shotley Parish Council	15 October 2004
Planning Conditions: Bathside Bay Container Terminal	Letter from the Office of the Deputy Prime Minister – Annex A	29 March 2006
Planning Conditions: Small Boat Harbour	Letter from the Office of the Deputy Prime Minister – Annex B	29 March 2006
Planning Conditions: Compensatory Habitat Creation	Letter from the Office of the Deputy Prime Minister – Annex C	29 March 2006
Planning Conditions: Listed Building Consent, Train Ferry Gantry	Letter from the Office of the Deputy Prime Minister – Annex D	29 March 2006
The Harwich and Parkeston Quay Harbour Revision Order 2010	Harwich International Port Ltd Protective provisions for:	3 March 2010

	<ol style="list-style-type: none"> 1. Trinity House 2. Harwich Haven Authority 3. Authorities in Harwich Harbour 4. The Environment Agency 	
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Train Ferry Gantry

6.10.5 A standalone undertaking is currently being negotiated seeking interim works to the train ferry gantry. The structure is currently on the buildings at risk register, due to years of neglect, and officers are keen to instigate works as soon as possible. The applicants are agreeable to the principle of formulating an interim action plan and officers are continuing discussions in this regard. An update will be given at the meeting.

6.11 Other Objections

Shotley Parish Council

6.11.1 Shotley Parish Council have made representation to the Council stating that obligations expected to be met prior to work being commenced affecting the Shotley Parish are only described within a letter (claimed to be legally binding). As such, Shotley PC seeks these obligations to be incorporated into an s106 agreement. These stated obligations include the beneficial placement of materials (on foreshores of Shotley Peninsula), improvements to amenity and environment (£40,000 to Shotley Parish Council) and community projects (£35,000 for parish and community projects).

6.11.2 Shotley PC now requests an inflation uplift due to the delay in starting the development and seeks a further £100,000. They also seek assurance that the agreed sound insulation grants are still to be paid to Shotley Gate residents as per the original agreement.

6.11.3 Officers have considered the content of the Shotley PC letter and advise Members that TDC has no power to enforce planning obligations outside of their administrative control. Accordingly, it is not for this Council to seek the requested obligations within a legal agreement. A copy of the letter has provided to Hutchison Port (UK) Ltd in order for them to comment directly to Shotley PC.

6.11.4 The sound insulation grants are to remain.

6.11.5 Finally, Shotley Parish Council requests a new Environmental Study. For the reasons set out in this Report, officers are satisfied that the original ES read together with the Supplementary ES provide sufficient environmental information and amount to an appropriate environmental statement within the meaning of the 1999 Regulations 1999.

Natural England

6.11.6 The Advisory Comments of Natural England with respect to any further planning application are noted.

Objections relating to the impact of construction upon amenity

6.11.7 Such objections were considered by the Secretary of State and mitigating measures were included in the conditions approved by him and repeated in the conditions proposed for the present application (see in particular conditions 13 – 20, 25 – 27 and 29-33).

Objections relating to the impact of the development upon amenity

6.11.8 Such objections were considered in detail by the Secretary of State and mitigating

measures were included in the conditions approved by him and repeated in the conditions proposed for the present application, including landscaping (conditions 5 and 6), noise and vibration management (conditions 21, 22 and 50), visual impact (conditions 23 & 24), lighting (condition 28), dust (condition 34) and air quality (condition 49).

Objections in principle to the development

- 6.11.9 Objections in principle were considered by the Secretary of State who concluded that the proposal was of national importance and that it should therefore be permitted. In the view of officers, that remains the position.
- 6.11.10 Copies of the Inspector's Report and of the Secretary of State's decision letters will be made available to Members prior to the meeting and will be available at the meeting.

7. Conclusion

- 7.1 The application documents detail that bringing forward the Bathside Bay Container Terminal development is a major enterprise in terms of both time and expenditure. Given the current economic climate it is understandable that the applicant is expressing some caution as to when the scheme, as approved, could commence. With such uncertainty it is clear that the required upturn in container handling demand may not occur during the current lifetime of the existing permissions. As such, this application has been submitted with a view to obtaining permission to construct the development platform in readiness for any change in circumstances which will bring about a faster delivery of the aspired Container Terminal.
- 7.2 Officers are of the view that the present application conforms to the material policies in the statutory development plan; that appropriate environmental assessments have been undertaken; that the previous decision of the Secretary of State is a highly relevant material consideration; in that the proposed change of conditions does not upset the balance in favour of development reached by the Secretary of State after a lengthy public inquiry into the merits of a container port at Bathside Bay; and that the reason for the application is another material consideration.

