

TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

10 October 2012

**Report of the Director of Planning, Transport and Leisure
and the Chief Solicitor**

Part 1- Public

Executive Non Key Decisions

**1 PETERS PIT, WOULDHAM – CONSULTATION BY THE MARINE
MANAGEMENT ORGANISATION AND THE SERVICE OF A COMPULSORY
PURCHASE ORDER**

SUPPLEMENTARY REPORT

This report updates the substantive Report

1.1 Consultation by the Marine Management Organisation

1.1.1 Since the main report was drafted the Marine Management Organisation has received further responses to consultation on the Licence application.

1.1.2 A summary of these responses is attached as Annex A.

1.1.3 The responses set out in Annex A do not cause us to rethink the position and we continue to Recommend that NO OBJECTION BE RAISED to the MMO Licence application.

1.2 The Compulsory Purchase Order (CPO)

1.2.1 In another part of the CPO process it will be necessary for the Council to support that CPO with a Statement of Reasons for (SoR) the service of the CPO.

1.2.2 The SoR has been part drafted for some time initially to reflect the policy framework in force at the time of the grant of planning permissions. A very substantial change took place when the Government published the National Planning Policy Framework NPPF in March 2012. Members will wish to be aware that the drafting dealing with this change in national policy context are in hand and that the review in national policy does not cause us to change our advice to serve the CPO. If anything the support for economic development with its wide ranging benefits for sustainability is enhanced by the adoption of NPPF

1.3 Legal Implications

1.3.1 As reported on 30 March 2011.

1.4 Financial and Value for Money Considerations

1.4.1 As reported on 13 October 2010.

1.5 Risk Assessment

1.5.1 As reported on 13 October 2010.

1.6 Equality Impact Assessment

1.6.1 See 'Screening for equality impacts' table at end of report

1.7 Policy Considerations

1.7.1 As reported on 13 October 2010.

1.8 Recommendations

1.8.1 **NO OBJECTION BE RAISED** in respect of the consultation from the Marine Management Organisation (subject to no key adverse responses arising from other consultees on matters that would be of direct relevance to the Local Planning Authority)

1.8.2 The decision to serve a Compulsory Purchase Order as authorised in March 2011 **BE RE-AFFIRMED**

Background papers:

contact: Steve Humphrey
Adrian Stanfield
Lindsay Pearson

Nil

Steve Humphrey
Director of Planning, Transport and Leisure

Adrian Stanfield
Chief Solicitor

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	The decision will not adversely impact any groups

Screening for equality impacts:		
Question	Answer	Explanation of impacts
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	Yes	Redevelopment of the area and improved transportation links will promote equality of opportunity in an area less well developed. In addition at least 25% of the housing will be affordable housing.
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.

MMO Medway Licence - Consultation Responses

The following have commented on your proposals:

Accepted: Trinity House, English Heritage, Environment Agency

Accepted with conditions: Marine and Coastguard Agency, Cefas, Natural England

Rejected:

Environment Agency

We are aware that the site benefits from Flood Defence Consent (FDC), Ref 07/T/91. The consent is not time limited and therefore the agreed proposals can be implemented (subject to any conditions imposed). We note that revised modelling has been undertaken in order to appraise the impact of updated flood levels resulting from updated flood levels made available in 2007, the results of which have been presented in the Flood Risk Assessment undertaken by WSP in November 2011.

We do not have any objections to the principle of the proposals on the basis that it benefits from both planning permission and Flood Defence Consent.

Since those permissions have been granted, there is a requirement for some new applications for Flood Defence Consent to be accompanied by a Water Framework Assessment Directive (WFD) assessment in order to ensure that the construction and design does not negatively impact WFD objectives. Although a WFD assessment will not be required in this instance, we will liaise with the Project Manager regarding this with a view to working closely with the Agent/Contractors during formation of the Method Statement.

Further, we have no comments to make except to reiterate the importance of work that has the potential to mobilise silt in the water not being carried out during the spawning season of any fish likely to breed here.

English Heritage

English Heritage has been involved in the planning application for this major proposed development of which the licence application relating to a new bridge over the tidal river Medway is only a part. Planning permission has been granted and this has included archaeological conditions as advised by the Heritage Conservation team at Kent County Council. I have reviewed the licence application that is specific to the bridge and its related works and I have consulted with Kent CC archaeologists to ensure that no new historic environment issues have emerged since the granting of the planning permission e.g. as a result of further evaluations. I am satisfied that no specific issues are known for proposed works within the river and that works on either bank in connection with the new bridge are not known to raise archaeological or other historic environment issues that are

not already appropriately covered by the conditions attached to the planning permission granted for the overall project. On this basis English Heritage is content that a licence might be granted and we do not advise that any specific conditions should be attached to any such licence for historic environment reasons.

