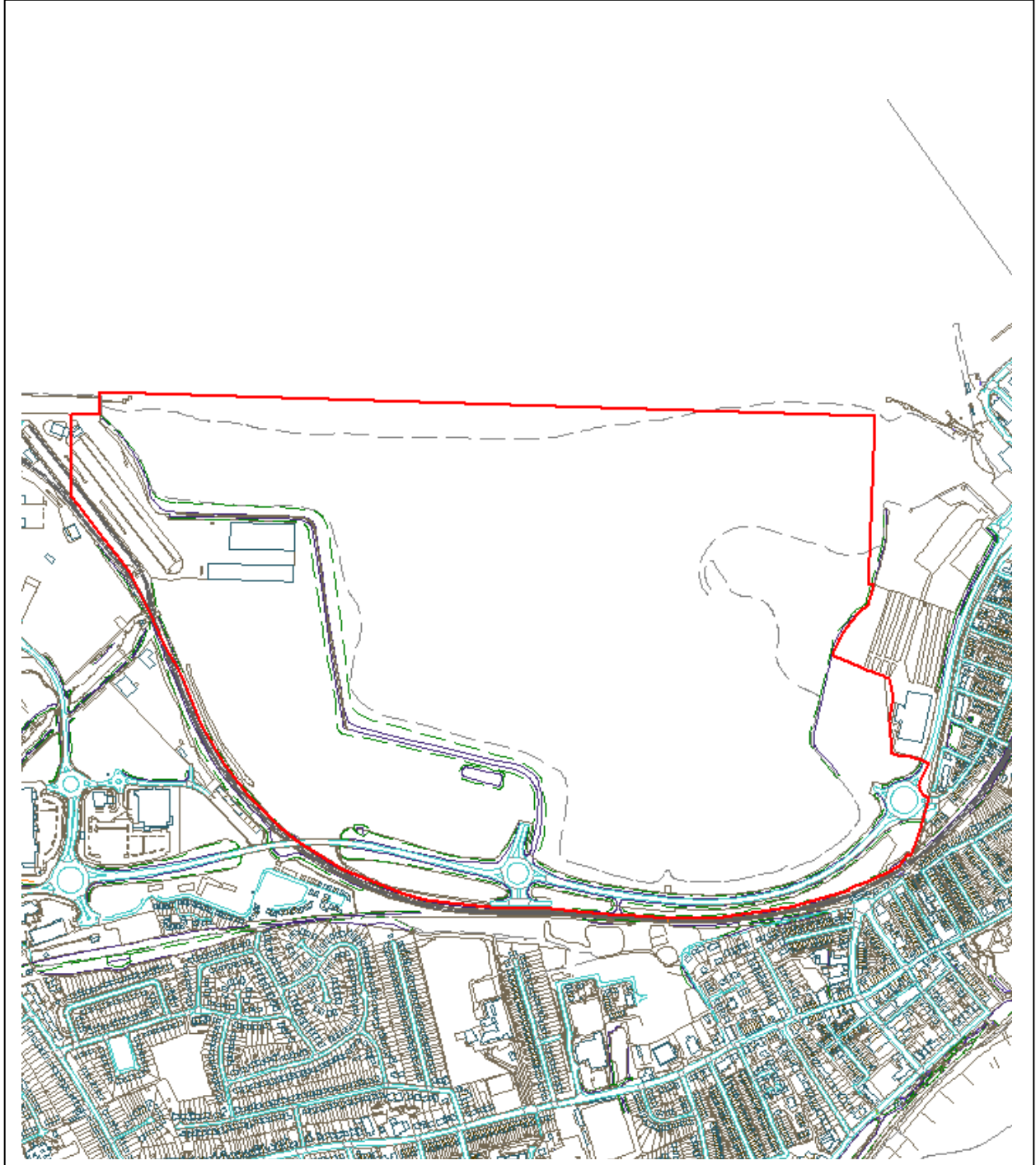


PLANNING COMMITTEE

4 DECEMBER 2012

REPORT OF THE HEAD OF PLANNING

A.9 PLANNING APPLICATION - 10/00202/FUL, 10/00203/FUL AND 10/00204/LBC-BATHSIDE BAY, STOUR ROAD, HARWICH, CO12 3HF



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Application:	10/00202/FUL, 10/00203/FUL and 10/00204/LBC	Town / Parish: Harwich Town Council
Applicant:	Hutchison Ports (UK) Limited	
Address:	Bathside Bay, Stour Road, Harwich, CO12 3HF	
Development:	<p>10/00202/FUL - Application for replacement planning permission (in respect of planning permission 03/00600/FUL) subject to a new time limit (to 2021) for 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.</p> <p>10/00203/FUL – Application for replacement planning permission (in respect of planning permission 03/00601/FUL) subject to a new time limit (to 2021) for 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.</p> <p>10/00204/LBC – Application for replacement listed building consent (in respect of listed building consent 03/00602/LBC) subject to a new time limit (to 2021) for the partial demolition of the long berthing arm attached to the listed Train Ferry Gantry and associated remedial works.</p>	

1. Executive Summary

- 1.1 These three applications were presented to the Planning Committee on 6 January 2011 with an officer recommendation of approval: see Appendix A - Planning Committee Report dated 6 January 2011. A fourth s.73 application seeking variation to previously imposed conditions (10/00201/FUL refers) was also considered at that meeting. The Planning Committee resolved to approve all four applications. Subsequently, the Secretary of State issued a direction that the applications should not be determined until he had given consideration as to whether they were to be 'called-in' for determination by him following a Public Inquiry.
- 1.2 The Council received written confirmation on 9 November 2011 that the Secretary of State had decided not to intervene in the determination of planning applications 10/00202/FUL,

10/00203/FUL and 10/00204/LBC (the applications subject of this Planning Committee Report – hereinafter called ‘the applications’).

- 1.3 The decision by the Secretary of State not to call-in these applications was unsuccessfully challenged by a third party. An application for permission to seek Judicial Review of the Secretary of State’s decision was refused. This was then followed by the Court of Appeal upholding the lower Court’s decision to refuse permission.
- 1.4 Due to the time that has elapsed since the Council’s original resolution to approve the applications, it is necessary that fresh consideration is given to any material changes in planning policy or circumstances in the intervening period. This report therefore provides an updated position in this regard.
- 1.5 Having considered the changes in national and local planning guidance and policy, and having regard to all other material considerations, it is the view of your officers that there are no significant changes to affect the Council’s decision to approve.
- 1.6 The applications are recommended for approval. Members are also advised that there is no further requirement to refer these applications back to the Secretary of State should a further resolution to approve the applications be made.
- 1.7 In relation to the fourth application (10/00201/FUL), the Secretary of State has directed that the application shall be determined by him instead of being dealt with by the Local Planning Authority.

Recommendations:

That the Head of Planning (or the equivalent authorised officer) be authorised to grant planning permission and listed building consent for the developments subject to those conditions attached to planning permissions 03/00600/FUL, 03/00601/FUL and 03/00602/LBC with the exception of revised time limit to 2021 (from 2016) (see Appendix B for full list of conditions applicable to each application).

Reason for approvals:

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 Deeds of Variation (dated 15 October 2004 and 23 March 2006 respectively) and further supplemental Deeds completed on 28 June 2011 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;
- The consultation responses from all statutory and non statutory consultees and all other representations made in relation to the proposal, including letters dated 11 April 2012 and 27 July 2012 from Richard Buxton Environmental & Public Law;
- The National Planning Policy Framework (2012);
- The National Policy Statement for Ports (2012);
- Tendring District Local Plan – Proposed Submission Draft (2012);
- The judgment of Edwards-Stuart J dated 13th December 2011 in the case of R (on the application of Saunders) v Secretary of State for Communities and Local Government.

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; the NPPF (2012); and the relevant policies of the Development Plan, with which the proposals comply.

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 (National Policy Statement for Ports 2012) 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 agreed in the Deed dated 15 October 2004 between the Applicant, Harwich Haven Authority, Environment Agency and English Nature.

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:

National Planning Policy Framework

National Statement for Ports (2012)

Regional 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
- ENG2 Renewable Energy Targets
- 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 District Local Plan – Proposed Submission Draft (2012)

SD1	Presumption in Favour of Sustainable Development
SD5	Managing Growth
SD6	Strategic Green Gaps
SD7	Securing Facilities and Infrastructure
SD8	Transport and Accessibility
SD9	Design of New Development

- SD10 Sustainable Construction
- PRO1 Improving the Strategic Transport Network
- PRO2 Improving the Telecommunications Network
- PRO3 Improving Education and Skills
- PRO4 Priority Areas for Regeneration
- PRO6 Retail, Leisure and Office Development
- PRO7 Tourism
- PRO11 Harwich International Port
- PRO12 Freight Transport and the Movement of Goods
- PRO13 The Renewable Energy Industry
- PRO14 Employment Sites
- PLA1 Development and Flood Risk
- PLA2 Coastal Protection
- PLA3 Water Conservation, Drainage and Sewerage
- PLA4 Nature Conservation and Geo-Diversity
- PLA5 The Countryside Landscape
- PLA6 The Historic Environment
- PLA7 Conservation Areas
- PLA8 Listed Buildings
- PLA9 Enabling Development
- PLA10 Renewable Energy Installations

Tending 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

02/01759/FUL	Retention of 2.4m high security fence	Approved	12.11.2002
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	26.03.2006
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	26.03.2006
03/00602/LBC	Partial demolition of the long berthing arm attached to the listed Train Ferry Gantry and associated remedial works.	Approved	26.03.2006

4. Assessment

- 4.1 Due to the time that has elapsed since the Council's original resolution to approve the applications, and the decision of the Secretary of State not to call-in the applications, it is necessary that fresh consideration is given to any material changes in planning policy or circumstances in the intervening period. This report therefore provides an updated position in this regard.
- 4.2 The following matters require fresh consideration:
- Policy Considerations
 - Imperative Reasons of Overriding Public Interest (IROPI)
 - Habitats Directive Annex I (stony reefs)

- Other Considerations

4.3 These matters are addressed in turn below.

Policy Considerations

National Planning Policy

- 4.4 In March 2012, the Government published the National Planning Policy Framework (NPPF), which revoked the existing Planning Policy Guidance Notes and Planning Policy Statements, against which the applications were considered previously. The policies contained within the NPPF were applicable with immediate effect but *“for 12 months from the day of publication, decision-takers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with this Framework”*: see Annex 1, paragraph 214. This therefore provided local planning authorities with a 12 month transition period within which to have a new LDF or Local Plan in place.
- 4.5 The purpose of the planning system is to contribute to sustainable development (paragraph 6). There are three dimensions to sustainable development: economic, social and environmental. So far as the economic dimension is concerned, the planning system should contribute to building a strong, responsive and competitive economy. So far as the social dimension is concerned, the planning system should support strong, vibrant and healthy communities by providing the supply of housing required to meet the needs of present and future generations. So far as the environmental dimension is concerned, the planning system should contribute to protecting and enhancing our natural environment (paragraph 7). Members may consider that the present proposals represent sustainable development, in that the economic dimension is fully achieved. The social dimension does not arise. As to the environmental dimension, insofar as replacement habitat is provided, it is also partially achieved, although the adverse effect on the SPA means that it is not fully achieved.
- 4.6 Paragraph 17 of The NPPF identifies 12 core land-use planning principles which should underpin both plan-making and decision-taking, including that planning should *“proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to widen opportunities for growth”*. In addition, planning should *“contribute to conserving and enhancing the natural environment....”*
- 4.7 The sustainability aspects of the applications are material to the outcome in this instance. Under the heading “Delivering sustainable development”, Government identifies the following:
- Building a strong, competitive economy,
 - Promoting sustainable transport,
 - Meeting the challenge of climate change, flooding and coastal change,
 - Conserving and enhancing the natural environment, and
 - Conserving and enhancing the historic environment.
- 4.8 Under the sub-heading “Building a strong competitive economy”, paragraph 18 of the NPPF states that *“the Government is committed to securing economic growth in order to create jobs and prosperity, building on the country’s inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.”* Local authorities are directed to approach decisions positively and to attach significant weight to the benefits of economic growth.