Phasing condition

- 7.3 The proposed variation to condition 03 is considered to be acceptable. The Council would continue to retain control over the phasing of the development and, more particularly, over the operation of the container terminal which is what in effect necessitates the need for the highway improvements referred to in the old conditions.

Highway conditions

- 7.4 The proposed variation, deletion and/or replacement of these controlling conditions are considered to be acceptable. The new conditions seek to alter the phasing of the development in relation to the timing of the two main sets of highway improvements. They do not negate the need for the originally approved highway improvements but merely seek to adjust the timing so that the emphasis is on the operation of the container terminal rather than on the commencement of construction works. In short, the new conditions, if approved, would allow for the construction of the container terminal platform in advance of some of the highway improvements but would not allow its **operation as a container terminal** until **all** the originally approved highway improvements were **complete and open for traffic**.

7.5 The new conditions have been agreed with the Highways Agency and Essex County Council as the local highway authority and have been considered and advised upon by Counsel.

APPENDIX A

1. The development shall be commenced before 30 March 2016.
2. The development hereby approved shall be implemented in accordance with the following plans, drawings and documents hereby approved:

H1001/01	Application Boundary
H1001/02 (Rev A)	Master Plan (RTG Operational Layout)
H1001/03 (Rev A)	RTG Layout Sections X-X
H1001/04	Existing and Proposed Flood Defences
H1001/05 Sheet 1	Existing Topographic Survey
H1001/05 Sheet 2	Existing Topographic Survey
H1001/05 Sheet 3	Existing Topographic Survey
H1001/05 Sheet 4	Existing Topographic Survey
H1001/05 Sheet 5	Existing Topographic Survey
H1001/05 Sheet 6	Existing Topographic Survey
H1001/05 Sheet 7	Existing Topographic Survey
H1001/06	Terminal Office GA Plans
H1001/07	Terminal Office Elevations and Sections
H1001/08	Terminal Control Gate GA
H1001/09	Logistics Facility GA Plans
H1001/10	Logistics Facility Elevations Drivers Facilities Building GA Plan
H1001/11	Elevations
H1001/12	Mess/Amenity Block GA Plan
H1001/13	Mess/Amenity Block Sections
H1001/14	Customs Control & BIP GA Plans Customs Control & BIP Elevations
H1001/15	Sections
H1001/16	Workshop Facility GA Plans
H1001/17	Workshop Facility Elevations
H1001/18	Lighting Layout Structural Landscaping Works and Planting
1514LO/52	Proposals
1514LO/53	Illustrative Planting Insets and Sections
1514LO/54	Landscape Masterplan
1514LO/55	Terminal Office Landscape Proposals Planning and Design Statement dated April 2003.

3. No development permitted hereby shall commence until a scheme of phasing substantially in accordance with Application Drawing H1001/02/A has been submitted to and approved in writing by the local planning authority. The scheme shall provide (inter alia) for:
 - (a) the construction of the quay wall comprised in the development to begin at the western end of the area marked Phase 1 on Plan H1001/02/A and proceed thereafter in an easterly direction;
 - (b) the timing of implementation of the landscaping scheme in accordance with condition 5 below;
and
 - (c) the notification of commencement and completion of construction of each phase.

The development shall be implemented in accordance with the approved scheme of phasing, which may provide for the construction of civil engineering works up to and including the paved surface of the terminal comprised in the development as a separate phase or phases prior to installation of craneage required to enable the development to function as a container terminal.