Marine and Coastguard Agency

The proposal has been examined by staff of the Navigation Safety Branch and it can be noted that the works are unlikely to have an adverse impact, with regards to safety of navigation, provided:

- A copy of this consent must be given to each contractor appointed to carry out part or all of the works in order that they are clear about the extent of the works for which consent has been given and the conditions that are attached to the consent.
- The Consent Holder should ensure appropriate steps are taken to minimise damage to the beach/foreshore/river bank by the works.
- The Consent Holder should ensure that any equipment, temporary works and/or debris associated with the works are removed from the foreshore upon completion of the works.
- The Consent Holder should ensure the best method of practice is used to minimise re-suspension of sediment during these works.
- The Consent Holder should ensure suitable bunding, storage facilities are employed to prevent the release of fuel oils, lubricating fluids associated with the plant and equipment into the marine environment.
- The Consent Holder must ensure the beach/foreshore/riverbank is returned to the original profile, or as close as reasonably practicable, following the completion of the works.
- The Consent Holder should ensure the local mariners and fishermen's organisations are notified.
- The Consent Holder should notify the UK Hydrographic Office to permit the promulgation of maritime safety information and updating of nautical charts and publications.
- The works shall be maintained at all times in good repair.
- The works should be removed from below the level of mean high water springs, or such alterations made, within one month of notice being given by the Secretary of State at any time he considers this necessary or advisable for the safety of navigation, and not replaced without further consent by the Secretary of State. The owner of the works shall be liable for any expense incurred.
- If in the opinion of the Secretary of State the assistance of a Government Department, including the broadcast of navigational warnings, is required in connection with the works or to deal with any emergency arising from the failure to mark and light the works as required by the consent or to maintain the works in good order or from the drifting or wreck of the works, the owner of the works shall be liable for any expense incurred in securing such assistance.
- Officers of the MCA, or any other person authorised by the Secretary of State, should be permitted to inspect the works at any reasonable time.

- The site is within port limits and the developer should consult with the responsible local navigation authority and the Harbour Authority/Commissioners where appropriate, who may wish to issue local warnings to alert those navigating in the vicinity to the presence of the works during the construction. Additionally, they may need to review their Port Marine Safety Code risk assessments.
- The matter is an issue for the local harbour authority with conservancy responsibilities. They have the responsibility within their port limits for ensuring their harbour is fit for use by, for example, not permitting the spoil to foul navigable channels thus assuring the safety of navigation.
- The works, and any associated temporary works, should be marked and lighted in accordance with the requirements of the General Lighthouse Authority in this case [Trinity House Lighthouse Service/Northern Lighthouse Board/Commissioners of Irish Lights/Local Navigation Authority].
- Any jack up barges / vessels utilised during the works/laying of the cable, when jacked up, should exhibit signals in accordance with the UK Standard Marking Schedule for Offshore Installations.

If these conditions are met I am able to advise you that the Maritime and Coastguard Agency (MCA) has no objection to consent being granted provided that measures are also taken to ensure that details of the proposed works are promulgated to maritime users through notice to mariners and/or navigational warnings.

Please note, however, that a charge will be levied on the developers where appropriate, by MCA, for the transmission of maritime safety information, via Navtex or Coastguard VHF radio network, in respect of the proposed works. Agreement by the developers to pay any such charges should, ideally, be a condition of the consent if they are likely to be used.

Trinity House

Trinity House has no objections to the proposed application for ground improvements works associated with the construction of a new crossing to Peters Village. Confirm no requirements for marking.

Cefas (Government Centre for Environment, Fisheries & Aquaculture Science – part of Defra)

Description of the proposed works

2. This is an application for the construction of a new road bridge in order to link the A228 on the West bank of the River Medway with the new development of Peters Village on the East bank. These also include river bank erosion protection works on the West bank of the river, and re-construction of an existing retaining wall on the East bank of the river.

3. The proposed works are part of the Medway Valley Crossing project, which will provide a link east/west between the A228 on the west bank of the Medway and the new development of Peters Village on the east bank. The crossing comprises a road bridge across the River Medway providing access to Peters Village. The bridge is formed from a

three-span in situ pre-stressed concrete superstructure supported on two reinforced concrete piers on piled foundations and reinforced concrete piled bank seat type abutments. The piers are located in the River Medway seaward of the Mean High Water Spring Tide Mark.

4. As part of the new proposed crossing, ground improvement and stabilisation works are required on the east and the west bank of the River crossing. This includes river bank erosion protection works on the West bank and retaining wall works on the east bank. The works form part of the proposed redevelopment of the abandoned chalk pit and works known as Peters Pit and Peters Works on the east bank of the River Medway near Wouldham. The development comprises mixed residential and commercial premises.

