



## Planning Statement



Applications for replacement planning permissions subject to a new time limit (to 2021) in respect of:

- Planning Permission 03/00600/FUL in respect of the Proposed Bathside Bay container terminal, Harwich;
- Planning Permission 03/00601/FUL in respect of the Proposed Small Boat Harbour, Harwich; and
- Listed Building Consent 03/00602/LBC in respect of Works to the Listed Train Ferry Gantry, Harwich

Prepared for

Hutchison Ports (UK) Ltd

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## Contents

1	Introduction	3
2	Background	4
3	The proposals	6
4	Planning considerations	10
5	Conclusions	27

# 1 Introduction

This Planning Statement has been prepared in support of applications for replacement planning permissions subject to a new time limit (to 2021) in respect of:

- Planning Permission 03/00600/FUL in respect of the Proposed Bathside Bay container terminal, Harwich dated 29 March 2006 (hereafter referred to as the 'Bathside Bay permission');
- Planning Permission 03/00601/FUL in respect of the Proposed Small Boat Harbour, Harwich dated 29 March 2006 (hereafter referred to as the 'small boat harbour permission'); and
- Listed Building Consent 03/00602/LBC in respect of Works to the Listed Train Ferry Gantry, Harwich dated 29 March 2006 (hereafter referred to as the 'train ferry gantry listed building consent').

In this Statement we provide supporting information setting out why we are seeking a longer period in which to begin the developments.

The Statement follows the following format:

Section 2 – Background

Section 3 – The proposals

Section 4 – Planning considerations

Section 5 – Conclusions

## 2 Background

In this section we set out the background to the applications. Within this section we discuss the time limits imposed on the Bathside Bay permission, the small boat harbour permission and the train ferry gantry listed building consent, and confirm that we are eligible to make these applications for extension of time limits.

### 2.1 Location

Bathside Bay is located in Harwich, Essex, on the north side of the settlement of Harwich. The Bay forms part of the estuarine environment that has been created by the convergence of the River Stour and River Orwell meeting the North Sea.

Hutchison Ports (UK) Ltd (HPUK) is the freehold owner of most of the site. HPUK previously identified the need for a new container port facility on the east coast to serve the growing container shipping industry. This led to proposals for the new facility at Bathside Bay, which was identified as a suitable location capable of providing a major terminal for the import and export of containerised freight.

### 2.2 The proposed Bathside Bay container terminal

The Secretary of State granted the Bathside Bay permission, the small boat harbour permission and the train ferry gantry listed building consent on 29 March 2006 subject to conditions, including time limiting conditions.

HPUK also made an application for a harbour revision order and the Harwich Parkeston Quay Harbour Revision Order (HRO) authorise works forming part of the container port. A decision letter approving the HRO has been issued but the HRO has not yet been made.

#### 2.2.1 Time limits imposed on the Bathside Bay permission, the small boat harbour permission and the train ferry gantry listed building consent

Condition 1 imposed on the Bathside Bay permission and the small boat harbour permission require that the respective developments be *"...commenced before the expiration of 10 years from the date of the permission"* (i.e. by 29 March 2016).

Condition 1 imposed on the train ferry gantry listed building consent similarly reads "the works hereby authorised shall be commenced before the expiration of 10 years from the date of this consent" (i.e. by 29 March 2016).

The 'Greater flexibility for planning permissions' guidance makes clear that an application to extend the time limits for implementation can be made if the relevant time limit has not expired, both on 1 October 2009 and at the date of application, and if the development has not yet commenced.

We confirm that the developments have not commenced, so that the Bathside Bay permission, the small boat harbour permission and the listed building consent associated with the small boat harbour permission are eligible.

#### 2.2.2 Harwich Parkeston Quay Harbour Revision Order

The HRO authorises the works necessary for the construction of the Bathside Bay container terminal that will be carried out below the low water mark such as a quay wall, including berths for vessels and quayside cranes, a culvert,

harbour wall, a floating wavescreen and a slipway. Such works as have not already been substantially commenced pursuant to the HRO by that time must be completed within 10 years from the coming into force of the HRO or such extended time as the Secretary of State may on the application of HPUK allow.

In order to ensure consistency, HPUK will review the application for the HRO and ensure that its provisions are synchronised with the new planning permissions and listed building consent.

In the next section we describe the proposals.

## 3 The proposals

### 3.1 Applications for replacement planning permissions subject to a new time limit (to 2021)

As stated above, this Statement has been prepared in support applications for replacement planning permissions subject to a new time limit (to 2021) in respect of:

- the Bathside Bay permission;
- the small boat harbour permission; and
- the train ferry gantry listed building consent.

