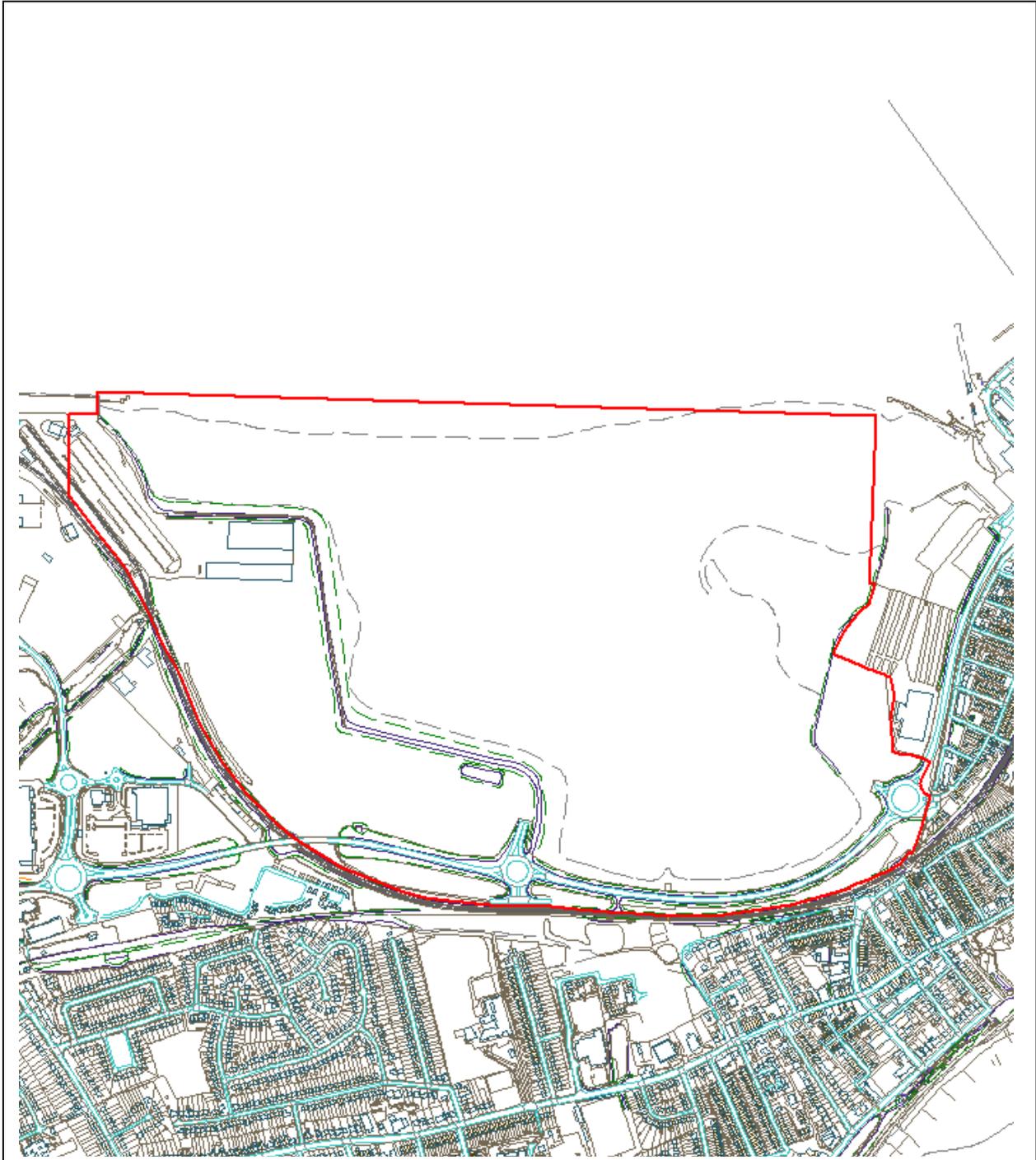


PLANNING COMMITTEE

29 JANUARY 2013

REPORT OF THE HEAD OF PLANNING

**A.4 PLANNING APPLICATION - 10/00202/FUL, 10/00203/FUL AND 10/00204/LBC -  
BATHSIDE BAY STOUR ROAD, HARWICH, ESSEX, CO12 3HF**



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**Application:** 10/00202/FUL, **Town / Parish:** Harwich Town Council  
10/00203/FUL and  
10/00204/LBC.