- 4.9 Under the sub-heading “Promoting sustainable transport”, paragraph 33 of the NPPF states that “*when planning for ports, airports and airfields that are not subject to a separate national policy statement, plans should take account of their growth and role in serving business, leisure, training and emergency service needs. Plans should take account of this Framework as well as the principles set out in the relevant national policy statements and the Government Framework for UK Aviation.*” There is a relevant national policy statement in the present case: see below.
- 4.10 It should be noted that the NPPF introduces a presumption in favour of sustainable development. This presumption does not apply where “*development requiring assessment under the Birds and Habitat Directives is being considered, planned or determined*”: see paragraph 119 under the sub-heading “Conserving and enhancing the natural environment”. Thus, the presumption in favour of sustainable development does not apply in the present case, where Members must consider whether the application satisfies the requirements of the Directive.
- 4.11 Paragraph 186 advises local planning authorities to approach decision-taking in a positive way to foster the delivery of sustainable development. Paragraph 187 advises local planning authorities to “*look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.*”

National Policy Statement for Ports (NPS)

- 4.12 The applications were originally considered against the draft National Policy Statement for Ports (2009). That has now gone and has been replaced by the National Policy Statement for Ports (NPS). The NPS was designated on 26 January 2012 by the Department of Transport having been laid before Parliament. This provides the framework for decisions on Nationally Significant Infrastructure Projects (NSIPs) in the ports sector, for which the Secretary of State is the decision maker, and is a material consideration for local authorities when they deal with port development proposals. Although only limited changes (material to the present applications) have been made from the draft to the final versions, your officers consider that it is important to set out the material provisions of the NPS in some detail.
- 4.13 Paragraph 3.1.3 notes that in the last 40 years freight traffic through UK ports has increased by three-quarters and that, in 2010, ports in England and Wales handled about 95% of the total volume of UK trade and 75% of its value. Paragraph 3.1.4 points out that shipping will continue to provide the only effective way to move the vast majority of freight in and out of the UK, and that the provision of sufficient sea port capacity will remain an essential element in ensuring sustainable growth in the UK economy. According to paragraph 3.1.7, ports continue to play an important part in local and regional economies, further supporting national prosperity. By bringing together groups of related businesses within and around the estate, ports also create a cluster effect, which supports economic growth by encouraging innovation and the creation and development of new business opportunities. And new investment, embodying latest technology and meeting current needs, will tend to increase the overall sector productivity.
- 4.14 As summarised in paragraph 3.3.1, the Government’s fundamental policy for ports is to seek to:
- encourage sustainable port development to cater for long-term forecast growth in volumes of imports and exports by sea with a competitive and efficient port industry

capable of meeting the needs of the importers and exporters cost effectively and in a timely manner, thus contributing to long-term economic growth and prosperity;

- allow judgements about when and where new developments might be proposed to be made on the basis of commercial factors by the port industry or port developers operating with a free market environment, and
- ensure all proposed developments satisfy the relevant legal, environmental and social constraints and objectives, including those in the relevant European Directives and corresponding national regulations.

4.15 The Ports NPS says the Government wishes to see port development wherever possible:

- being an engine for economic growth;
- supporting sustainable transport by offering more efficient transport links with lower external costs, and
- supporting sustainable development by providing additional capacity for the development of renewable energy.

4.16 The NPS contains forecasts of demand for port capacity in the period up to 2030. Although those forecasts are from 2006/07, since when the effects of the global economic recession have been felt, the Government's view remains 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, in particular for unitised goods, predicted in these forecasts."*

4.17 In paragraph 3.4.8, the NPS refers to consents granted since 2005, which, if completed as planned, would provide substantial additional container throughput. One such consent is *"Bathside Bay (Harwich): consent granted March 2006 would provide capacity for an estimated 1.7 million teu per annum, though this development is not expected to proceed for some years"*. The following paragraph notes that if all the above developments were to be built (including, in other words, Bathside Bay), the aggregate container capacity would be broadly in line with the pre-recession forecast for 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 judgements of the developers at the time."*

4.18 The Government concludes 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 *"would be strongly against the public interest"*. Given this level and urgency of need for infrastructure, the NPS, at paragraph 3.5.2, states that the IPC (and, by implication, other decision makers) *"should start with a presumption in favour of granting consent to applications for ports development. That presumption applies unless any more specific and relevant policies set out in this or another NPS clearly indicate that consent should be refused"*.

4.19 The NPS therefore contains the most up-to-date assessment of the need for additional port capacity – and it is accepted by the Government that the delivery of new ports may be temporarily delayed because of the economic downturn. In fact, the government introduced specific planning measures in direct response to the economic slowdown, including the introduction of an application for a replacement planning permission subject to a new time limit.

4.20 CLG guidance 'Greater flexibility for planning permissions' states that the ability to secure extensions of time has been introduced *"...in order to make it easier for developers and*

LPAs to keep planning permissions alive for longer during the economic downturn so that they can more quickly be implemented when economic conditions improve” (paragraph 1). The provision for extensions to time limits has recently been extended by the Government to reflect the continuing economic downturn. The grant of these permissions by the Council will therefore protect the existing Bathside Bay Container Terminal permissions. They will provide security to HPUK (the applicant) that, in the event that HPUK is unable to commence development before the present deadline of 29 March 2016, these permissions will remain extant for a similar period to that approved under the Harwich Parkeston Quay Harbour Revision Order 2010.

- 4.21 In summary, the Government seeks to encourage sustainable port development to cater for long-term forecast growth in volumes of imports and exports by sea with a competitive and efficient port industry capable of meeting the needs of importers and exporters cost effectively and in a timely manner, thus contributing to long-term economic growth and prosperity.

Regional Planning Policy

East of England Regional Plan - The East of England Plan (2008)

- 4.22 The Localism Bill sought to abolish the Regional Spatial Strategies. This has been temporarily stalled by successful legal challenges and therefore the East of England Regional Plan still forms part of the development plan. The applications have already been considered against the provisions of this plan and therefore there has been no change in circumstances in the intervening period in this regard.

Local Planning Policy

Tendring District Local Plan (2007) – Current Position

- 4.23 Currently, the ‘development plan’ is formed of the 2007 Adopted Tendring District Local Plan and the 2008 East of England Plan. Local Plan Policy HAR1 – Bathside Bay is the principle source of planning policy for use in Development Management applicable to this site. The 2007 Adopted Local Plan remains in force until 27th March 2013 (12 months from the publication of the NPPF) (paragraph 214). By 27th March 2013, the government will expect the Council to have a new, up-to-date, Local Plan that meets the requirements of the NPPF (paragraph 215). The more advanced the new plan is (in terms of going through the process of consultation, examination and adoption), the more weight it will carry (paragraph 216).
- 4.24 With reference to the current adopted Tendring District Local Plan (2007), the proposals were previously considered against the provisions of this plan during the Planning Committee meeting on 6th January 2011. The issue to be addressed is whether any impending local planning policies would lead Members to reach a different conclusion on each of the applications.

The 2010 Core Strategy (now discontinued)

- 4.25 The 2010 Core Strategy, which includes key Project 12 - Port Expansion at Bathside Bay, is no-longer being progressed as a result of a considerable number of un-resolved objections; and therefore it can only carry very limited weight as a material consideration alongside the adopted Local Plan. Since the new Local Plan is now subject to public consultation, the draft Core Strategy will effectively carry even less weight in the assessment of these planning applications and your officers advise that it can be ignored.

Tendring District Draft Local Plan 2012

Explanatory Note

- 4.26 The Government published the NPPF on the 27th March 2012, which effectively gave all Local Planning Authorities twelve months to bring local planning policies in line with the NPPF. This Council is preparing a new 'local plan' and published a 'Proposed Submission Draft' of the new local plan for public consultation for eight weeks commencing on 9th November 2012 (consultation expiring Monday 7th January 2013). In accordance with the provisions of the NPPF, the Council's 2007 Adopted Local Plan will remain in place until 27th March 2013 as part of the statutory development plan and should therefore continue to have full weight in the determination of planning applications and at appeals. After this date it will cease to have effect.
- 4.27 The NPPF also allows Councils to give weight to emerging local plans as material considerations but the level of weight that can be attached to these depends on the stage of preparation of the emerging plan, the extent to which there are unresolved objections to the plan and the degree of consistency of policies in the plan to the NPPF.
- 4.28 Following its approval at Full Council on 11 September 2012, the draft new plan should be considered as a material consideration in the determination of planning applications and at appeals and, where relevant and appropriate, its policies should be applied alongside the 2007 Adopted Local Plan but the weight will be minimal.
- 4.29 Following public consultation, depending on the level of objections received, the new plan will carry more weight and any policies or proposals that receive little or no objection will carry greater weight than those that did receive objection. The Planning Policy Team will issue guidance on the level of weight to attach to each policy/proposal as soon as possible following the close of the consultation period. If, having considered any objections, the Council chooses to approve the plan (or only make minor changes) and submit it to the Secretary of State before the 27th March 2013, it will carry greater weight and should take firm precedence over the 2007 Adopted Local Plan.
- 4.30 From the 27th March 2013, the new Local Plan will become the principle source of planning policy for use in Development Management but until it is formally adopted by the Council the level of weight to attach to each policy/proposal will still depend on the extent to which there are unresolved objections to the plan and the degree of consistency of policies in the plan to the NPPF.

Impact of emerging Local Plan on proposals

- 4.31 The draft Local Plan includes Policy PRO11: Harwich International Port.

"Land at Harwich International Port, as shown on the relevant Policies Map Inset, is safeguarded for port use where the Council will support proposals for the upgrading of facilities necessary for the continued successful operation of the port and refuse proposals for development in any part of the district that would jeopardise its continued operation.

Bathside Bay, to the east of Harwich International Port, also shown on the relevant Policies Map Inset, is allocated for the major expansion of existing container port facilities. The development is expected to take place after 2021 but during this period the Council will work with the owners of Harwich International Port, the Highways Agency and other relevant partners to investigate ways of facilitating the early start to the development and refuse proposals for development in any part of the district that would jeopardise the development.

The proposed port expansion at Bathside Bay has been granted planning permission by the Secretary of State in recognition of its overriding economic benefits to the national economy, despite its status as site of international importance for nature conservation. Whilst Bathside Bay remains undeveloped, its importance for nature conservation will continue to be recognised through Policy PLA4 in Chapter 5 of this Local Plan and protected in line with the relevant International, European and English law.”

- 4.32 This policy sets out the Council’s full support for the proposal at Bathside Bay, but, due to a number of economic factors, does not realistically expect the development to commence until at least the end of the Local Plan period in 2021. Policy PRO11 aims to ensure that port expansion in the longer-term is not jeopardised by planning decisions in the shorter-term, and will work closely with Hutchinson Ports, the Highways Agency and other relevant partners to investigate possible ways of facilitating the development as early as possible for the benefit of the Tendring economy.
- 4.33 In summary, draft Local Plan Policy PRO11: Harwich International Port (which includes BSB) will help meet the requirements of the Government’s policies on sustainable development, new port infrastructure and contribute to local employment, regeneration and development. However, at present, this policy can only carry limited weight.

Imperative Reasons of Overriding Public Interest (IROPI)

- 4.34 The Council received correspondence from Richard Buxton Environmental & Public Law (letter dated 27 July 2012) requesting that *“the Council bring the applications back to committee to reconsider afresh its position on IROPI under the Habitats Directive in light of the severity and prolonged nature of the economic downturn affecting capacity demand.”* The letter goes on to state that *“the council’s decision was expressly made on the basis that an ‘imperative reason of overriding public interest for a container terminal development remains’.* However since this statement in January 2011 the recent economic data we have seen calls into question whether in fact that statement is correct now or indeed was correct at the time.” The writer then requests confirmation that *“prior to entering the decision notices that the Council will bring the applications back to the committee and provide an update on container port capacity supply and demand so your committee is fully apprised of the IROPI position prior to issuing decision notices.”*
- 4.35 In this regard, it is acknowledged that since the works to which these applications relate would affect a European Site, they cannot be determined by the Council until an appropriate assessment of the proposed project has been undertaken, the absence of alternatives established and imperative reasons of overriding public interest ("IROPI") demonstrated. In this regard this case has already been made out in the justification for the 2006 permissions and the case remains materially as stated in the applications under consideration.
- 4.36 Your officers have concluded that the IROPI that the Secretary of State found existed in 2006 exist even now. They have arrived at that conclusion for the following principal reasons:
- (i) The demand for future port facilities formed the basis for the Secretary of State’s finding that IROPI existed. He concluded in his decision letter that *“there is a need for the Bathside Bay container terminal and...the development to help meet the need for container terminal capacity as part of the development of a modern, competitive ports industry is of vital importance to the United Kingdom.....these factors would constitute imperative reasons of overriding public interest.”* Finally, in agreement with the Inspector, he found that the proposal *“would also be able to significantly assist in enhancing the socio-economic and economic interests of the sub region.”*

- (ii) The NPS for Ports specifically recognises that the demand for future port facilities that existed in 2006 continues to exist at present, albeit the long term effect of the recession will be to delay by a number of years, but not ultimately reduce, the eventual levels of demand for port capacity predicted in the Government's 2006 and 2007 forecasts. Bathside Bay was noted as being one of the developments that would meet the future demand. The compelling need for future port capacity could be met in part by development already consented, including Bathside Bay. Excluding the possibility of providing additional capacity "*would be strongly against the public interest*".
- (iii) In his letter of 30th October 2012, the Secretary of State raised a number of matters on which he wished to receive submissions in relation to the Public Inquiry into application 10/00201/FUL. However, he did not require his Inspector "*to assess the need for the container port, this justification is contained in the National Policy Statement for Ports (January 2012).*" Insofar as he required submissions on IROPI, it was in the context of HPUK's intention to facilitate an alternative temporary use.
- (iv) Two submissions made before Edwards-Stuart J. are worth repeating. First, Counsel for the Secretary of State and for HPUK both submitted that nothing had altered to affect the original decision on IROPI. The inspector's conclusions, accepted by the Secretary of State in his original decision letter, was that there was going to be a significant demand in the requirements for handling containers which could not be met without expansion of facilities at Bathside Bay, Felixstowe and Thames Gateway. While it was true that the demand had not materialised as anticipated, the 2011 position was that an increase in demand was still anticipated (judgment paragraph 51). Later, Counsel for the Secretary of State reiterated that "*all that was being sought was an extension of time in the circumstances where.....no real change of circumstances had been identified because the position going forward in 2011 was not materially different from that as envisaged in 2006 so far as the anticipated increase in container traffic demand was concerned...*" (judgment paragraph 58). The Judge accepted those arguments (judgment paragraph 63).