4. The development shall be carried out in accordance with the Planning and Design Statement dated April 2003 identified in condition 2 above save insofar as otherwise provided in any condition attached to this permission.
5. No part of the development hereby permitted shall be commenced until a landscaping scheme, including a programme for its implementation according with the indicative scheme shown in the application drawings, including details of screen mounding and tree planting, has been submitted to and approved in writing by the local planning authority. The landscaping scheme as approved shall be implemented during the first planting season following completion of topsoil dressing works at the development site. Any tree or shrub dying or becoming seriously diseased within five years of completion of the relevant phase of the development shall be replaced with a suitable specimen of similar species in accordance with the approved scheme.
6. No phase of the development shall commence operation until a landscape management plan including long term design objectives, management responsibilities and maintenance schedules for all landscape areas of that phase of the development, has been submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved.
7. No phase of the development shall commence until details of the design and external appearance of the buildings and hardstanding areas to be constructed within that phase of the development according with the Planning and Design Statement dated April 2003 have been submitted to and approved in writing by the local planning authority. The details shall include dark block paving for the container stacking area and quayside comprised in the development. The development shall be carried out in accordance with the details as approved.
8. Except with the prior written agreement of the local planning authority and local highway authority, top soiling of the buffer land surrounding the operational areas of the development is not to be undertaken using material from any source other than from the managed realignment site at Little Oakley approved under planning permission 03/01200/FUL, which material shall not be delivered from the said site at Little Oakley to the site of the development other than by sea.
9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no development shall commence until a scheme showing full details of fences, walls, gates and other means of enclosure has been submitted to and approved in writing by the local planning authority. The development hereby permitted shall be carried out in accordance with the approved details.
10. No part of the development hereby permitted shall be commenced until drawings showing both foul and surface water drainage (including the provision of all oil and diesel interceptors) incorporating a Sustainable Drainage System (SuDS) connected with the development have been submitted to and approved in writing by the local planning authority and thereafter any works in relation to the development shall be undertaken in accordance with the approved drawings.
11. No part of the development hereby permitted shall begin until a scheme for the design of the proposed 'wetland area' comprised in the development has been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the scheme as approved.

12. No part of the development (including ground works) hereby permitted shall commence until a programme of archaeological work (including marine archaeology) for the site (including any works that might be necessary and practicable to preserve the remains in situ) has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved programme.
13. No part of the development hereby permitted shall be commenced until a written Construction Management Plan (CMP) together with a certificate that the same has been submitted in that form to the Highways Agency has been submitted to the local planning authority and local highway authority and approved by each of them in writing. The CMP shall include details of management during the construction phase of the development of the matters contained in conditions 14 to 20 inclusive (construction noise and vibration), a construction traffic management plan in accordance with the Bathside Bay Construction Traffic Management Plan produced by ERM and dated 7th June 2004, conditions 25-27 (construction lighting) and conditions 29-33 (construction dust management) of this permission. The development hereby permitted shall be carried out in accordance with the approved CMP.
14. No part of the development hereby permitted shall be commenced until details relating to the control of noise and vibration from the construction of the development have been submitted to and approved in writing by the local planning authority. These details shall include the following:
 - (a) definitions of roles and responsibilities;
 - (b) the adoption of best practice for the specification and procurement of quiet plant and equipment;
 - (c) consultation and reporting processes for noise and vibration;
 - (d) noise and vibration monitoring procedures including recording measures and the location of measuring instruments for each phase of the development;
 - (e) action to be taken in the event of non-compliance with (b) to (d) above;
 - (f) a record of the occasions on which percussive piling operations take place;
 - (g) complaint response procedures;
 - (h) requirements to provide environmental noise awareness training to operatives; and
 - (i) construction methods for percussive piling designed to minimise the noise generated by such operations through practical methods such as shrouding or other appropriate alternative methods.

The development hereby permitted shall be carried out in accordance with the approved details.

15. All plant, machinery and vehicles used on site in constructing the development shall be fitted with effective silencers at all times which shall be maintained in accordance with the manufacturers' recommendations and current British Standards applicable thereto. No such plant shall be left running when not being operated.
16. Where any vehicle or plant is required to be fitted with a reverse warning system, such vehicles or plant shall not be installed or used prior to the approval in writing by the local planning authority of such a system. In operating such vehicles or plant the approved system shall be used.