More fully, this Statement has been prepared in support of application to extend the time limits for implementing the following:

- Planning Permission 03/00600/FUL dated 29 March 2006 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 1,400 metre quay wall; construction of a concrete block-paved container handling and stacking facility with 11 quayside cranes and 44 rubber tyre gantry 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 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*"
- Planning Permission 03/00601/FUL dated 29 March 2006 for "*a small boat (sic) harbour, 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; Fishermen's store and fuel facility; and site works including access road, car parking and lighting, fencing and landscape mounds*"
- Listed Building Consent 03/00602/LBC dated 29 March 2006 for "*the partial demolition of the long berthing arm attached to the listed Train Ferry Gantry and associated remedial works*".

For the avoidance of doubt, these applications do *not* seek:

- the variation of any of the other conditions; and/or
- 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 dated 29 March 2006 (hereafter referred to as the 'compensatory intertidal habitat permission').

HPUK may make a separate application in due course to extend the compensatory intertidal habitat permission if it is deemed necessary and appropriate, but the lack of an application now does not render the project undeliverable.

## **3.2 Content of the applications**

### **3.2.1 The application to extend the Bathside Bay permission**

The following documents support the application to extend the Bathside Bay permission:

- covering letter;
- the original and three copies of the completed and dated 1APP Planning Application Form;
- Ownership Certificate C and Agricultural Holdings Certificate and copies of Notices to other parties with an interest in the land;
- Planning Statement;
- four copies of drawing reference H1001/01, which identifies the land to which the application relates (approved Application Boundary);
- four copies of drawing reference H1001/02 (Rev A), being the Master Plan (RTG Operational Layout);
- four copies of the Supplementary Environmental Report;
- four copies of the Supplementary Traffic Assessment; and
- a soft copy of the Environmental Statement submitted in support of the Bathside Bay permission (for information).

We also enclose:

- the statutory planning application fee cheque for the application to extend the Bathside Bay permission, payable to Tendring District Council – **£500**; and
- a CD containing (for information):
  - the approved drawings listed at Condition 2 of Planning Permission 03/01200/FUL;
  - the approved Environmental Statement Non-Technical Summary;
  - the approved Environmental Statement (as stated above);
  - the approved Planning and Design Statement; and
  - the approved Transport Assessment – Main Report.

As set out in the recent Government guidance ‘Greater flexibility for planning permissions’, applications for extension are exempt from the requirement to provide design and access statements (para. 15).

### **3.2.2 The application to extend the small boat harbour permission and the associated train ferry gantry listed building consent**

The following documents support the application to extend the small boat harbour permission and the associated train ferry gantry listed building consent:

- covering letter;
- the original and three copies of the completed and dated 1APP Planning Application Form;
- Ownership Certificate C and Agricultural Holdings Certificate and copies of Notices to other parties with an interest in the land;
- Planning Statement;
- four copies of drawing reference H1002/01, which identifies the land to which the application relates (approved Application Boundary);
- four copies of drawing H1002/02 (Rev B), being the Small Boat Harbour Master Plan;
- four copies of the Supplementary Environmental Report;
- four copies of the Supplementary Traffic Assessment; and
- a soft copy of the Environmental Statement submitted in support of the small boat harbour permission (for information).

We also enclose:

- the statutory planning application fee cheque for the application to extend the small boat harbour permission, payable to Tendring District Council – **£500**; and
- a CD containing (for information):
  - the approved drawings listed at Condition 2 of Planning Permission 03/00601/FUL;
  - the approved Environmental Statement Non-Technical Summary;
  - the approved Environmental Statement (as stated above);
  - the approved Planning and Design Statement;
  - the approved Transport Assessment – Main Report; and
  - the approved drawings listed at Condition 2 of Listed Building Consent 03/00602/LBC.

There is no fee for the element of the application which is for the extension to the time limit of the train ferry pier listed building consent (para. 35 of the recent Government guidance ‘Greater flexibility for planning permissions’).

As also set out in the guidance, applications for extension are exempt from the requirement to provide design and access statements (para. 15).

### **3.3 Time limits sought**

The length of time for which each permission may be extended is covered by Sections 91 and 92 of the Town and Country Planning Act 1990 (as amended); default periods are set out, with discretion to grant longer or shorter permissions if this is justified on planning grounds.

In light of the economic situation and the resulting temporary stagnation in UK container demand, HPUK forecasts that it will be 2022 before phase 1 container terminal operations commence (based on 5% growth pa from 2011 would be 2026, based on 3% growth pa 2026). Of course, it remains possible that demand generally – or in relation to the Haven Ports in particular – may require an earlier delivery. However, the deferment of the implementation date is sensible and realistic as matters stand.

We therefore request that the Bathside Bay permission, the small boat harbour permission and the listed building consent associated with the small boat harbour permission be extended from 29 March 2016 to 29 March 2021.

As set out above we consider that there are good planning reasons for seeking a longer period (i.e. a further five years) in which to begin the developments.