4.37 The Inspector and the Secretary of State originally decided that there were no alternatives to Bathside Bay. Since then, no alternatives have been suggested, much less established. It is of significance that, at the recent hearing for permission to apply for judicial review in the Administrative Court before Edwards-Stuart J, Counsel for the Applicant (instructed by Richard Buxton) "*very realistically accepted that there was no alternative candidate other than those mentioned for handling an increase in container traffic*" (judgment paragraph 61). The reference to "*other than those mentioned*" was to Felixstowe and London Gateway, which both the Inspector and the Secretary of State had concluded would be required in addition to Bathside Bay and not as alternatives.

Habitats Directive Annex I (stony reefs)

4.38 The Council has received correspondence from Richard Buxton Environmental & Public Law (letter dated 11 April 2012) stating the following:

"...it has recently been brought to our attention that potential Habitats Directive Annex I habitats (stony reefs) are pending recommendation by Natural England and or the Joint Nature Conservancy Council for designation by the European Commission which would impact on the Bathside SPA, since they are within the boundaries of that designated area. Our further instructions are that the original 2004-05 environmental statement and the 2010 update have not considered this potential EU designation of Annex I habitat."

"Should these potential reefs become Annex I habitats, this would affect the IROPI decision criteria under the Habitats Directive and impose a more stringent test because of the increased importance of the habitat. This would be a material consideration which the

Council did not have regard to when the resolution to grant permission was made. Therefore under the principles established in R (Kides v So Cambridgeshire District Council [2002] EWCA 1370 the Council must refer the applications back to the committee for fresh reconsideration.” As such it was requested that the Council should agree to return the matter for fresh consideration before issuing the decision notices.

- 4.39 This matter was referred by the Council to Natural England for clarification. The following advice was provided from Natural England:

“I have looked into the information supplied to you and there are no stony reefs (Annex 1 habitat) to be designated as Special Areas of Conservation near Harwich. I believe there are a couple of areas this could have been confused with. The JNCC are currently consulting on a number of new SACs for stony reef features but these are all near Scotland. Natural England has submitted a new candidate SAC to the European Commission called Haisborough Hammond and Winterton candidate SAC which is offshore from Norfolk and has Sabellaria reef as a feature for designation. An alternative reason for confusion could be the Marine Conservation Zone (MCZ) which is proposed in the Stour and Orwell and covers the Harwich area. One of the features which will be protected, if approved by government, is Sabellaria reef at Harwich.”

- 4.40 One of the habitats listed in Annex I of the Habitats Directive for protection within Special Areas of Conservation is ‘Reefs’. No definition of the term *reefs* is given in the Directive itself. Interpretation at a European level has been documented in several versions of the EC’s Interpretation Manual, the most recent of which was agreed in 2007. [The JNCC publication “Marine Habitat Reviews”, 2000 suggests that Sabellaria could be protected as Reefs.]
- 4.41 The Council is unaware of any evidence of the existence of a stony reef in Harwich Haven. The Joint Nature Conservation Committee (JNCC) maintains a map showing areas of potential Annex I reef in UK waters. These are areas where the Statutory Nature Conservation Bodies believe, from the best available evidence, that Annex I reef might be present. No evidence of stony reefs existing in the Harwich Haven is identified and as detailed above, Natural England has confirmed to the local planning authority that there are no stony reefs (Annex 1 habitat) to be designated as Special Areas of Conservation near Harwich.
- 4.42 The issue of *Sabella pavonina* is documented within the Environmental Statement (ES) accompanying the application. The ES addressed the potential for the proposed development, including capital dredging, to impact on the biological communities of the Stour and Orwell estuaries. The assessment addressed a number of routes by which a potential impact could occur, such as dispersion of fine sediment, changes to current speeds and direction and changes to tidal propagation.
- 4.43 At the original public inquiry, an additional concern was raised by the Eastern Sea Fisheries Joint Committee regarding the potential for the programme of sediment recharge that takes place in the Stour and Orwell Estuaries to impact on *S. pavonina*. The ES attached maps demonstrate that there are a number of extensive areas of *S. pavonina* in both the Stour and Orwell Estuaries. The concern related to the recharge of fine sediment at one particular location, a site off Holbrook Bay in the Stour Estuary, which is located to the west (upstream) of the *S. pavonina* bed that is located in the lower Stour, upstream of Bathside Bay.
- 4.44 The above matter was debated at the original public inquiry, with evidence submitted by Dr Mike Dearnaley (HR Wallingford), which referenced Dr Martin Dyer of Unicomarine. The

evidence stated that Dr Dyer was confident that there is little threat to the *S. pavonina* populations of the Stour and Orwell Estuaries.

- 4.45 The Planning Inspector refers to the potential for the sediment recharge to affect the ecological communities and fishery resource of the estuary system, and concluded that the Compensation, Mitigation and Monitoring Agreement (CMMA) developed by HPUK provided the framework for a high degree of safeguarding for the marine environment. Paragraphs 18.363 and 18.364 of the Inspectors report are relevant in this respect:

Paragraph 18.363 “ ... because of the acknowledged complexities of the estuary regime, there must be some degree of doubt as to the exact operation and effectiveness of a sediment recharge programme, how this would impact on sensitive benthic communities within the estuary, and therefore what the ramifications might be for the fishery resource. However, Section 2 of the CMMA addresses the proposed mitigation for the sediment replacement and Section 4 relates to the monitoring of this. The contents of the CMMA are agreed between HPUK, EN [English Nature], EA [Environment Agency], the RSPB [Royal Society for the Protection of Birds] and TDC [Tendring District Council]. Mitigation would include regular liaison between the HHA and HFA [Harwich Fishermen’s Association] and others to ensure that effective communication of mutual requirements was maintained. This would be important since it is accepted that commercial fishing activity would be necessarily restricted during periods of sediment placement. Also, following placement, there would be temporary adverse implications for fishermen operating in the Stour and Orwell due to likely disturbance of targeted species”.

Paragraph 18.364 “The CMMA would be enforced by the concluded CMMD [Compensation, Mitigation and Monitoring Deed, dated 15th October 2004], Schedule 3 of which details the monitoring of the sediment replacement strategy. This would include reporting to, and dialogue with, a Regulatory and Advisory Group, in respect of which the KESFC [Kent and Essex Sea Fisheries Committee] and ESFJC would be consultees. The comprehensive sediment placement strategy, monitoring regime and scope for flexibly adjusting the strategy in the light of data produced through monitoring, would be likely to provide a high degree of safeguarding for the marine environment of the estuary in respect of the sediment replacement measures proposed”.

- 4.46 Accordingly, on the matter of *Sabella pavonina* it is concluded that:

- The information accompanying the applications for the proposed development, including the ES and the relevant supporting documents, fully document the presence and distribution of *S. pavonina*.
- The ES assesses the potential impacts of the proposed development on the ecological resource of the estuary system.
- The potential impacts on *S. pavonina* in particular were raised as a concern and debated at the public inquiry, as evidenced by notes and rebuttals prepared to inform the inquiry. The main potential for impact on this species arises from the sediment recharge programme.
- The Inspector’s report concluded that the monitoring programme and CMMA provided the framework for the management of risk to *S. pavonina*.

- 4.47 Therefore Members are advised that there are no issues relating to stony reefs and that there has been no material change in circumstances contrary to the applications in this regard.

5. Other Considerations

- 5.1 The decision of the Secretary of State not to call in these applications was challenged by a third party by way of an application for permission to seek Judicial Review. As part of the application, the Applicant sought an order prohibiting TDC from granting planning permission for the 3 applications which had not been called in by the Secretary of State. On 25th November 2011, on the paper application, the Court declined to grant permission or to make the order sought. The decision stated, inter alia, *“The claimant is seeking to restrain the Council from proceeding to act lawfully, on the basis that someone else should take that (lawful) decision.”*
- 5.2 The Applicant then renewed his application and there was an oral hearing before a single judge of the Administrative Court (Edwards-Stuart J). He too refused to grant permission or to make any order. The Applicant then appealed unsuccessfully to the Court of Appeal.
- 5.3 On 6th July 2012 the Council received in the post a sealed copy of an order of the Court of Appeal refusing “the application for permission to appeal the decision to refuse permission to claim for judicial review and protective costs”.

6. Conclusions

- 6.1 Having regard to the assessment above, the following conclusions are made:
- The NPPF defers to the Conservation of Habitats and Species Regulations 2010 (the "Conservation Regs") and Habitats Directive and places no more onerous requirements on decision makers in respect of development in or impacting on European Sites than have been appropriately addressed by the Council previously;
 - The National Policy Statement for Ports (NPS) re-affirms the compelling need for substantial additional port capacity over the next 20–30 years which if not met *“would be strongly against the public interest”*. Decision makers are advised to *“start with a presumption in favour of granting consent to applications for ports development”* unless any more specific and relevant policies clearly indicate that consent should be refused. No such policies apply in this instance.
 - The IROPI conclusion reached on this proposed development remains extant and is supported by the Government’s recent publication of the National Policy Statement for Ports.
 - No evidence of stony reefs existing in the Harwich Haven is identified – an opinion shared by Natural England.
- 6.2 Members are advised that having considered the changes in national and local planning guidance and policy, and having regard to all other material considerations, it is the view of your officers that there are no significant changes to affect the Council’s decision to approve.
- 6.3 Members are also advised that there is no further requirement to refer these applications back to the Secretary of State should a further resolution to approve the applications be made.

Enc. –

Appendix A – Planning Committee Report dated 6 January 2011

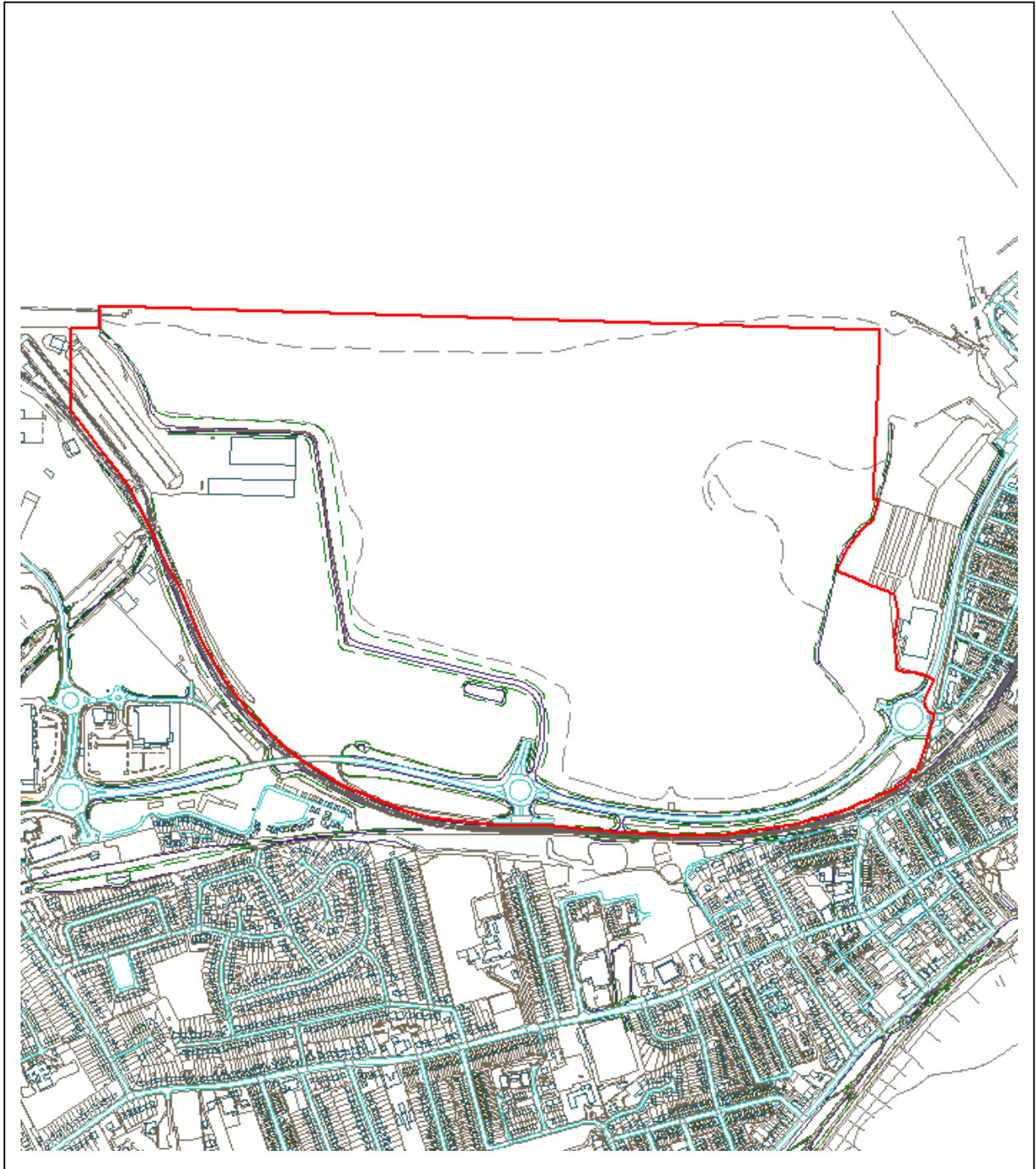
Appendix B – List of Conditions

DEVELOPMENT CONTROL COMMITTEE

06 JANUARY 2011

REPORT OF THE INTERIM HEAD OF PLANNING

**A.2 PLANNING APPLICATIONS – 10/00202/FUL, 10/00203/FUL AND 10/00204/LBC
- BATHSIDE BAY, STOUR ROAD, HARWICH**



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Applications:	10/00202/FUL, 10/00203/FUL and 10/00204/LBC.	Town / Parish: Harwich Town Council
Applicant:	Hutchinson Ports (UK) Limited	
Address:	Bathside Bay Stour Road Harwich	
Development:	<p>10/00202/FUL - Application for replacement planning permission (in respect of planning permission 03/00600/FUL) subject to a new time limit (to 2021) for 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.</p> <p>10/00203/FUL – Application for replacement planning permission (in respect of planning permission 03/00601/FUL) subject to a new time limit (to 2021) for 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.</p> <p>10/00204/LBC – Application for replacement listed building consent (in respect of listed building consent 03/00602/LBC) subject to a new time limit (to 2021) for the partial demolition of the long berthing arm attached to the listed Train Ferry Gantry and associated remedial works.</p>	

1. Executive Summary

- 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. These developments were subject to rigorous assessments and were found on balance to be acceptable. In particular, as regards the then Habitats Regulations, the Secretary of State found that imperative reasons of overriding public interest (IROPI) outweighed the identified harm to the integrity of a European site (the Sour and Estuaries SPA). This situation does not change as a result of these proposals. Advice from Central Government in the “Greater Flexibility for Planning Permissions” Guidance (October 2010) makes clear that an application to extend the time

limit for implementation can be made if the relevant time limit has not expired and the development has not yet commenced. Both those criteria are fulfilled in the present case.