17. No percussive piling operation for any phase of the development shall be carried out except in accordance with a programme for that phase which shall first have been approved in writing by the local planning authority. The said programme shall provide that:
- a. no percussive piling operations shall be undertaken in relation to the construction of the development during more than thirteen weekends in any six months; and
 - b. except with the prior written approval of the local planning authority no more than three hours of percussive piling of tubular piles for the main quay wall shall take place on any day.
18. Except with the prior written agreement of the local planning authority, no percussive piling operations shall be undertaken in relation to the construction of any part of the development outside the hours of:
- (a) 08:00 to 18:00 Monday to Friday; and
 - (b) 09:00 to 13:00 on Saturday;

or at any time on Sundays or Bank or Public Holidays provided that percussive piling operations may be undertaken in relation to the construction of the development outside the permitted hours if:

- (i) in the case of emergency; or
- (ii) where piling is required on the grounds of safety or environmental protection; and
- (iii) in either case the situation would otherwise be dangerous to life or limb.

The local planning authority shall be promptly notified in writing of any event of this type and the reason why percussive piling took place outside the permitted hours.

19. The noise from construction activities in relation to any phase of the development shall not exceed the following daytime free-field equivalent sound pressure levels, as measured at a height of 1.5 m above ground level at the nearest residential property to the relevant phase of development:
- (a) 67dB LAeq 12H and 85dB LA1 5mins (in relation to percussive piling operations) during the hours of 07:00 to 19:00 on Mondays to Fridays, excluding Bank Holidays;
 - (b) 55dB LAeq 1hr during the hours of 19:00 to 23:00 on Mondays to Fridays, excluding Bank Holidays;
 - (c) 67dB LAeq 6hr and 85dB LA1 5mins (in relation to percussive piling operations) during the hours of 07:00 to 13:00 on Saturdays; and
 - (d) 50dB LAeq 1hr at all other times.
20. Vibration levels from piling or other construction activities in relation to any phase of the development, as measured immediately adjacent to the nearest residential or vibration sensitive structure for that phase shall not exceed a peak particle velocity of 5mm/s.
21. No part of the development hereby permitted shall be operated until an operational noise and vibration management and monitoring plan (NVP), relating to the control of noise and vibration from the operation of the development has been submitted to and approved in writing by the local planning authority. The NVP shall include the following:

- (a) definitions of roles and responsibilities in relation to the obligations contained in the NVP;
- (b) requirements for the adoption of best practice for the specification and procurement of quiet plant and equipment;
- (c) consultation and reporting processes in relation to noise and vibration;
- (d) noise and vibration monitoring and recording procedures;
- (e) action to be taken in the event of non-compliance;
- (f) complaint response procedures; and
- (g) a requirement to provide environmental noise awareness training to operatives.

The development hereby permitted shall be carried out in accordance with the approved NVP.

- 22. Noise from the operation of the development and emanating from the site shall not exceed a free-field sound pressure level of 55dB LAeq 1hr at any residential property existing at the date of this permission measured at a height of 4 m above local ground level between the hours of 23:00 to 07:00.
- 23. No stack or stacks of containers on any part of the development hereby permitted shall exceed five containers in height save that nothing in this condition shall preclude the lifting of containers above any stack of five containers.
- 24. There shall be no stacking of containers (other than containers on HGV trailers) more than one high on land south of the rail terminal comprised in the development.
- 25. No phase of the development hereby permitted shall be begun until a written scheme of construction lighting for that phase has been submitted to and approved in writing by the local planning authority. The scheme shall include details of:
 - (a) definitions of roles and responsibilities;
 - (b) design including locations of the construction lighting in accordance with conditions 26 and 27 to this permission;
 - (c) installation of the construction lighting;
 - (d) management of the construction lighting; and
 - (e) construction lighting monitoring procedures and action to be taken in the event of non-compliance.

The development hereby permitted shall be carried out in accordance with the approved scheme.

- 26. The height of fixed lighting installations used in the construction of the development shall not exceed twelve metres above ground level.
- 27. No phase of the development shall commence until details of the luminaires to be mounted on lighting columns on site in connection with the construction of the development have been submitted to and approved in writing by the local planning authority. The details shall include:

- (a) use of luminaires with high quality optical systems of flat glass construction, where appropriate;
- (b) limits upon the aiming angle of the peak intensity of the luminaire to maintain the light from the luminaire generally within 75 degrees from the downward vertical; and
- (c) use of the most appropriate photometry reflectors available at the date of this permission.

The development shall be carried out in accordance with the approved details.