5. The existing river wall is an old and unmaintained structure in poor condition. The proposed works comprise a sheet pile wall with a length of 570m to be constructed in front of the existing river wall. The new wall will be tied back to the existing structure and the void between filled with concrete. The proposed wall will house three surface water outfalls carrying surface water from the developed site. An anti-scour mattress will be placed on the river bed at each outfall to prevent scour of the existing mud flats. The sheet pile wall will be faced in timber composite material. The proposed river wall was granted a FEPA licence in 2008 but this lapsed in 2009. The Environment Agency granted a Land Drainage Consent at the same time and this is still current.

6. Subject to a detailed programme and method statement being submitted by the contractor, it is anticipated that the sheet piles will be driven using a barge-mounted rig on the river. The piles will be driven through the existing river bed approximately 200mm in front of the existing wall. The piles will be tied back through the existing wall using an approved tie back design to suitable dead man ground anchors behind and the void between the walls filled with concrete. A concrete capping beam will be placed along the sheet pile wall and the existing ground level behind the wall brought up to 5.45m AOD using chalk fill and a paved surface laid thereon. A rip-rap mattress will be placed at each of the three outfalls. On completion, the surface of the river wall will be covered with timber.

7. The overall project construction period will extend for two years, commencing in March 2013. For the main bridge construction, the foundations for both the piers and the east piers construction will be completed within the first year. It is also envisaged that the west pier will be built to a level above MHWS level by the end of the first year. Completion of the west pier and removal of temporary access works will be undertaken in the second year. It is anticipated the works for the proposed retaining wall will last approximately 3 months although the works may not be continuous given the need to tie into the main bridge works programme.

8. The proposed crossing will include two support piers constructed within the river channel which is tidal and navigable at the Crossing point. Temporary enclosing cofferdams will be formed into the riverbed around the pier sites from steel sheet piles, which will be driven by vibrating or hydraulic impact hammer.

9. Works access routes at the bridge site would generally be formed from hard-core laid on a geotextile layer. Access to construct the river piers would probably be via short temporary piled jetty links from each riverbank. The jetties would be constructed either from a pontoon barge with a crane, or more likely, in an incremental sequence from each bank of the river. The jetty legs are likely to be steel tubes and the deck will be a composite of universal steel beams longitudinally (welded to the steel legs) and steel, timber, or possibly pre-cast reinforced concrete beams transversely. Tower cranes may be erected on each jetty to service the pier and superstructure construction works.

10. Temporary cofferdams formed from steel sheet-piles would be installed into the riverbed around the pier base sites. Pile driving would be either using a vibro-hammer or an hydraulic impact hammer. Subject to satisfactory confirmation of ground conditions the sheet-piles will be terminated in sound chalk stratum. The area encircled by each cofferdam would be pumped dry, allowing excavations within the cofferdam. The bridge will require excavation of river bed material to construct the piers. The applicant claim that this will be carried out in a more localised and controlled manner than the standard dredging activities, but no further details are provided. I would suggest adding a condition to request that any material resulting from this excavation is not disposed at the marine environment without a separate marine licence for disposal.

Materials to be used

11. The materials to be used are iron, steel and concrete. Timber is not in the list of materials in the application, but it is in the method statement. I am satisfied that these materials are acceptable to use in the marine environment, and would suggest that a condition to request that any coatings are also acceptable to use in the marine environment is attached to the licence.

Shellfisheries

12. There are no commercial molluscan shellfisheries within the vicinity of the proposed works.

Fish resources

13. The proposed works are within broad areas used as nursery grounds by some fish populations of commercial importance. Due to their nature and scale, the works are unlikely to have a significant adverse impact on these fish populations.

Coastal processes

14. The bridge supports have the potential to affect the hydrodynamic regime through scouring and sedimentation changes. This issue is considered in the Amplification of the Environmental Statement (Appendix 2, paragraphs 2.40 2.45). It is stated that a review of studies associated with two new Medway bridges (the CTRL and M2 widening) informed the conclusion that the two 4m diameter piers associated with the Medway Valley Crossing could, theoretically, cause very localised scour. However, given the nature of the material on the riverbed, which is relatively coarse, and the size of the piers, it is unlikely that there will be a significant adverse impact.

15. The risk of tidal flooding has been comprehensively assessed. A hydraulic model was developed for the tidal reach of the River Medway between Strood Pier and Allington Locks to assess the impact of the construction on tidal flooding and a Flood Risk Assessment supported the original ES in 2004. An updated Flood Risk Assessment was produced in line with the updated Planning Policy Guidance (PPS25) to support applications for a FEPA Licence and a River Works Licence submitted in 2006. This model predicts that the magnitude of any potential changes in tidal flooding caused by the proposed structure would be negligible.