- 1.2 In this instance the current economic recession and reduction in global trade has resulted in a lower volume of containers being handled by UK ports. However, Government recognises that despite this current downturn, there will be no reduction in the eventual level of demand for port capacity. In November 2009 the Department for Transport published the 'Draft National Policy Statement for Ports' which sets out the Government's conclusions on the need for new port infrastructure, considering the current place of ports in the national economy, the available evidence on future demand, and the options for meeting future needs. The Statement goes on to state that 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.
- 1.3 The updates and justification provided accord with legislation and planning guidance. Accordingly, the applications are recommended for approval.

Recommendations:

The Interim Head of Planning (or the equivalent authorised officer) be authorised to grant planning permission and listed building consent for the developments 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 (i) 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.

- (i) Those conditions attached to Planning permissions 03/00600/FUL, 03/00601/FUL and 03/00602/LBC with the exception of revised time limit to 2021 (from 2016) (See Appendix A)**

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 approvals:

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 proposals comply.

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 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
ENG2	Renewable Energy Targets
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
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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

Tending 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 consent TEN/2099/89 to read within a period of 8 years commencing on the date of this notice	Approved	02.06.1998
02/01759/FUL	Retention of 2.4m high security fence	Approved	12.11.2002
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	Approved	26.03.2006

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.

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	26.03.2006
03/00602/LBC	Partial demolition of the long berthing arm attached to the listed Train Ferry Gantry and associated remedial works.	Approved	26.03.2006

4. Consultations

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	Recommend that this application be determined in accordance with national and local policy guidance, and on the basis of your expert conservation advice.

EDF Energy Networks	No response received.
Environment Agency	No objection to the proposals of flood risk grounds.
Essex Bridleways Association	No response received.
Arch. Liaison Off, Essex Police	No response received.
Essex Wildlife Trust	No response received.
ECC Strategic Planner	No response received.
Essex County Council Archaeology	<p><u>Recommendation:</u> Full Condition No demolition or preliminary ground works of any kind shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the planning authority.</p> <p><u>Further Recommendations:</u> A professional team of archaeologists should undertake the archaeological work. A brief outlining the levels of archaeological investigation will be issued from this office on request. The District Council should inform the applicant of the recommendation and its financial implications.</p>
ECC Highways Dept	No objection.
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	<p>In accordance with the action plan approved by the Haven Gateway Board on 14 October 2010 (item 7 refers, see copy attached), I am writing in support of the current planning applications ref 10/00201/FUL, 10/00202/FUL, 10/00203/FUL and 10/00204 LBC.</p> <p>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.</p>
Health and Safety Executive	No response received.

Highways Agency	Directs conditions to be attached to any planning permission which may be granted (see Agenda Item 2).
HM Railway Inspectorate	No response received.
Marine and Fisheries Agency	No response received.
Natural England	The proposed development has the potential to affect the Stour Estuary Site of Special Scientific Interest (SSSI) and the Stour and Orwell Estuaries SPA and Ramsar Site.

Consultation under Regulation 61 of the Conservation of Habitats and Species Regulations 2010:

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.

Consultation under Section 28I(2) of the Wildlife and Countryside Act 1981 (as amended):

The conservation features under consideration for the European and Ramsar site are also among the features of interest for which the Stour Estuary Site of Special Scientific Interest (SSSI) is notified. As such, Natural England's advice on the European and Ramsar site also applies in relation to the SSSI in respect of these features.

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 Based on the information provided, the RSPB does not object to the above applications to vary the time limit of applications 03/0601/FUL and 03/0602/LBC, and make other changes to the conditions attached to the existing planning permission 03/00600/FUL.

However, the RSPB wishes to make the following comments.

Firstly, the importance of the Stour Estuary Site of Special Scientific Interest (SSSI) and the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar Site was recognised by all parties to the original planning applications back in 2006. Subsequently there has been no change to the requirement (in respect of the Habitats Regulations) of the agreed mitigation and compensation package.

Secondly, the RSPB expects that any granting of permission will result only in alteration of the time horizons of the current permissions (and variation of conditions with regards to the A120), and that the conditions and section 106 agreement relating to nature conservation will remain as per the 2006 planning permissions.

If the 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 full use of the port as a container terminal. 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.

Thirdly, it is important to note that the Habitats Regulations Assessment of the original consent, which passed the alternative solutions and imperative reasons of overriding public interest tests, relates to the development of the container terminal (and, for example, not the construction of a port for offshore wind farm construction). Furthermore, Tendring DC must satisfy itself that any other use of the port prior to completion as a container terminal (for example for offshore wind farm construction), will be only temporary in nature and not become the ultimate use.

Finally, we would wish Tendring DC to inform the RSPB of any applications by HPUK with regards to any changes to the permission relating to the habitat compensation and for any temporary change of use of the port.

Society For Protection of Ancient Buildings	No response received.
Shotley Parish Council	No response received.
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. If Tendring District Council requires any specific comments in relation to different aspects of the current planning applications please do not hesitate to contact us.
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	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	Supports the above applications. The reduction in global trade brought about by the recession reduced the volume of containers handled by UK ports, delayed the growth in container traffic anticipated in the original Bathside Bay applications and eased the demand for new container terminal capacity in the short term. Current capacity demand projections show that the Bathside Bay container terminal will still be needed, but not within the timeframe envisaged in the original applications. The significant economic and regeneration opportunity that the new port will bring to the District could be lost if the new time limits are not granted.
Marine Management Organisation	No response received.
Highways Agency	No objections to extensions of time.

5. Representations

10/00202/FUL

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

10/00203/FUL

5.2 A total of forty representations have been received as a result of the statutory consultation. Thirty seven representations were received in objection to the application, two in support and one offering comments.

10/00204/LBC

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

5.4 The main points of objection are summarised as follows:

- Extend the uncertainty leaving blight on environment and preventing alternative improvements;
- Concern over highway works;
- Application should be subject to Public Inquiry;
- Contrary to flood protection plans;
- Detrimental to wildlife habitat;
- Additional financial burden to repair or reinstate walls and piers;
- Additional railway infrastructure required;
- A120 requires an upgrade;
- Noise pollution;
- No longer a need for the development;
- Applicants demonstrate lack of need in planning statement as reason for exploring alternative temporary uses'
- Object to this new project;
- HPUK misjudged demand and now trying to recoup something from this misjudgement;
- Destruction of SPA with none of the claimed advantages;
- Would allow the SPA to be used for any purpose and lead to concreting over protected area;
- Applicants are hedging their bets;
- Object to permanent loss of a SPA for a temporary use;
- Disgrace if HPUK were allowed to subvert regulations;
- Alteration of conditions would materially alter and change justification;
- Object to phasing as the specific project was protected from metamorphosing into another project by the conditions;
- Object to an undefined use;
- An attempt to force a virtually done-deal when real future is revealed;
- Let us see alternative use proposals and put them through appropriate examinations before construction (destruction) begins;
- Government forecasts can no longer be relied upon;
- No pressing need and they still have 6 years in which to make a similar application;
- Extension is delaying any alternative development and suppressing possibility of job creation in near future;
- Temporary use for wind turbine operations would not constitute IROPI;
- Previous forecasts no longer material;
- Gt Yarmouth and ABP Humber better located for wind port;
- Unnecessary rail/road congestion;
- CTD and traffic infrastructure should not be separated;
- If our quality of life or our health be adversely affected we reserve right to seek full compensation from those responsible;
- Omissions in ES, including no mention of sabellaria pavonina;
- Predictions of silt accreting in the estuary shown to be inaccurate;
- TDC as competent authority has legal obligation to manage and enhance SPA'
- Road improvement conditions originally imposed to ensure SPA not developed for purpose other than container terminal;
- Benefit only the owner wishing to sell his real estate;
- SPA will no longer be subject to the Habitats Directive when it has evolved into a concrete wasteland;
- Plenty of alternatives for wind farm storage e.g. FSR Phase 2;
- Attempt to side-step Habitats Directive;
- Any future application should precede any development work;

- Quite likely there will never be a time in the future when the expense of the necessary road construction and improvements will be justified by the income of the container port;
- Harbours Act will allow almost any activity to take place;
- No details of what is envisaged for vast concrete storage yard;
- Development will likely never be needed;
- How can concreting a protected site be ecologically sound;
- All four applications would result in an undefined development concreting and irrevocably destroying the conservation area;
- Proposals not in best interests of local residents;
- Change to permissions would be unlawful;
- Reckless in the extreme for TDC to have accepted the applications for it could prove expensive should a series of court hearings ensue;
- Insist TDC adhere to ruling of Habitats and Birds Directive as I have no confidence that TDC has been doing this so far;
- Right to expect TDC to put people and environment before profit;
- Far more sustainable economic and tourist value can be achieved through passenger ferries, historic Harwich, fishing, beaches and the scenic and wildlife value of Bathside Bay;
- Planning Statement is woefully inadequate;
- Object to extending time limit of train ferry gantry;
- Train ferry gantry already on the 'At Risk Register' as the applicant has not maintained this properly;
- Thinly disguised attempt to 'bank' the original consent;
- Misuse of planning system;
- Strong grounds for reappraisal of the whole area; and
- Importance of cycling has increased since original permission;

In support the application, the following summarised comments were made:

- No objection providing all road improvements are in place before any temporary or permanent work is begun; and
- No reason to oppose applications providing sailing club is not prejudiced.

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 material 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. Other conditions deal with works for the improvement of the A120 (T) and other roads in the vicinity which would serve the proposed container terminal. Such improvements were 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. Those highway conditions would remain unchanged were permission to be granted for the present applications.

- 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 for replacement permissions subject to a new time limit to 2021, as follows:
- 10/00202/FUL in respect of the container port;
 - 10/00203/FUL in respect of the small boat harbour
 - 10/00204/LBC in respect of the train ferry gantry
- 6.1.5 It must be clearly understood that these would be entirely new planning permissions and a new listed building consent, but subject to all the conditions (except Condition 1) which were imposed upon the 2006 permissions and consent. Moreover and importantly, the applications do not seek to extend the time limit for implementing Planning Permission 03/01200/FUL in respect of the proposed creation of estuarine and coastal habitat compensatory land at Little Oakley, Hamford Water
- 6.1.6 Advice from Central Government in the “Greater Flexibility for Planning Permissions” Guidance (October 2010) makes clear that an application to extend the time limit for implementation can be made if the relevant time limit has not expired and the development has not yet commenced. Both those criteria are fulfilled in the present case. When determining extension applications, the Guidance (para. 23) states: "In current circumstances, LPAs should take a positive and constructive approach towards applications which improve the prospect of sustainable development being taken forward quickly. The development proposed in an application for extensions will by definition have been judged to be acceptable in principle at an earlier date. While these applications should, of course, be determined in accordance with s. 38(6) of the Planning and Compulsory Purchase Act 2004, LPAs should, in making their decisions, focus their attention on development plan policies and other material considerations (including national policies on such matters as climate change) which may have changed significantly since the original grant of permission."
- 6.1.7 Although the normal period within which development must be begun is now 3 years, section 91 of the Act gives the local planning authority discretion to impose such longer period as it thinks appropriate “having regard to the provisions of the development plan and to any other material considerations.” 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 permissions and the consent were 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 fact that 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. HPUK draw attention to a passage from the Guidance referred to above, where it is said that the ability to secure extensions of time have been introduced "...in order to make it easier for developers and LPAs to keep planning permissions alive for longer during the economic downturn so that they can more quickly be implemented when economic conditions improve" (para. 1).
- 6.1.8 The main planning considerations are:
- Context and Background;
 - Policy Considerations;

- Environmental Considerations;
- Other Material Considerations; and,
- 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 otherwise the powers granted cease to exist (or as otherwise extended by the SoS).