28. The development permitted by this planning permission shall not be commenced until a scheme for the provision and control of operational lighting (including high mast lighting and column lighting) on the site has been submitted to and approved by the local planning authority. The operational lighting scheme shall include the following:

- (a) use of luminaires with high quality optical systems of flat glass construction for high mast lighting;
- (b) use of full cut-off luminaires which do not produce upward spread of light near to or above the horizontal;
- (c) a restriction on the luminaire tilt angle to maximum of 8 degrees above the maximum peak of intensity angle of luminaire;
- (d) the direction of high mast lighting so as to minimise direct light into windows or properties in the proximity of the development site;
- (e) a reduction of the heights of high mast towers and columns towards the boundary of the site;
- (f) automatic extinguishment of ship to shore gantry crane boom arm floodlighting and maintenance access walkway lighting on the raising of a crane boom arm 10 degrees from the horizontal operation position;
- (g) access and safety luminaires on access walkways and ladders shall be fitted with diffusers;
- (h) the working lighting of the ship to shore gantry cranes shall be switched off when not in use for any extended period of time, retaining only access, safety and security lighting;
- (i) ship to shore gantry crane boom arm floodlighting luminaires located beyond the riverside edge of berthed vessels shall be manually turned off when not in use;
- (j) working lighting of rubber tyre gantry cranes shall be switched off when not in use for an extended period of time, retaining only access, safety and security lighting; and
- (k) operational lighting monitoring procedures and action to be taken in the event of non-compliance.

The lighting scheme hereby permitted shall be carried out and maintained in accordance with the approved scheme.

29. No part of the development hereby permitted shall be commenced until a construction dust management plan has been submitted to and approved in writing by the local planning authority. The construction dust management plan shall include details of the following:

- (a) definitions of roles and responsibilities;

- (b) the adoption of best practice for the specification of plant and equipment;
- (c) the consultation and reporting processes;
- (d) dust monitoring procedures;
- (e) action to be taken in the event of non-compliance; and
- (f) complaint response procedures.

The development hereby permitted shall be carried out in accordance with the approved plan.

30. No part of the development hereby permitted shall be commenced until details of the cleaning and maintenance programme for the site roads to be used during construction have been submitted to and approved in writing by the local planning authority. The programme shall include details of:
- (a) the use of water bowsers and sprays for damping down of hard surface site roads;
 - (b) sweeping of hard surface site roads; and
 - (c) grading and maintenance of loose aggregate surface site roads.

The development shall be operated in accordance with the approved programme.

31. All vehicles used to transport materials to or from the site during construction shall be sheeted so as not to deposit materials on the highway
32. No part of the development hereby permitted shall be commenced until written details of a wheel wash facility and its location have been submitted to and approved in writing by the local planning authority and local highway authority. The development hereby permitted during construction shall be carried out so as to ensure that vehicles leaving the development site first pass through the approved wheel wash facility.
33. No part of the development hereby permitted shall be commenced until a plan for the handling of materials and stockpiling of new construction materials on site (using physical containment, partial shielding where available and water misting/sprays where appropriate) has been submitted to and approved in writing by the local planning authority. The development hereby permitted shall be carried out in accordance with the approved plan.
34. No part of the development hereby permitted shall be commenced until an ambient dust monitoring strategy has been submitted to and approved in writing, by the local planning authority. The ambient dust monitoring strategy shall include details of the following:
- (a) three months' 'baseline' data;
 - (b) the numbers and locations of deposit gauge units;
 - (c) monthly sampling requirements;
 - (d) wind direction monitoring requirements;
 - (e) assessment criteria;
 - (f) reporting processes; and

- (g) action to be taken in the event of non-compliance with the approved assessment criteria.

The development hereby permitted shall be carried out in accordance with the approved ambient dust monitoring strategy.