**Applicant:** Hutchison Ports (UK) Limited

**Address:** Bathside Bay Stour Road Harwich CO12 3HF

**Development:** **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.

**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.

**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.

## **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 Planning Committee Report dated 6 January 2011 Appendix A. 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 The applications were previously on the agenda for consideration on 3 January 2013. However a late item of correspondence was received that resulted in a deferral of these applications. The matters raised within the late correspondence have now been considered within this report.
- 1.6 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.
- 1.7 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.
- 1.8 In relation to the fourth application (10/00201/FUL), the Secretary of State has directed that the application should be determined by him instead of being dealt with by the Local Planning Authority. Subsequently the application was withdrawn by the applicant.

**Recommendations:**

**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 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 13<sup>th</sup> 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)

### 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 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 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 East of England Plan (RSS14) and any policies that were ‘saved’ from the 2001 Essex & Southend-on-Sea Replacement Structure Plan are now revoked and therefore are no longer applicable to the out come of these applications.

#### *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. 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 27<sup>th</sup> March 2013 (12 months from the publication of the NPPF) (paragraph 214). By 27<sup>th</sup> 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 6<sup>th</sup> 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 27<sup>th</sup> 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 9<sup>th</sup> November 2012 (consultation expired Monday 7<sup>th</sup> January 2013). In accordance with the provisions of the NPPF, the Council's 2007 Adopted Local Plan will remain in place until 27<sup>th</sup> 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<sup>th</sup> 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 The public consultation has now ended, 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 are currently collating the consultation responses. 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 27<sup>th</sup> March 2013; it will carry greater weight and should take firm precedence over the 2007 Adopted Local Plan.
- 4.30 From the 27<sup>th</sup> 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 30<sup>th</sup> 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 pavanina* 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. pavanina*. The ES attached maps demonstrate that there are a number of extensive areas of *S. pavanina* 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. pavanina* 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 15<sup>th</sup> 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 6<sup>th</sup> 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".
- 5.4 The Council has also received further representation outlining a number of objections to the applications, namely:
- The potential danger to the aquifer and drinking water in the Tendring District;
  - Deeper dredging would create a higher risk;
  - EC Pilot case (EU Pilot: 1085/10/ENVI);
  - The 2006 consent has already expired;
  - The Criteria of SI 2009 No. 2261 were not met by the 2010 applications;
  - Habitats Directive Potential Infringement;
  - Misinformation provided to the Planning Committee in 2011 on the subject of IROPI;
  - Misinformation in the 2012 Head of Planning Report on the subject of Court Actions;
  - Potential Annex Habitat, and
  - Sabella Pavonina.
- 5.5 In response to the above, your officers advise as follows.

### *The potential danger to the aquifer and drinking water in the Tendring District*

- 5.6 It has been alleged by the objector that a meeting was directed to take place between the applicant's and a local Professor of Geology in relation to this matter. In response to this matter, the applicant provides the following response:

"It is alleged that a meeting should have taken place between a Professor Macmanus and the applicant. No such meeting has been required and Professor Macmanus is not a statutory consultee. However, the Professor could have commented himself on the current applications. He did not do so and the findings of the Inspector at the 2004 inquiry remain valid.

The findings of the 2004 Inspector are not at para 13.28 of his report, which merely reports the case of Harwich Fisherman's [sic] Association. This is recorded again in paragraph 18.361 of the report. However, the findings of the Inspector are at paragraph 18.364, where he states "The comprehensive sediment placement strategy, monitoring regime and scope

for flexibly adjusting the strategy in 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."