6.3 Policy Considerations

- 6.3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
- 6.3.2 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.”
- 6.3.3 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.
- 6.3.4 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.
- 6.3.5 Advice from Central Government in the “Greater Flexibility for Planning Permissions” Guidance, referred to above, must be taken into account in determining these applications.

National Planning Policy

Draft National Policy Statement for Ports (2009)

- 6.3.6 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.
- 6.3.7 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.”*

- 6.3.8 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)

- 6.3.9 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.
- 6.3.10 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.
- 6.3.11 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)

- 6.3.12 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”.

6.3.12 The current applications are 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), (ii), 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. (Highways considerations were addressed in HPUK’s Supplementary Traffic Assessment which concluded that there were no highways grounds for refusal.) Criterion (iii) requires fuller consideration and is addressed below.

6.3.13 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.

6.3.14 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.”

Tending Local Development Framework (2010)

6.3.15 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.

6.4 Environmental Considerations

6.4.1 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

6.4.2 Paragraph 14 of the Guidance advises local planning authorities that an application for an extension to the time limit is considered to be a new application for development consent under the Town & Country Planning (Environmental Impact Assessment etc) Regulations 1999. However, it goes on to suggest that, in the majority of cases, where an environmental impact assessment was carried out on the original application, further information to make the environmental statement satisfy the requirements of the Regulations is unlikely to be required

- 6.4.3 The current applications for planning permission (and for certain the application for a container port) are for Schedule 1 development and thus are applications for planning permission for EIA development within the meaning of Article 2 of the Regulations. Accordingly, the Council must not grant planning permission without first taking the environmental information provided by HPUK into consideration.
- 6.4.4 HPUK submitted a full Environmental Statement (ES) when it made its original applications. 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. The original ES was submitted with these applications, 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. Those reports judged that altering the date by which the developments must be implemented 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 (a copy of the Summary of Potential Environmental Impacts and Mitigation prepared by Royal Haskoning dated April 2003 is attached at Appendix B).
- 6.4.5 Having reviewed the original ES, the Inspector's report, the Secretary of State's decision and the supplementary ES, officers concur with that judgment.

(See Appendix B for Summary of Potential Environmental Impacts and Mitigation – 2003)

Habitats Regulations 2010

The Secretary of State's original approach

- 6.4.6 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.
- 6.4.7 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

6.4.8 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.”

6.4.9 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).”

6.4.10 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 Applications

6.4.11 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 applications will not have a material impact over and above the environmental impacts predicted in the original ES.

- 6.4.12 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 extension of time 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.
- 6.4.13 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. These applications were of course assessed against the full range of national and local planning policy, and in light of all material considerations.
- 6.4.14 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.
- 6.4.15 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 Habitat 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

- 6.4.16 In its planning statement, HPUK suggested that one of the possible temporary uses of the site before the container port is constructed may be as a harbour at which off-shore wind turbines can be assembled and transported out to sea. Many objectors have objected on the grounds that, in those circumstances, a Habitats Regulations assessment should be undertaken based on those temporary uses. It is right to say that such objections are probably directed more to the section 73 application than to the present applications. They are therefore addressed at greater length in the officer's report relating to the section 73 application to which reference should be made. For the reasons fully set out in that report, those objections are not accepted.

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

- 6.4.17 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 lead to an EU Pilot Project Case.

6.4.18 Following enquiries by the Communities and Local Government Deputy Director, CLG responded (by letter dated 12 August 2010) 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.*”

6.5 Section 106 agreements

6.5.1 Officers have assessed the existing s106 legal obligations in the context of these new applications. 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 Levy Regulations (Part 11).

6.5.2 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

6.5.3 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.

6.5.4 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

APPENDIX A

Deed of Variation made to the Bathside Bay Container Terminal Section 106 Agreement	<ol style="list-style-type: none"> 1. Harwich International Port Ltd 2. Tendring District Council 3. Essex County Council 	23 March 2006
The Hamford Water Section 106 Agreement	<ol style="list-style-type: none"> 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	<ol style="list-style-type: none"> 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	<ol style="list-style-type: none"> 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	<ol style="list-style-type: none"> 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	<p>Harwich International Port Ltd</p> <p>Protective provisions for:</p> <ol style="list-style-type: none"> 1. Trinity House 2. Harwich Haven Authority 3. Authorities in Harwich Harbour 4. The Environment Agency 	3 March 2010

Train Ferry Gantry

- 6.5.5 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.

7.0 Assessment

- 7.1 The 2006 planning permissions required implementation of the development by 2016. Applications 10/00202/FUL, 10/00203/FUL and 10/00204/LBC that are currently under consideration seek planning permission to extend the time limit for implementation until 2021 but in accordance with the 53 remaining conditions imposed by the Secretary of State in 2006.

10/00202/FUL – Container Port

- 7.2 Government advice is supportive of the application which would appear to conform to the material policies in the statutory development plan.
- 7.3 Officers accept that the previous decision of the Secretary of State is a highly relevant material consideration. In their opinion, the proposed extension of time 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.
- 7.4 The reason for the application is another material consideration in the view of officers. As a result of the current economic climate and the resulting stagnation in United Kingdom handling container demand, the applicants forecast that it will be 2022 before phase 1 container terminal operations commence. The draft National Policy Statement for Ports acknowledges this current downturn but provides and confirms the continued compelling need for port capacity and container handling. HPUK state that they remain committed to the implementation of the container terminal in the long term but the current economic recession and reduction in global trade has severely impacted upon the container shipping industry. This in turn has lowered the volume of containers handled in UK ports, which of course has resulted in the reduced short-term demand for new terminal capacity.
- 7.5 The application is unlikely to result in any environmental impacts greater than those associated with the original permission. The Secretary of State concluded, in relation to the original permission, that they were acceptable in principle subject to the mitigation measures proposed. It would be bordering on the perverse for the Council to reach a different conclusion.
- 7.6 Such objections as there are to this application appear to be based on the argument that the IROPI no longer exist and that development as a windport, or other similar use would fail to meet the tests set out in the Habitats Regulations. Given that an imperative reason of overriding public interest for a container terminal development remains, officers are satisfied that there are no grounds to oppose an extension to the prescribed time limit for the container terminal development. Officers are not considering any alternative use at this time, and indeed, any such alternative use of the site would need to be scrutinised against similar provisions.

10/00203/FUL – Small Boat Harbour

- 7.7 Condition 01 of planning permission 03/00601/FUL required commencement of the small boat harbour before the expiration of 10 years from the date of the consent i.e. 29 March 2016. This corresponded with similar time constraints to the container terminal development and the train ferry gantry.
- 7.8 The case for extending the time limit of implementation of the container terminal development has been made above. It therefore follows that approval for a new time limit to 2021 should be granted in relation to the proposed small boat harbour. The provisions of, and other conditions attached to, such development remain as previously.

10/00204/LBC – Train Ferry Gantry

- 7.9 Listed Building Consent has already been given for 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. The consent was subject to conditions requiring prior submission of the method and execution of demolition, prior details of any navigation marks or lights to be affixed to the new terminus and the submission of a programme of repairs etc.
- 7.10 The structure has further deteriorated, due to its inactivity and lack of maintenance and officers are in the process of securing some interim improvements with a view to removing the structure from the buildings at risk register. Notwithstanding this, there has been no material change in circumstance to warrant the withholding of consent and accordingly, no objection is raised to a further conditional consent being granted to reflect the extended life of the applications as proposed.

8.0 Comments on Objections

- 8.1 The submission of these applications has attracted a relatively small number of objections across the three applications. The points raised in opposition largely replicate those issues raised at the original Planning Inquiry. Your officers do not intend to re-address all these previously raised issues as they have already been subject to scrutiny at the highest level and permission forthcoming.

Natural England and RSPB

- 8.2 The Advisory Comments of Natural England and RSPB with respect to any further planning application are noted.

Associated British Ports

- 8.3 Many of the points raised on behalf of ABP are addressed elsewhere in this Report. However some further points should now be shortly addressed.

- 8.4 Officers can find no real inconsistency in the justification for the proposals advanced by HPUK. They believe that a national need for a Container Terminal at Bathside Bay still exists, even though that need will only be satisfied at a later date.

- 8.5 Neither formal screening nor scoping under the 1999 EIA Regulations was requested by HPUK. The submission by HPUK of the original ES and the supplementary ES determined that the applications were EIA development. It was then open to the Council to request additional environmental information. It did not do so because it was satisfied that the environmental information before it was sufficient.

- 8.6 Officers were similarly satisfied with the contents of the Supplementary Traffic Assessment

and its conclusions. They note that ABP themselves describe the Assessment as being “perhaps not the most critical document in the supporting documentation for this application.”

- 8.7 Finally, it is not accepted that the applications are premature. It is open to a developer to submit an application for an extension of time at any time prior to the expiration of the original time limit. The fact that there are still some six years before the time limit set by the Secretary of State is nothing to the point. On a project of this magnitude with a lengthy lead-in time, it is surely sensible that HPUK should know where it stands well in advance of the cut-off date.

Alternative Uses

- 8.8 Objections are made to possible alternative uses of the site. In this regard, and as is clarified throughout this report, no such alternative use is sought. The application documents do discuss the potential for alternative uses but also reveal that any such use would be subject to further applications for permission. The matter is discussed in greater detail in the report on HPUK’s section 73 application.

Objections relating to the impact of construction upon amenity

- 8.9 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 applications (see in particular conditions 13 – 20, 25 – 27 and 29-33).

Objections relating to the impact of the development upon amenity

- 8.10 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 applications, 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

- 8.11 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.
- 8.12 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.

9.0 Other Considerations

- 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.

- 9.1.1 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.

- 9.2 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.

10.0 Conclusions

- 10.1 These applications do not seek to vary the existing permissions, other than to allow an extension to the time limit from 2016 to 2021.
- 10.2 In considering the range of applications originally, the Planning Inspector, in his report, advised that one must consider the whole development and that it would be wrong to try to consider any one application in isolation. As such, the Inspector stated that they all stand or fall together. Accordingly, the proposals to extend the life have once again been considered as a whole, hence the inclusion of three applications within this one report.
- 10.3 The Bathside Bay developments have been subject to rigorous past assessments and found to be acceptable in so far that the IROPI outweighed the identified harm. This situation does not change as a result of these proposals. The updates provided and justification provided accords with legislation and planning guidance. Accordingly, there are no material grounds to warrant refusal of these applications.

Background Papers.

None.

APPENDIX A**10/00201/FUL - Bathside Bay Container Terminal**

1. The development shall be commenced before the expiration of ten years from the date of this permission.
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.

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 85dBLA1 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 commenced until such time as details of works for the improvement of the A12(T)/A120(T)/A1232 Ardleigh Crown Interchange in such form as the Highways Agency and local highway authority may approve in writing, have been submitted to and approved in writing by the local planning authority. The details of the said works shall:
- (a) be to a standard at least capable of ensuring
 - (i) that conditions at the interchange are no worse during and at the expiration of a period of 10 years from the anticipated date of commencement of operation of the development; and
 - (ii) the safety of all road users including pedestrians and cyclists using the junction; and

- (b) include drawings to a scale of not less than 1:500

Whether or not requiring the land of third parties.

42. No part of the development hereby permitted shall be commenced until such time as the details of a scheme for the improvement of the A120(T)/Parkeston Road/Station Road/Europa Way roundabout, in such form as the Highways Agency and local highway authority may approve in writing, have been submitted to and approved in writing by the local planning authority. The details of the said works shall:

- (a) be to a standard at least capable of ensuring
 - (i) that all traffic related to the development is accommodated during and at the end of a period 10 years from the anticipated date of commencement of operation of the development;
 - (ii) the safety of all road users including pedestrians and cyclists using the junction; and
- (b) include drawings to a scale of not less than 1:500

Whether or not requiring the land of third parties.

43. No part of the development hereby permitted shall be operated until the works referred to in Conditions 41 and 42 have been implemented and/or opened to traffic as the case may be.

44. No part of the development hereby permitted shall be commenced unless:

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

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

- (ii) the local highway authority has announced proposals relating to the local highway network including the A120 from Parkeston roundabout to Morrisons roundabout required as a result of the proposals referred to at (i) above;
- (iii) an agreement or agreements have been concluded pursuant to section 278 Highways Act 1980 to secure funding of such route improvement works

together with all consequential and ancillary improvements to the A120 (T), A 120 and any side roads in such form and upon such route as may thereafter be authorised pursuant to orders under the Highways Act 1980 and associated instruments made therewith;

- (iv) the necessary powers and consents to implement the works referred to at paragraphs (i) and (ii) above have been secured; and
 - (v) such improvement works have been begun by or on behalf of the Secretary of State for Transport and/or Essex County Council by the carrying out of a material operation in respect thereof as the same is defined in section 56 of the Town and Country Planning Act 1990.
45. That part of the development hereby permitted as shown by magenta and green colouring on the drawing H1001/02 Rev A shall not be paved or equipped with ship to shore gantry cranes or used for any purpose that generates road traffic until the improvements to the A120 (T) referred to in condition 44 above have been completed and opened to traffic so that for the avoidance of doubt no more than six cranes shall be provided at the development until such time as the said improvements have been completed.
46. 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), unless and until the improvements referred to in Condition 44 above have been completed, the areas referred to in condition 45 above shall not be used for any purpose unless the same relates to the construction of the development or would not result in the arrival or departure of traffic to or from the development by road.
47. Except where the works referred to in Condition 44 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 44 have been opened for traffic.
48. 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.
49. 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.