- 35. No part of the development hereby permitted shall be commenced until details of measures to mitigate gas migration and accumulation, in accordance with the recommendations contained in the Bathside Bay Development Project Landfill Gas Investigation Report Ref E6702/1991/OCT/L6 have been submitted to and approved in writing by the local planning authority. The development hereby permitted shall be carried out in accordance with the approved details.
- 36. No part of the development hereby permitted shall be commenced until a flood evacuation plan has been submitted to and approved in writing by the local planning authority and the local highway authority. The development hereby permitted shall be carried out and operated in accordance with the approved plan.
- 37. All buildings constructed as part of the development shall have a minimum ground floor level of at least 4.6 m AODN with the provision of dry access at the same or higher levels to all such buildings.
- 38. No part of the development hereby permitted shall be commenced until a scheme for concrete pouring and filling works has been submitted to and approved in writing by the local planning authority. The scheme shall include the following:
 - (a) monitoring procedures; and
 - (b) remedial action works to be undertaken in the event of spillage.

The development hereby permitted shall be carried out in accordance with the scheme as so approved.

- 39. No part of the development hereby permitted shall be commenced until a scheme for pollution control has been submitted to and approved in writing by the local planning authority. The development hereby permitted shall be carried out and operated in accordance with the scheme as so approved.
- 40. No site clearance for any phase of the development hereby permitted shall be commenced until a scheme for the translocation of reptiles, invertebrates and coastal vegetation within the part of the site relevant to the phase of the development has been submitted to and approved by the local planning authority. The scheme shall include the following;
 - (a) exclusion fencing to be erected around the site;
 - (b) tinning to be carried out over a minimum of 60, 70 or 90 suitable days for a low, medium or high population level respectively, between 1st March and 30th September;
 - (c) relocation of the reptiles and invertebrates found to areas of suitable habitat outside the exclusion fencing.

Site clearance of each phase shall be carried out in accordance with the approved scheme.

41. No part of the development hereby permitted shall be operated until such time as the works listed below, (whether or not requiring the land of third parties), shall have been opened for traffic. The works are:

- (a) works for the improvement of the A12(T)/A120(T)/A1232 Ardleigh Crown Interchange, or such other works (by whomsoever and wherever provided) as in either case will achieve the relief of that junction in accordance with the principles (i) (ii) and (iii) set out below; and
- (b) works for the improvement of the A120(T)/Parkeston Road/Station Road/Europa Way Roundabout as will achieve the relief of that junction in accordance with the principles (i) (ii) and (iii) set out below.

The principles are that such highway works shall:

- (i) be in such form as the Highways Agency and local highway authority shall have approved in writing prior to the construction of those works; and
- (ii) be of a standard at least capable of ensuring that conditions at the relevant junction are no worse during and at expiration of a period of 10 years from the anticipated date of commencement of the operation of the development; and
- (iii) ensure the safety of all road users including pedestrians and cyclists using the junction in question.

42. Subject as Condition 43 otherwise permits and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (or any Order revoking and re-enacting the Order with or without modification), until the works set out below have been opened for traffic, no part of the development hereby permitted that is shown by magenta and green colouring on drawing H1001/02/A, shall:

- (a) be equipped with ship to shore gantry cranes; or
- (b) be operated in any manner as a container terminal; or
- (c) unless such use relates to the construction of the development, be used for any purpose that generates road traffic or would result in the arrival or departure of traffic to or from the development by road,

The works are:

- (a) an improvement of the route of the A120(T) (including from Ramsey Bridge Roundabout to Parkeston) together with consequential and ancillary improvements thereto; and
- (b) an improvement to the A120, and any side roads and access thereto, between and in the vicinity of :
 - (i) the A120 (T)/A133 Interchange at Hare Green to Horsley Cross Roundabout to no less a standard than a two lane dual carriageway; and
 - (ii) Horsley Cross Roundabout to Ramsey Bridge Roundabout to no less a standard than a wide single carriageway

or in either case such other terminal points for such route improvements as the Secretary of State may announce and

- (c) improvements to the local highway network including the A120 from Parkeston Roundabout to Morrisons Roundabout required as a result of the proposals referred to at (a) above in

such form as the Highways Agency and local highway authority shall have approved prior to the construction of those works.