The text reproduced does not relate to the topic of effect upon groundwater. However, the findings of the Inspector on Water Pollution are at para 18.388 et seq, specifically at paragraph 18.395. the Inspector found "From the evidence provided it is apparent that there are no groundwater aquifers within the proposed development area and no major water abstraction aquifers locally... the risk to any aquifer within the chalk, should any exist, would be small." In light of this and because there is no new evidence in Mr Saunders' letter, there is no need to come to a different conclusion to that of the Inspector."

- 5.7 Your officers therefore conclude that there are no new issues relating to any potential danger to the aquifer and drinking water in the district.

*Deeper dredging would create a higher risk*

- 5.8 The objector refers to the potential for a differing quay length and dredge, to that originally approved. In doing so reference is made to local media reports and quoted for TDC Members, although no specific details have been provided. It is also suggested that the IROPI case has not been made for any revisions to the quay length or dredging depth.

- 5.9 However, in response to this the applicant advises officers that the proposed quay length proposed is identical to that in the original applications considered in 2004 and consented in 2006. Furthermore the applicant advises that the question of IROPI cannot be applied retrospectively to an extant planning permission and other consents. IROPI is in place for the current applications. Members will note that matters relating to IROPI discussed at paragraphs 4.34 to 4.37 above.

- 5.10 Accordingly it is confirmed that there are no changes to the original consent in this regard.

*EC Pilot Case (EU pilot:1085/10/ENV1)*

- 5.11 The matter of the EC Pilot Case was fully addressed within the Head of Planning Report before Members on 6<sup>th</sup> January 2011.

- 5.12 Notwithstanding, the objector requests that as there is "an open, ongoing, current investigation at the European Commission Law Enforcement Section of the Environment DG", the Council would be prudent to wait until matters are resolved before determining the applications. In response to this officers advise that there is no requirement to await any EU determination in respect of this matter as there is no principle in UK law that a pilot case must or should be determined only after such a matter has been disposed of.

*The 2006 consent has already expired*

- 5.13 It is alleged by the objector that the 2006 permission has expired because an obligation in the s106 agreement due to have been discharged by 2009 had not been so-discharged. The obligation specifically referred to relates to the provision to Tendring District Council of a copy of an agreement between the applicants and the Strategic Rail Authority (SRA), which would ensure the delivery of offsite rail improvements by the end of 2009.

- 5.14 In response officers advise that s106 agreements do not form part of a planning permission, even if they are associated with the permission. Rather, a planning permission may subsist without being capable of implementation without a variation to the s106 agreement. The question is whether the obligation contained in the s106 agreement would be capable of

being varied, which in this particular instance, it is. As such, the 2006 planning permission remains extant.

*The Criteria of SI 2009 No. 2261 were not met by the 2010 applications*

- 5.15 It is alleged by the objector that the criteria contained within the Town and Country Planning (General Development Procedure) (Amendment No.3) (England) Order 2009 (SI 2009 No. 2261) has not been met by these applications.
- 5.16 SI 2009 No. 2261 sets out criteria which projects must satisfy in order to be eligible for an extension of time, these being a) the original permission must be extant, b) the work must not have commenced and c) the extant permission must have been granted before 1<sup>st</sup> October 2009. The objector correctly states that criterion b) and c) are met by these applications but argues that criterion a) is not.
- 5.17 As the 2006 planning permission remained extant in 2010 (as it does now and as detailed above at paragraphs 5.13 – 5.14), your officers disagree with the conclusion reached by the objector.

*Habitats Directive Potential Infringement*

- 5.18 This matter relates to IROPI considerations. As such, this matter is fully addressed within this report and the original report to Members on 6<sup>th</sup> January 2011.