50. 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;
 - i. vehicles contained within containers;
 - ii. 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
 - iii. vehicles delivered to the development for the use in its construction or operation
51. 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).

52. 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;
 - (iv) 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;
 - (v) 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
 - (vi) 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.

53. 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.
54. 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.

10/00202/FUL - Small Boat Harbour

1. The development shall be commenced before the expiration of 10 years from the date of this consent.
2. the development hereby approved shall be implemented in accordance with the following plans, drawings and documents hereby approved:

H1002/01		Application Boundary
H1002/02	(Rev B)	Small Boat Harbour Master Plan
H1002/03		Existing Topographic Survey
H1002/07		Lighting Layout
H1002/08		Fisherman's Store Location Plan
H1002/09		Fisherman's Store GA
H1002/10		Fisherman's Store Sections and Elevations
H1002/11		Fisherman's Store East Elevation
H1002/12	(Rev A)	Division Wall Sections
H1002/13		Train Ferry Pier Termination Details
1514LO/50		Landscape Proposals
1514LO/51		Detail of Quayside (Landscape)
1514LO/52		Structural Landscaping Works
1514LO/53		Illustrative Planting Insets & Sections

Planning and Design Statement dated April 2003.

3. No part of the development hereby permitted shall be begun until a landscaping scheme including a programme in accordance with the indicative scheme shown in application drawings 1514LO/50, 1514LO/52 and 1514LO/53, including details of screen mounding and tree planting, has been submitted to and approved in writing by the local planning authority. The scheme as so 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 planting shall be replaced by a specimen of the same or similar species in accordance with the approved scheme.
4. The small boat harbour hereby permitted shall not be brought into use as such unless and until a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, has been submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as so approved.
5. The development shall be carried out in accordance with the Planning and Design Statement dated April 2003 identified in condition 2 above except insofar as otherwise provided for in any condition attached to this permission.

6. No phase of the development shall begin until details of the design and external appearance including materials of the buildings, structures and areas of hardstanding to be constructed within the development according with the Planning and Design Statement dated April 2003 and identified in condition 2 have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the details as so approved.
7. Except with the prior written agreement of the local planning authority and local highway authority, top soiling comprised in 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 other than by sea.
8. 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 begin until a written scheme showing full details of fences, walls, gates or 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 details as so approved.
9. Development pursuant to this planning permission shall not begin until drawings showing both foul and surface water drainage (including the provision of all oil and diesel interceptors) 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 drawings as so approved except as otherwise first agreed in writing by the local planning authority.
10. No part of the development (including ground works) hereby permitted shall commence until a programme of archaeological work to the site (including marine archaeology and any works which might be necessary and practicable to preserve any archaeological 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.
11. 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 and approved in writing by the local planning authority and local highway authority. The CMP shall include details of the management during the construction phase of the development of the matters contained in conditions 12 to 18 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, condition 19 (construction lighting) and condition 21 (construction dust management) of this permission. The development hereby permitted shall be carried out in accordance with the CMP as so approved.
12. 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:

- (c) definitions of roles and responsibilities;
- (d) the adoption of best practice for the specification and procurement of quiet plant and equipment;
- (e) consultation and reporting processes for noise and vibration;
- (f) noise and vibration monitoring procedures including recording measures and the location of measuring instruments;
- (g) action to be taken in the event of non-compliance with (b) to (d) above;
- (h) a record of the occasions on which percussive piling operations take place;
- (i) complaint response procedures;
- (j) a requirement to provide environmental noise awareness training to operatives; and
- (k) 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.

13. 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.
14. 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 of such a system in writing by the local planning authority. In operating such vehicles or plant the approved system shall be used.
15. No percussive piling operation for 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:
 - (i) 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
 - (ii) 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.

16. 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:

- (l) 08:00 to 18:00 Monday to Friday; and
- (m) 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:

- (j) 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.

17. The noise from construction activities in relation to 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 development:

- (e) 67dB LAeq 12H and 85dBLA1 5mins (in relation to percussive piling operations) during the hours of 07:00 to 19:00 on Mondays to Fridays, excluding Bank Holidays;
- (f) 55dB LAeq 1hr during the hours of 19:00 to 23:00 on Mondays to Fridays, excluding Bank Holidays;
- (g) 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
- (h) 50dB LAeq 1hr at all other times.

18. Vibration levels from piling or other construction activities in relation to 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.

19. No part of the development hereby permitted shall be begun until a written scheme of construction lighting 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;
- (c) installation of the construction lighting;
- (d) management of the construction lighting;
- (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.

- 20. No part of the hereby permitted development shall be implemented until a scheme relating to the provision and control of operational lighting on the site has been submitted to and approved in writing by the local planning authority. The lighting scheme shall be carried out in accordance with the scheme so approved.
- 21. No part of the development hereby permitted shall begin 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:
 - (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.

- 22. 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
- 23. 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 shall be carried out so as to ensure that vehicles leaving the development site during construction first pass through the approved wheel wash facility.
- 24. No part of the development hereby permitted shall be operated 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.

25. 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.
26. 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.

27. 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.
28. No site clearance for the development hereby permitted shall be commenced until a scheme for the translocation of reptiles, invertebrates and coastal vegetation within the site 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 the months of March and September;
 - (c) relocation of the reptiles found to areas of suitable habitat outside the exclusion fencing.

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

29. Development shall not begin until 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.

30. Development pursuant to this planning permission shall not begin until a scheme of provision to be made for disabled people to gain access to public areas forming part of the development shall have been submitted to and approved in writing by the local planning authority. The agreed scheme shall be implemented before the development hereby permitted is brought into use.
31. Except with the agreement of the local planning authority, no dredging operations shall be undertaken in relation to the construction of the development outside the hours of :
- (a) 07:00 hours to 19:00 hours Monday to Fridays;
- (b) 07:00 hours to 13:00 hours Saturdays;
- or at any time on Sundays or on bank or public holidays.
32. Before the development is begun written details of the layout, construction and surfacing of the internal roadways and hardstanding for cars comprised in the development shall be submitted to and approved in writing by the local planning authority and local highway authority. The development shall be implemented in accordance with the details so approved and retained hereafter.

10/00204/LBC – Train Ferry Gantry

01. The development shall be commenced before the expiration of 10 years from the date of this consent.
02. The works hereby authorised shall be implemented only in accordance with the following plans and drawings hereby approved:
- H1002/04 Existing Train Ferry Pier Plans, sections & Details
H1002/05 Existing Train Ferry Pier Gantry & Adjustable Bridge Details
H1002/06 Train Ferry Pier Extents of Demolition
03. No part of the works hereby permitted shall commence until a scheme for the method and execution of the proposed demolition works has been submitted to and approved in writing by the local planning authority. The works hereby permitted shall be carried out in accordance with the approved scheme.
04. None of the works hereby permitted shall begin until details of any navigation marks or lights to be affixed to the new terminus of the Grade II Listed train ferry gantry long berthing arm have been submitted to and approved in writing by the local planning authority. The works hereby permitted shall be carried out in accordance with the details as so approved.
05. None of the works hereby permitted shall begin until a programme of repairs, painting works, lighting works and maintenance of the Grade II Listed train ferry gantry structure has been submitted to and approved in writing by the local planning authority. The works hereby permitted shall be carried out in accordance with the programme as so approved.

APPENDIX B

SUMMARY OF POTENTIAL ENVIRONMENTAL IMPACTS AND MITIGATION
ROYAL HASKONING APRIL 2003



APPENDIX 2

SUMMARY OF POTENTIAL ENVIRONMENTAL
IMPACTS AND MITIGATION

Table A Summary of environmental impacts and mitigation measures associated with the development of Bathside Bay¹

CONSTRUCTION PHASE		OPERATIONAL PHASE					
Potential impact	Significance	Mitigation	Residual impact	Potential impact	Significance	Mitigation	Residual impact
HYDRODYNAMIC AND SEDIMENTARY EFFECTS							
Change in tidal range	Ranges from +2mm (Orwell Bridge) to -20mm (Wrabness and Bailister Creek). Equates to a one-off loss of approximately 3ha of intertidal	None possible	Loss of exposure of approximately 3ha of intertidal	Changes to the hydrodynamic regime – increased local wave activity; Increased tidal currents in Erwarnton Bay, reduced tidal currents at Shotley	Largest increase in wave activity at HIPL, with height increases of up to 23% during large S and SE winds; (occurring <1% of the time); Increased wave action in Erwarnton Bay and at Shotley	None possible	Negligible
				Increased sedimentation rates in berths and approaches to Felixstowe and in the new dredged areas to HIPL; Increased rate of erosion of intertidal		Limit offshore disposal to present levels through sediment replacement in estuaries and harbour	None

¹ Where impact predictions are revised from those presented in the tidal works ES they are presented in *italics*

Table A (continued)

CONSTRUCTION PHASE				OPERATIONAL PHASE			
Potential impact	Significance	Mitigation	Residual impact	Potential impact	Significance	Mitigation	Residual impact
BENTHIC INVERTEBRATE COMMUNITIES							
Loss of benthic community due to reclamation	Major adverse affect on the regional site assemblage	None	Major adverse affect on the regional site assemblage	Prevention of benthic community succession due to maintenance dredging	Minor adverse locally	None	Minor adverse locally
Removal of benthic community within the existing channel	Minor adverse locally	None	Minor adverse locally	Enhanced erosion of intertidal area and potential removal of benthic communities	Major adverse	Sediment replacement	None
Removal of benthic community in currently un-dredged subtidal areas	Moderate adverse affect for the Stour and Orwell estuaries	None	Moderate adverse affect for the Stour and Orwell estuaries	Localised erosion of intertidal areas due to predicted increases in wave activity and in tidal currents in the SPA	Minor adverse	Sediment replacement will mitigate for the impact on the estuary wide resource; targeted placement in Erwarton Bay should mitigate for local effects	None

Table A (continued)

CONSTRUCTION PHASE				OPERATIONAL PHASE			
Potential impact	Significance	Mitigation	Residual impact	Potential impact	Significance	Mitigation	Residual impact
Sedimentation of material re-suspended during capital dredging (smothering of benthic communities)	Moderate adverse (locally) to Negligible (beyond the immediate vicinity of the dredging works)	None	Moderate adverse (locally) to Negligible (beyond the immediate vicinity of the dredging works)	Localised acceleration of erosion of intertidal area due to increases in wave action in an already exposed location at Shotley	Minor adverse impact on some foreshore structures	Local beneficial use initiative with clays or gravels	Major benefit locally (without beneficial use, Negligible)
Release of sediment bound contaminants	Negligible	Not required	Negligible				
ORNITHOLOGY							
Loss of 69ha undesignated intertidal feeding habitat in Bathside Bay	Major adverse	None	Major adverse	Enhanced erosion of designated feeding area (equating to 2.8ha annually)	Major adverse	Sediment replacement /recycling	None
Decreased exposure of 3ha of intertidal area within the Stour and Orwell Estuaries SPA	Minor adverse	None	Minor adverse	Potential disturbance to feeding and roosting birds	Negligible	None	Negligible

Table A (continued)

CONSTRUCTION PHASE				OPERATIONAL PHASE			
Potential impact	Significance	Mitigation	Residual impact	Potential impact	Significance	Mitigation	Residual impact
Loss of waterfowl roosting areas at Bathside Bay (i.e. 2.8ha of saltmarsh)	Minor adverse within the estuarine system; Moderate adverse locally	None	Minor adverse within the estuarine system; Moderate adverse locally				
Disturbance to feeding and roosting birds on adjacent intertidal areas	Minor adverse (short term) at Erwarion; No impact elsewhere	Not required	Minor adverse (short term) at Erwarion; No impact elsewhere				
SALTMARSH AND COASTAL VEGETATION							
Direct loss of 2.8ha of saltmarsh within Bathside Bay	Moderate adverse locally; Minor adverse in the context of the SPA	None locally; sediment replacement upstream	Moderate adverse locally; Negligible for the SPA	Indirect loss of saltmarsh within the estuarine system	Moderate adverse	Sediment replacement	Negligible; sediment replacement could be applied (with direct placement) to have a Moderately beneficial impact on the saltmarsh resource
Direct loss of coastal vegetation within Bathside Bay	Minor to moderate locally	None - potential for translocation to be investigated	Minor to moderate locally				

Table A (continued)

CONSTRUCTION PHASE				OPERATIONAL PHASE			
Potential impact	Significance	Mitigation	Residual impact	Potential impact	Significance	Mitigation	Residual impact
Direct loss of coastal invertebrates in Bathside Bay	Moderate regionally	None - potential for translocation to be investigated	Moderate regionally				
FISHERIES RESOURCE							
Deterioration in quality of feeding resource for estuarine fish within the footprint of the deepened and widened channel	Moderate adverse locally	None	Moderate adverse locally	Prevention of benthic invertebrate community succession in the dredged area due to maintenance dredging	Minor adverse	None	Minor adverse
Loss of potential feeding habitat for estuarine fish	Moderate adverse locally	None	Moderate adverse locally	Effect of ongoing sediment replacement on fisheries (i.e. elevated suspended sediment)	Moderate adverse if undertaken during a sensitive period or at a sensitive location	Managed placements to avoid sensitive periods and locations	Negligible to Minor in the short term; No impact on commercial fishing activity
Effect of dredging-induced suspended sediment on fish physiology	Minor adverse (short term)	Careful silt stripping; optimisation of dredging speeds	Minor adverse (short term)				