16. The Environment Agency undertook 2D hydraulic modelling of the Medway based on the latest topographic and bathymetric data. The 2D model was obtained from the Environment Agency and updated using a site survey to improve the TUFLOW model. The 2D model was then updated to include the proposed bridge, river wall and proposed ground raising. The parameters of the bridge structure were taken from drawings of the proposed structure and the proposed site levels were taken from the latest earthworks proposals. Tidal flooding events were based on the boundary levels generated by the Environment Agency for their model. The tide scaling undertaken by the Environment Agency was not changed during the model updates. The pre- and post- development scenarios were assessed for the 200 year plus climate change and 1000 year plus climate change flood events.

17. The model results showed that the proposed bridge would generally result in a reduction in water levels within the River Medway. No increases in predicted flood Levels as a result of the proposed bridge were identified in the model. Consequently, it is concluded that the presence of the proposed bridge structure will have a negligible effect on the tidal flooding regime of the River Medway.

GENERAL

Conservation designations

18. The proposed works are within the Holborough to Burham Marshes SSSI. This site along the flood plain of the River Medway is designated for the presence of a variety of habitats, including extensive reed beds, open water, fen, grassland, scrub and woodland. The many different habitats support a wide variety of breeding birds and the site is also important for wintering wildfowl and waders.

19. I believe that the location, nature and scale of the works do not warrant an Appropriate Assessment under The Conservation of Habitats and Species Regulations 2010.

Requirement for EIA

20. I am of the opinion that the proposed works do not fall under the scope of a relevant project as defined in the Marine Works (Environmental Impact Assessment) 2007 Regulations (amended 2011), and therefore do not warrant an EIA to be carried out.

The Licence Holder must ensure that;

Pre-works

The District Marine Office must be notified of the timetable of works/operations at least 10 days prior to any activities commencing. The District Marine Office must also be notified within 10 days of completion of the works. Reason: To ensure that the MMO officer is aware of the operations at sea occurring within its jurisdiction in order to notify other sea users and can arrange enforcement visits as appropriate.

A full method statement should be submitted to the MMO before the works start. Reason: to prevent unforeseen impacts on the marine environment due to works not included in the original methodology.

During works

The Licence Holder must ensure that soft-start procedures are used to ensure incremental increase in pile power over a set time period until full operational power is achieved. The soft-start duration should be a period of not less than 20 minutes. Should piling cease for a period greater than 10 minutes, then the soft start procedure must be repeated. Reason: To allow mobile sensitive receptors to move away from the noise source, and reduce the likelihood of exposing the animal to sounds which can cause injury.

The Licence holder must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with best environmental practice, (e.g. approved by HSE, EA Pollution Prevention Control Guidelines. Reason: to ensure that hazardous chemicals that may be toxic, persistent or bioaccumulative are not released into the marine environment.

The Licence Holder must install bunding and/or storage facilities to contain and prevent the release of fuel, oils, and chemicals associated with plant, refuelling and construction equipment, into the marine environment. i.e. secondary containment should be used with a capacity of not less than 110% of the containers storage capacity. Reason: To prevent marine pollution incidents by adopting best practice techniques.

The Licence Holder must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team. Reason: To ensure that any spills are appropriately recorded and managed to minimise impact to sensitive receptors and general marine environment.

Any material resulting from this excavation is not disposed in the marine environment. Reason: To prevent potential contamination due to the disposal of material of unknown chemical and physical properties.

Post-works

Any equipment, temporary structures, waste and/or debris associated with the works are removed within 6 weeks of completion of the works. Reason: To prevent the accumulation of unlicensed materials/debris and the potential environmental damage, safety & navigational issues associated with such materials/debris.

Natural England

Proposal: Medway Valley proposed crossing and associated ground and river wall improvements

Location: Medway Valley Development

Thank you for your consultation dated 9th May 2012. The above proposal is located adjacent to the Holborough to Burham Marshes Site of Special Scientific Interest (SSSI) and in close proximity to Peters Pit SSSI and Special Area of Conservation (SAC).

Advice under section 28I of the Wildlife & Countryside Act 1981

Based on the proposed methodology, Environmental Statements and additional supplementary information provided, Natural England advises that the above proposal is unlikely to have a detrimental effect on the above SSSI sites subject to the following advice:

- a) Visual checks are carried out prior to construction to ensure no ground nesting birds are in the locality of the area (Holborough to Burham Marshes SSSI) and;
- b) The works stated in the proposal do not impact on any other features of the SSSI's other than that stated in the project description, Ecological Mitigation Strategy and Environmental Statements.

Natural England advises that the works applied for under this marine licence will not impact on the features of the terrestrial European site, Peters Pit SAC and these works do not require assessment under the Habitats Regulations.