*Misinformation provided to the Planning Committee in 2011 on the subject of IROPI*

- 5.19 This matter relates to IROPI considerations. As such, this matter is fully addressed within this report and the original report to Members on 6<sup>th</sup> January 2011.

*Misinformation in the 2012 Head of Planning Report on the subject of Court Actions*

- 5.20 It is suggested that the report of the Head of Planning to Members provides misinformation in so far that the court judgement of 13<sup>th</sup> December 2011 was the not he final judgement in relation to challenges to the Tendring District Council resolutions reached on 6<sup>th</sup> January 2011. The objector states that a hearing of 4<sup>th</sup> July 2012 should also be taken into account and Members made aware of its existence. The basis for this is that at the 4<sup>th</sup> July Hearing, the judge found that no decision had been made (on the applications) and thus no leave to challenge a decision could be granted, however, there would be an opportunity to seek leave to challenge any decision once formal decision is reached by the Council. The objector goes on to state that a formalisation of any resolution to approve can, and will likely result in a legal challenge.
- 5.21 In relation to these comments, officers advise that these are not material planning considerations. The potential for challenge to any Council planning decision exists and this fact does not preclude Members from reaching a decision.

*Potential Annex Habitat and Sabella Pavonina*

- 5.22 The objector raises two issues that relate to the habitats present in Bathside Bay. The first relates to the potential presence of Annex 1 habitat stony reef in the bay and the second relates to the potential presence of so-called *Sabella pavonia*. These issues are addressed in turn below.

*Stony Reef*

- 5.23 It is the case that an interactive map on the JNCC website ([MPA interactive map](#)) shows reef to be present within Bathside Bay. However, Natural England (NE) has indicated that, on closer inspection, this is not stony reef but bedrock reef. In addition, NE has stated that they do not have any evidence of the presence of stony reef in the bay. In support of this position, available biotope habitat maps show littoral mud communities and a small amount of low energy littoral rock at the high tide mark in Bathside Bay. NE has also confirmed that there is no designated reef habitat present in the bay.
- 5.24 Clarification of the interactive map was sought from the JNCC and they confirmed that the area of interest in the reef map layer is marked as *potential* bedrock (not stony) reef. This data comes from a BGS product called [DigRock250](#), which is a 1:250,000 scale map of bedrock locations in the UK seabed; but note that the data that has been used to produce this dataset varies in quality and type. Moreover, the JNCC indicated that their confidence in this data is low and refer instead to the MESH interactive map. This map supports the biotope information referred to by NE and suggests that most of the area is made up of sediment; it has been assigned a 'moderate' confidence rating (based on the fact that the survey used to create it had good ground-truthing but a lack of acoustic data). The JNCC confirmed that, given the difference in spatial scale and level of biotope detail between the two maps, the MESH data is more reliable.
- 5.25 In summary, on the evidence available, NE considers that stony reef does not occur in the proposed development footprint or surrounding area and, therefore, is not an issue requiring further consideration.

#### *Sabella pavonina*

- 5.26 NE has confirmed that the quote provided by the objector is inaccurate, as *Sabellaria pavonina* is not a species. Rather this is a combination of two separate species, *Sabellaria spinulosa* and *Sabella pavonina*; where *Sabellaria* is a reef-forming worm which occurs at Stone Point at the mouth of the estuary, but not in Bathside Bay. Whilst it is noted that *Sabellaria spp* have been proposed for designation under the Stour and Orwell Marine Conservation Zone (MCZ), they have been considered throughout the process of this and previous applications, and no adverse effects with respect to the proposed Stour and Orwell MCZ are predicted.
- 5.27 Moreover, NE considers that *Sabella pavonina* has been given due regard through the planning process (including discussion at the Public Inquiry). They draw attention to the fact that, while of interest, *Sabella* does not form part of SSSI or SPA designations as an interest feature. It is also not a species afforded protection under the Wildlife and Countryside Act.

## **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