Table A (continued)

CONSTRUCTION PHASE				OPERATIONAL PHASE			
Potential impact	Significance	Mitigation	Residual impact	Potential impact	Significance	Mitigation	Residual impact
Effect of dredging-induced suspended sediment on zooplankton	Moderate adverse (if dredging occurs when population level is at peak) to Minor adverse (when populations are at lower levels)	Careful silt stripping; optimisation of dredging speeds	Moderate adverse (if dredging occurs when population level is at peak) to Minor adverse (when populations are at lower levels)	Effect of sediment replacement on the native oyster	Negligible	Managed placements to avoid sensitive periods and locations	Negligible
Direct uptake of fish during dredging	Minor adverse (short term)	None	Minor adverse (short term)				
COMMERCIAL FISHING ACTIVITY							
Limited access to fishing areas during dredging works	Minor adverse (short term)	None	Minor adverse (short term)	Restriction of access to fishing areas 100m to the north of the existing channel and between the channel and the proposed quay face	Moderate adverse locally	None	Moderate adverse locally

Table A (continued)

CONSTRUCTION PHASE		OPERATIONAL PHASE					
Potential impact	Significance	Mitigation	Residual impact	Potential impact	Significance	Mitigation	Residual impact
WATER AND SEDIMENT QUALITY							
Generation of sediment plume during dredging and from the reclamation	Minor adverse in the estuary (short term); no impact on bathing beaches	Silt should be transferred directly to disposal vessels rather than being double-handled	Minor (short term) adverse affect locally	Alterations to the hydrodynamic regime affecting bacterial dispersion	No impact on designated bathing beaches	Not required	No impact
Reduced die-off rate of bacteria due to sediment plumes	Negligible	None	Negligible	Enhanced turbidity in the water column during maintenance dredging	Minor increases in suspended sediment concentrations above background levels	Not required	Negligible
Release of contaminants into the water column	Negligible	Not required	Negligible	Run-off of contaminated surface water from the reclaimed area into Stour estuary	Negligible - drainage system designed to avoid run-off of contaminants	Not required	Negligible
Disturbance of potentially contaminated ground	No impact	Not required	No impact	Accidental pollution	The potential for accidental pollution to occur is Minimal	Implementation of pollution contingency plan, as currently in place at the Port of Felixstowe	The potential for accidental pollution is Minimal; the significance of an impact will depend on the nature of the incident

Table A (continued)

CONSTRUCTION PHASE			OPERATIONAL PHASE				
Potential impact	Significance	Mitigation	Residual impact	Potential impact	Significance	Mitigation	Residual impact
Risk of gas accumulation due to the disruption of gas migration routes	Potentially Major adverse	Implementation of mitigation measures as recommended (WSA, 1991b), e.g. installation of a gas migration barrier	Negligible				
Accidental pollution	The potential for accidental pollution to occur in an uncontrolled manner is Minimal	No mitigation is required in addition to good site practice	The potential for accidental pollution is Minimal				
LANDSCAPE AND VISUAL SETTING							
Visual effects of construction, plant on land and on the river, pumping ashore, haul roads, building erection, landscaping and site lighting	Minor (all views), although the magnitude of the effect will be slight to substantial depending on location	Site management to ensure a tidy and ordered site, and controlled lighting; early construction of the small boat harbour quay side mound to screen views from Harwich	Minor	Loss of existing (limited) vegetation cover; alteration (raising) of the site topography	Minor consequence; Major change	Planting (trees, shrubs and grassland), screen mounding and the establishment of a wetland corridor; affecting views from Parkeston and Harwich	Minor in terms of land cover and drainage; Major with respect to topography

Table A (continued)

CONSTRUCTION PHASE		OPERATIONAL PHASE					
Potential impact	Significance	Mitigation	Residual impact	Potential impact	Significance	Mitigation	Residual impact
				Effects on landscape character	Minor to Major, depending on location of view; intensifying the industrial character of the Felixstowe and Harwich headlands and harbour	Scheme mitigated through design - limits on stacking heights/lighting and location of buildings/lights away from the quayside; in landside views, the creation of the Ramsey Creek corridor and earthworks	Minor to Major, depending on location of view; typically more significant in views towards the site from and across the water
				Effect of lighting on 'skyglow'	In views from the north and south, Major due to coalescence with Felixstowe; from the east, Moderate; and elevated views from the west, Moderate	Scheme mitigated through design - e.g. full cut off lanterns with low aiming angles to reduce light spill and masts set back from the water's edge	Minor to Major, where the effect in distant views will be reduced

Table A (continued)

CONSTRUCTION PHASE		OPERATIONAL PHASE				
Potential impact	Significance	Mitigation	Potential impact	Significance	Mitigation	Residual impact
			Effects on urban settings	Harwich - Major; Dovercourt - Moderate to Major (in upstairs and high views); Bathside - Moderate; Shotley - Moderate to Major due to the intensification of port activities; Parkeston - Moderate to Minor; Mistley and Manningtree - Minor to Moderate (rail movements)	Harwich - creation of a new setting for the approach to the town and planting; Dovercourt - establishment of the wetland buffer and good site layout; Bathside - boulevard planting; Parkeston - screen planting	Harwich - Major; Dovercourt and Shotley - Moderate to Major; Bathside - Moderate; Parkeston, Mistley and Manningtree - Minor to Moderate
			Effects on designated landscapes	Moderate locally, intensifying existing adverse effects of port facilities on the AONB and SLA ¹	Mitigation through design - control of stacking heights and good design of lighting	Moderate locally, however, the integrity of the sites will not be affected

¹ Area of Outstanding Natural Beauty and Special Landscape Area

Table A (continued)

CONSTRUCTION PHASE		OPERATIONAL PHASE					
Potential impact	Significance	Mitigation	Residual impact	Potential impact	Significance	Mitigation	Residual impact
				Effect on setting of Listed Buildings and Scheduled Ancient Monuments	Victoria Hotel - Moderate to Major; Train Ferry Berth - Moderate; Pier and Great Eastern Hotels - Minor to Moderate (views will not be impacted); Church and West Streets - Moderate; Bathside Battery - Minor	Victoria Hotel - improvements to the open space; Church and West Streets - small boat harbour screens views	Victoria Hotel - Moderate; Train Ferry Berth and Church/West Streets - Moderate; Pier and Great Eastern Hotels - Minor to Moderate; Bathside Battery - Minor
				Effect on views	Moderate in the local and immediate study area; Moderate to Major in the urban and Conservation Areas	Scheme mitigated through design	Moderate to Major depending on viewpoint
				In-combination effect of development on Shotley	Major	None	Major

Table A (continued)

CONSTRUCTION PHASE		OPERATIONAL PHASE					
Potential impact	Significance	Mitigation	Residual impact	Potential impact	Significance	Mitigation	Residual impact
NOISE							
Increased noise during the daytime	Minor to Moderate adverse during combi-wall piling	Piling confined to 07:00 to 19:00 Monday to Saturday; potential for use of shrouded piling rig to be trialed and, if practical, adopted; use of acoustic screens adjacent to the old town; vibratory systems to be used where possible and shrouded systems on land; noise monitoring; mechanical plant to be fitted with silencers and comply with EC noise limits; maintain good public relations	Minor to Moderate adverse, where the lower impact level will be achieved if a the trial use of the shrouded piling rig proves to be successful	Increased night-time noise due to the operational port	Harwich and Dovercourt (key receptors) - Moderate to Minor adverse; Parkeston - Minor adverse; Shotley Gate - Minor to Moderate adverse (the latter at the nearest locations to Bathside Bay)	Ensuring that noise is an integrated design consideration (incorporating landscaping features); noise limit specifications are prepared for all major noise radiating plant; all tractor units are fitted with the latest noise control technology; Quayside cranes are designed with minimisation of noise radiation; RTG engine pods and exhausts are high quality; and reassessment of driver skills takes place regularly	Minor to Moderate adverse depending on receptor location, diminishing to Minor adverse if full noise control measures are achieved

Table A (continued)

CONSTRUCTION PHASE			OPERATIONAL PHASE				
Potential impact	Significance	Mitigation	Residual impact	Potential impact	Significance	Mitigation	Residual impact
Increased noise during the night time (dredging operations)	Moderate adverse during the works for the small boats harbour (and, to a lesser degree, plant attending to the end of the pipeline discharging gravel)	Use low noise dredgers in the boat harbour; use of screens near to the old town of Harwich; use of noise sensitive reversing alarms or rear mounted sensors	Minor to Moderate, where the latter only applies to those locations close to the small boat harbour	Elevated noise levels due to increased shipping	Negligible due to large container ships; Minor adverse due to pilot boats	Reduced speed of pilot boats	Negligible and Minor adverse
Noise due to the movement of construction traffic	No impact on the A120; Minor adverse on the B1414 and B1352	The haul road to the B1414 to be kept in a good condition	Minor adverse (B1414 and B1352 only)	Elevated noise due to road traffic	Minor adverse	None	Minor adverse
VIBRATION				Elevated railway noise	Minor adverse	Use of newer locomotives	Minor adverse
Damage to buildings and disturbance to local community from vibration generated during the piling activities	Moderate adverse community perception in the NW corner of old Harwich; <i>Minor</i> adverse in other locations (e.g. Sholley Gate); No impact on structures	Limit piling to 07:00 to 19:00 Monday to Saturday; monitor vibration levels at sensitive structures and reduce the energy of blows where necessary	<i>Moderate to Minor</i> adverse in terms of the perceived impact; no impact on structures	Vibration resulting from movement and stacking of containers	Negligible	Not required	Negligible

Table A (continued)

CONSTRUCTION PHASE			OPERATIONAL PHASE		
Potential impact	Significance	Mitigation	Potential impact	Significance	Mitigation
			Vibration due to road traffic	Negligible	Good maintenance of the A120
			Vibration due to rail movements	Negligible	Good maintenance of the track
AIR QUALITY					
Increased particulate and gaseous emissions	Minor adverse due to general site activities; Moderate adverse due to fugitive releases of dust	Application of an EMP and good site practice (e.g. wheel washing, speed restrictions and covers)	Emissions during operation (shipping, terminal activities, HGV traffic etc.)	Nitrogen dioxide - Minor adverse; Sulphur dioxide - Negligible; Carbon monoxide - Negligible; Particulates - Minor adverse; Benzene - Negligible	Policy changes (local and national government) and employee travel plans
Increased emissions from HGV traffic	Minor adverse	Implementation of a Traffic Management Plan	Emissions of PAHs from shipping Container fumigation Residual emissions of CO ₂	Negligible Negligible Negligible	Not required Operators obliged to phase-out use Not required
					Minor adverse Negligible Negligible Negligible

Table A (continued)

CONSTRUCTION PHASE		OPERATIONAL PHASE					
Potential impact	Significance	Mitigation	Residual impact	Potential impact	Significance	Mitigation	Residual impact
COMMERCIAL AND RECREATIONAL NAVIGATION							
Potential disruption to commercial navigation at Harwich International Port	Minor adverse	Vessels must have appropriate signals as required by International Regulations; construction works should be appropriately marked; one-way passage for larger commercial vessels to be coordinated by Harbour Master; Notices to Mariners and broadcasts	Negligible	Disruption to navigational activities due to predicted increases in wave activity	Minor adverse for recreational navigation in certain weather conditions; Negligible for commercial navigation	None	Minor adverse for recreational navigation in certain weather conditions; Negligible for commercial navigation
Interference with navigational aids in the lower Stour estuary	Major adverse (worst case)	As above	Negligible	Potential for navigational difficulties at Trinity Pier due to changes in current speeds	No impact	Not required	No impact

Table A (continued)

CONSTRUCTION PHASE			OPERATIONAL PHASE				
Potential impact	Significance	Mitigation	Residual impact	Potential impact	Significance	Mitigation	Residual impact
Disruption to recreational boat moorings within Bathside Bay	Major adverse	Proposals for a small boat harbour in Gass House Creek have been developed to accommodate displaced boats	No impact	Wave effects on small boat harbour Potential for increased sedimentation at Trinity Pier	No impact	Not required	No impact
				Interference with navigation	No impact (commercial and recreational users are segregated)	Not required	No impact
				Disturbance to small vessels due to passing ships	Negligible to Minor adverse	Not required	Negligible overall
RECREATION							
No impact	-	-	-	No impact	-	-	-
ARCHAEOLOGY AND HERITAGE							
Potential effect on designated sites and buildings - demolition of part of the Train Ferry Berth's long berthing arm	Negligible in the context of the special interest of the Train Ferry Berth	A programme of repairs is proposed; preparing/painting; making good the truncated arm; and maintenance	No impact	Potential effect on designated sites and buildings	No impact	Not required	No impact

Table A (continued)

CONSTRUCTION PHASE			OPERATIONAL PHASE				
Potential impact	Significance	Mitigation	Residual impact	Potential impact	Significance	Mitigation	Residual impact
Potential effect on known archaeological sites	Potentially Moderate adverse	Digital data from geotechnical and magnetometry surveys is to be reviewed by a specialist. The findings will be discussed with English Heritage and Essex CC in order to agreed suitable mitigation (as appropriate). If the wrecks present are considered to be 'rare' or well preserved, recording should be undertaken. No vehicles are to track over known sites within the bay until 1.5m of cover is achieved	Negligible	Potential effect on designated sites and buildings	No impact (no intrusion); for 'settling' see landscape	Not required	No impact
				Known and potential sites and landsurfaces	No impact	Not required	No impact