43. Except where the works referred to in Condition 42 above have been opened to traffic, when this condition shall cease to have effect, the development shall not be operated except in accordance with a scheme (accompanied by a certificate that the same has been supplied to and approved by the local highway authority and the Highways Agency) approved by the local planning authority providing for traffic management and safety measures to remain in place until the works referred to in Condition 42 have been opened for traffic.
44. No part of the development hereby permitted shall be commenced until such time as details of the means of vehicular access to the site from the A120 have been submitted to and approved in writing by the local planning authority and the local highway authority. The development shall not be operated until the vehicular access has been constructed in accordance with the approved details and opened to traffic.
45. No phase of the development hereby permitted shall be commenced until a scheme and layout of hard standing for lorries and cars including a requirement that no charge be levied for HGV's delivering or collecting goods from the development and reasonable and proper provision for disabled people in accordance with the plans hereby approved has been submitted to and approved in writing by the local planning authority and local highway authority. The development shall be implemented in accordance with the approved scheme and layout which shall be retained thereafter.
46. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (or any Order amending or revoking and re-enacting that Order with or without modification) no linkspan (or other structure to permit the use of the development hereby permitted (or any part thereof) by RoRo type vehicles (here including vehicles referred to at paragraph (iii) below) shall be constructed pursuant to this planning permission or otherwise and no part of the development shall be used :
 - (a) for the import or export of RoRo vehicles or goods carried by RoRo vehicles (at the time of import or export); or
 - (b) for the storage or handling of RoRo vehicles; or
 - (c) for the loading or unloading of RoRo vehicles from any vessel; or
 - (d) For the collection or deposition of passengers arriving or departing as passengers by sea on vessels capable of carrying over 50 passengers.

In this condition;

“RoRo vehicle” means a wheeled vehicle capable of being used upon the public highway for the carriage of passengers or freight whether capable of moving under its own power or otherwise (e.g. trailer) including motorcycles, cars, buses and HGV's (in each case including any trailer) but does not include:

- (i) vehicles in use for the conveyance of goods, persons or containers to, from or within the development where the vehicle so used is not imported or exported with the goods, persons or containers;
- (ii) vehicles contained within containers;

- (iii) specialist vehicles used for the conveyance of awkward unusually large or bulky or unusual loads including solid wheel flat bed "MAPI" trailers (or similar); or
- (iv) vehicles delivered to the development for the use in its construction or operation

47. No part of the development hereby permitted shall be operated until a written emergency port closure scheme setting out:

- (i) procedures for the evacuation and/or closure of the development in the event of an emergency;
- (ii) procedures to be followed in the event of the closure of the development to sea traffic;
- (iii) the areas of HGV parking within the development to be used in the event of the closure of the development to sea traffic;
- (iv) procedures for notification and liaison with emergency services and highway authorities; and
- (v) procedures to be followed in the event of closure to or restrictions upon the use of the A120 and/or A120(T) by HGV's,

together with a certificate that the same has been submitted in that form to the Highways Agency has been submitted to and approved in writing by the local planning authority and local highway authority. The scheme shall be implemented as so approved.

In conditions 46-48:

"HGV" means a heavy goods vehicle of COBA Vehicle Category OGV1 and/or OGV2 as defined in the Design Manual for Roads and Bridges, Volume 13, Section 1 (May 2002).

48. No part of the development hereby permitted shall be implemented until a scheme providing for the operation of the development in accordance with measures designed to secure controls on activities likely to adversely affect air quality has been submitted to and approved in writing by the local planning authority. The scheme shall include:

- (i) a strategy for the procurement of plant, machinery and vehicles to be used in operating the development complying with Government air quality objectives from time to time for control of emissions including (where appropriate) the fitting and use of catalytic converters;
- (ii) a requirement that the development should be capable of being retrofitted with apparatus for the purpose of the supply of electricity from land to vessels berthed alongside;
- (iii) procedures for liaison and review in relation to the prospects of securing improvements to emissions from the development and the adoption of reasonable measures identified as being necessary as a result of such liaison and review; and
- (iv) a requirement upon the terminal operator to request that the Harwich Haven Authority imposes reductions in vessel speeds in order to limit emissions.

The development shall be operated in accordance with the scheme so approved.

- 49 No part of the development hereby permitted shall be commenced until a scheme for the provision of noise attenuation measures designed to mitigate the impact of traffic noise arising from the operation of the development on residential and/or noise sensitive properties at or in the vicinity of Wix Road, Ramsey has been submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out prior to the commencement of the operation of the development.
50. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) the hereby permitted container terminal shall not be extended to include land within the existing Harwich International Port without the submission of a planning application and the prior written permission of the local planning authority or the Secretary of State.