Table A (continued)

CONSTRUCTION PHASE			OPERATIONAL PHASE				
Potential impact	Significance	Mitigation	Residual impact	Potential impact	Significance	Mitigation	Residual impact
Potential sites and landsurfaces	Minor to Moderate adverse	As for the known archaeological resource. A watching brief should be maintained throughout the silt removal and dredging process	Negligible				
LAND DRAINAGE AND FLOOD DEFENCE							
Disruption of pattern of land drainage	No impact on the pattern of land drainage or the risk of flooding	Not required (relies on sound design)	No impact	Increased flood risk due to changes in water levels	No impact	Not required	No impact
Implications of the proposed development on the existing standard of flood defence	No impact (includes consideration of the effects of vibration)	Not required	No impact	Increased flood risk due to changes in the wave climate	Minor adverse	None	Minor adverse
				Siltation at outfalls and barrages due to changes in erosion/accretion patterns or sediment replacement	No impact	Not required	No impact

Table A (continued)

CONSTRUCTION PHASE			OPERATIONAL PHASE				
Potential impact	Significance	Mitigation	Residual impact	Potential impact	Significance	Mitigation	Residual impact
TRAFFIC AND TRANSPORTATION							
Potential for increased traffic levels on the road network	Minor adverse on the A120; Minor to Moderate adverse on the B1414 and B1352	Movement of major items by sea; preparation of a Traffic Management Plan to include wheel washing, designated routes, marked vehicles and trip sharing	No impact on the A120 or wider network; a Minor adverse impact on the B1414 and B1352 for a six month period	Potential for increased traffic generation on the road network	Capacity exceedance at 3 roundabouts and 1 intersection (out of 12)	Highway improvements (e.g. widening the running surface, single lane dualling etc.) to be discussed with the Highways Agency; and a scheme and a scheme Travel Plan	No impact
				Potential for additional freight rail traffic	Negligible	Not required	Negligible
INFRASTRUCTURE							
Unlikely that any impact will arise	The appointed Contractor should verify the location of any utilities	Depends on findings	Unlikely that any impact will arise	No impact	-	-	-
SOCIO-ECONOMICS (also see Statement of Need, Section 1.2)							
Increased construction employment	Minor benefit locally	Not required	Minor benefit locally	Increased direct employment	Moderate benefit	Not required	Moderate benefit
Indirect effects on the local and national economy	Moderate benefit locally; Minor benefit elsewhere	Not required	Moderate benefit locally; Minor benefit elsewhere	Multiplier effects	Moderate benefit	Not required	Moderate benefit

Table A (continued)

CONSTRUCTION PHASE		OPERATIONAL PHASE					
Potential impact	Significance	Mitigation	Residual impact	Potential impact	Significance	Mitigation	Residual impact
				Increases in associated port activities	Minor benefit	Not required	Minor benefit
				Increased visitor expenditure	Minor benefit	Not required	Minor benefit
				Effect on the labour market	Moderate benefit	Not required	Moderate benefit
				Improved competitive advantage	Further enhancement	Not required	Further enhancement

APPENDIX B**10/00201/FUL - Bathside Bay Container Terminal**

1. The development shall be commenced before the expiration of ten years from the date of this permission.
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;

APPENDIX B

- (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.

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

APPENDIX B

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.

APPENDIX B

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:
 - (i) 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
 - (ii) 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 85dBLA1 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

APPENDIX B

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 commenced until such time as details of works for the improvement of the A12(T)/A120(T)/A1232 Ardleigh Crown Interchange in such form as the Highways Agency and local highway authority may approve in writing, have been submitted to and approved in writing by the local planning authority. The details of the said works shall:
 - (a) be to a standard at least capable of ensuring
 - (i) that conditions at the interchange are no worse during and at the expiration of a period of 10 years from the anticipated date of commencement of operation of the development; and
 - (ii) the safety of all road users including pedestrians and cyclists using the junction; and

(b) include drawings to a scale of not less than 1:500

Whether or not requiring the land of third parties.

42. No part of the development hereby permitted shall be commenced until such time as the details of a scheme for the improvement of the A120(T)/Parkeston Road/Station Road/Europa Way roundabout, in such form as the Highways Agency and local highway authority may approve in writing, have been submitted to and approved in writing by the local planning authority. The details of the said works shall:

(a) be to a standard at least capable of ensuring

- (i) that all traffic related to the development is accommodated during and at the end of a period 10 years from the anticipated date of commencement of operation of the development;
- (ii) the safety of all road users including pedestrians and cyclists using the junction; and

(b) include drawings to a scale of not less than 1:500

Whether or not requiring the land of third parties.

43. No part of the development hereby permitted shall be operated until the works referred to in Conditions 41 and 42 have been implemented and/or opened to traffic as the case may be.

44. No part of the development hereby permitted shall be commenced unless:

(i) the Secretary of State for Transport has announced a preferred route for the improvement of the route of the A120(T) (including from Ramsey Bridge roundabout to Parkeston) together with consequential and ancillary improvements thereto and to the A120 and any side roads and access between and in the vicinity of:

- (a) the A120 (T)/A133 Interchange at Hare Green and Horsley Cross Roundabout to no less a standard than a two lane dual carriageway; and
- (b) from Horsley Cross Roundabout to Ramsey Bridge Roundabout to no less a standard than a wide single carriageway.

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

(ii) the local highway authority has announced proposals relating to the local highway network including the A120 from Parkeston roundabout to Morrisons roundabout required as a result of the proposals referred to at (i) above;

(iii) an agreement or agreements have been concluded pursuant to section 278 Highways Act 1980 to secure funding of such route improvement works together with all consequential and ancillary improvements to the A120 (T), A 120 and any side roads in such form and upon such route as may thereafter be authorised pursuant to orders under the Highways Act 1980 and associated instruments made therewith;

(iv) the necessary powers and consents to implement the works referred to at paragraphs (i) and (ii) above have been secured; and

APPENDIX B

- (v) such improvement works have been begun by or on behalf of the Secretary of State for Transport and/or Essex County Council by the carrying out of a material operation in respect thereof as the same is defined in section 56 of the Town and Country Planning Act 1990.
45. That part of the development hereby permitted as shown by magenta and green colouring on the drawing H1001/02 Rev A shall not be paved or equipped with ship to shore gantry cranes or used for any purpose that generates road traffic until the improvements to the A120 (T) referred to in condition 44 above have been completed and opened to traffic so that for the avoidance of doubt no more than six cranes shall be provided at the development until such time as the said improvements have been completed.
46. 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), unless and until the improvements referred to in Condition 44 above have been completed, the areas referred to in condition 45 above shall not be used for any purpose unless the same relates to the construction of the development or would not result in the arrival or departure of traffic to or from the development by road.
47. Except where the works referred to in Condition 44 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 44 have been opened for traffic.
48. 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.
49. 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.
50. 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

51. 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).

52. 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.

53. 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.
54. 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.

10/00202/FUL - Small Boat Harbour

1. The development shall be commenced before the expiration of 10 years from the date of this consent.
2. The development hereby approved shall be implemented in accordance with the following plans, drawings and documents hereby approved:

H1002/01		Application Boundary
H1002/02	(Rev B)	Small Boat Harbour Master Plan
H1002/03		Existing Topographic Survey
H1002/07		Lighting Layout
H1002/08		Fisherman's Store Location Plan
H1002/09		Fisherman's Store GA
H1002/10		Fisherman's Store Sections and Elevations
H1002/11		Fisherman's Store East Elevation
H1002/12	(Rev A)	Division Wall Sections
H1002/13		Train Ferry Pier Termination Details
1514LO/50		Landscape Proposals
1514LO/51		Detail of Quayside (Landscape)
1514LO/52		Structural Landscaping Works
1514LO/53		Illustrative Planting Insets & Sections

Planning and Design Statement dated April 2003.

3. No part of the development hereby permitted shall be begun until a landscaping scheme including a programme in accordance with the indicative scheme shown in application drawings 1514LO/50, 1514LO/52 and 1514LO/53, including details of screen mounding and tree planting, has been submitted to and approved in writing by the local planning authority. The scheme as so 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 planting shall be replaced by a specimen of the same or similar species in accordance with the approved scheme.
4. The small boat harbour hereby permitted shall not be brought into use as such unless and until a landscape management plan, including long term design objectives, management

APPENDIX B

responsibilities and maintenance schedules for all landscape areas, has been submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as so approved.

5. The development shall be carried out in accordance with the Planning and Design Statement dated April 2003 identified in condition 2 above except insofar as otherwise provided for in any condition attached to this permission.
6. No phase of the development shall begin until details of the design and external appearance including materials of the buildings, structures and areas of hardstanding to be constructed within the development according with the Planning and Design Statement dated April 2003 and identified in condition 2 have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the details as so approved.
7. Except with the prior written agreement of the local planning authority and local highway authority, top soiling comprised in 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 other than by sea.
8. 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 begin until a written scheme showing full details of fences, walls, gates or 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 details as so approved.
9. Development pursuant to this planning permission shall not begin until drawings showing both foul and surface water drainage (including the provision of all oil and diesel interceptors) 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 drawings as so approved except as otherwise first agreed in writing by the local planning authority.
10. No part of the development (including ground works) hereby permitted shall commence until a programme of archaeological work to the site (including marine archaeology and any works which might be necessary and practicable to preserve any archaeological 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.
11. 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 and approved in writing by the local planning authority and local highway authority. The CMP shall include details of the management during the construction phase of the development of the matters contained in conditions 12 to 18 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, condition 19 (construction lighting) and condition 21 (construction dust management) of this permission. The development hereby permitted shall be carried out in accordance with the CMP as so approved.
12. 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;
- (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) a requirement 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.

- 13. 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.
- 14. 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 of such a system in writing by the local planning authority. In operating such vehicles or plant the approved system shall be used.
- 15. No percussive piling operation for 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:
 - (i) 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
 - (ii) 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.
- 16. 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:

- (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.

APPENDIX B

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.

17. The noise from construction activities in relation to 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 development:
 - (a) 67dB LAeq 12H and 85dBLA1 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.
18. Vibration levels from piling or other construction activities in relation to 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.
19. No part of the development hereby permitted shall be begun until a written scheme of construction lighting 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;
 - (c) installation of the construction lighting;
 - (d) management of the construction lighting;
 - (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.

20. No part of the hereby permitted development shall be implemented until a scheme relating to the provision and control of operational lighting on the site has been submitted to and approved in writing by the local planning authority. The lighting scheme shall be carried out in accordance with the scheme so approved.
21. No part of the development hereby permitted shall begin 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:
 - 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.

22. 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

23. 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 shall be carried out so as to ensure that vehicles leaving the development site during construction first pass through the approved wheel wash facility.
24. No part of the development hereby permitted shall be operated 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.
25. 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.
26. 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.

27. 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.
28. No site clearance for the development hereby permitted shall be commenced until a scheme for the translocation of reptiles, invertebrates and coastal vegetation within the site 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 the months of March and September;
 - c. relocation of the reptiles found to areas of suitable habitat outside the exclusion fencing.

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

29. Development shall not begin until 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.

30. Development pursuant to this planning permission shall not begin until a scheme of provision to be made for disabled people to gain access to public areas forming part of the development shall have been submitted to and approved in writing by the local planning authority. The agreed scheme shall be implemented before the development hereby permitted is brought into use.
31. Except with the agreement of the local planning authority, no dredging operations shall be undertaken in relation to the construction of the development outside the hours of :
- a. 07:00 hours to 19:00 hours Monday to Fridays;
 - b. 07:00 hours to 13:00 hours Saturdays;
- or at any time on Sundays or on bank or public holidays.
32. Before the development is begun written details of the layout, construction and surfacing of the internal roadways and hardstanding for cars comprised in the development shall be submitted to and approved in writing by the local planning authority and local highway authority. The development shall be implemented in accordance with the details so approved and retained hereafter.

10/00204/LBC – Train Ferry Gantry

1. The development shall be commenced before the expiration of 10 years from the date of this consent.
2. The works hereby authorised shall be implemented only in accordance with the following plans and drawings hereby approved:
- H1002/04 Existing Train Ferry Pier Plans, sections & Details
 - H1002/05 Existing Train Ferry Pier Gantry & Adjustable Bridge Details
 - H1002/06 Train Ferry Pier Extents of Demolition
3. No part of the works hereby permitted shall commence until a scheme for the method and execution of the proposed demolition works has been submitted to and approved in writing by the local planning authority. The works hereby permitted shall be carried out in accordance with the approved scheme.
4. None of the works hereby permitted shall begin until details of any navigation marks or lights to be affixed to the new terminus of the Grade II Listed train ferry gantry long berthing arm have been submitted to and approved in writing by the local planning authority. The works hereby permitted shall be carried out in accordance with the details as so approved.
5. None of the works hereby permitted shall begin until a programme of repairs, painting works, lighting works and maintenance of the Grade II Listed train ferry gantry structure has been submitted to and approved in writing by the local planning authority. The works hereby permitted shall be carried out in accordance with the programme as so approved.