### **3.4 Need for a supplementary deed**

The ‘Greater flexibility for planning permissions’ guidance states that the outcome of a successful application for the extension of time limits will be a new permission with a new time limit attached.

We recognise that the Section 106 Agreement associated with the Bathside Bay permission and the small boat harbour permission is linked to those permissions, so that there will be a need for a simple supplementary deed to link the obligations to the new permissions. This is a matter which will be addressed with Tendring District Council and Essex County Council during the determination of the applications.

### 3.5 Pre-application consultation

Consistent with latest guidance<sup>1</sup>, pre-application discussions have been held with Tendring District Council, Essex County Council (Highways) and the Highways Agency to discuss the proposals and to seek the District Council's agreement to the documentation to be submitted for the applications.

These applications have been prepared and submitted in accordance with the basis of those discussions and it is anticipated that ongoing dialogue with the Council will take place whilst the applications are being considered.

### 3.6 Separate application under Section 73

A separate application under Section 73 of the Town and Country Planning Act 1990 (as amended) to vary Conditions 3 (Phasing), 45 (Highways), 46 (Highways) and 47 (Highways) and to delete and replace Conditions 41 (Highways), 42 (Highways), 43 (Highways) and 44 (Highways) to enable commencement of the Bathside Bay container terminal without compliance with those conditions requiring inception of works for the improvement of the A120(T) their commencement, and/or completion before commencement of the Bathside Bay Container terminal development is being submitted in parallel to the applications that are the subject of this Statement.

The separate application under Section 73 does not seek to extend the time limit for implementing the Bathside Bay permission.

The intent of the Section 73 planning application is not to release HPUK from its obligations to mitigate the impacts of the proposed development. Instead it will allow the provision of off-site highways infrastructure to be phased so as to relate to the container terminal use rather than other uses without similar traffic generation effects. The application sets out the wording for new Grampian style conditions designed to limit the operation of the container terminal so as to maintain the status quo in terms of protection. No (temporary or permanent) uses of the sub-structure of the container terminal development could be permitted without the appropriate statutory authority and any such application would be subject to public consultation.

In the event that the separate application under Section 73 is granted, its implementation would make that planning permission extant.

These planning applications (i.e. to extend the time limits for implementing the Bathside Bay permission, the small boat harbour permission and the train ferry gantry listed building consent) are being submitted as a contingency. They will allow the port development at Bathside Bay to be implemented in accordance with recent Government projections and the draft National Policy Statement for Ports (draft NPS for Ports), published in November 2009 in the event that:

- the separate application under Section 73 is not granted; or
- no temporary alternative use is brought forward.

HPUK is content that in the event that it secures the separate application under Section 73 and these planning applications, they will be mutually exclusive.

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<sup>1</sup> See paragraph 63 'Greater flexibility for planning permissions' - Department for Communities and Local Government, November 2009.

## 4 Planning considerations

### 4.1 Introduction

The CLG guidance ‘Greater flexibility for planning permissions’ states 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).

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.”*

Except in relation to statutory consultees who are required to be consulted on an applications (such as these) in respect of an EIA<sup>2</sup> scheme, local planning authorities are given discretion on which statutory consultees should be consulted under Article 10 of the Town and Country (General Development Procedure) Order 1995 (as amended). In deciding which bodies to consult, they should take a “proportionate approach” taking into account that “...there will have been full consultation when the original permission was granted” (paras 25-27).

In this section we set out the planning considerations relevant to the determination of these applications. Specifically, we consider the following:

- the economic downturn:
  - the ‘Greater flexibility for planning permissions’ guidance; and
  - demand forecasts;
- need:
  - national transport policy; and
  - Habitats Regulations & IROPI;
- interrelationship of the developments; and
- changes in the development plan or other relevant material considerations which indicate that the applications are to be treated favourably.

### 4.2 The economic downturn

#### 4.2.1 The ‘Greater flexibility for planning permissions’ guidance

The ‘extensions to the time limits for implementing existing planning permission’ measure was brought into force on 1 October 2009 via the Town and Country Planning (General Development Procedure) (Amendment No. 3) (England) Order 2009 (SI 2009 No. 2261) and the Planning (Listed Buildings and

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<sup>2</sup> Environmental Impact Assessment

Conservation Areas) (Amendment) (England) Regulations 2009 (SI 2009 No. 2262).

We reiterate here that the 'Greater flexibility for planning permissions' guidance states that the measure 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" (para. 1). This is reinforced at Paragraphs 2 and 5, which respectively read:

*"This procedure allows applicants to apply to their LPAs for a new planning permission to replace an existing planning permission...in order to obtain a longer period in which to begin the development".*

*"...this measure is being [has been] introduced in response to current economic circumstances..."*

#### **4.2.2 Demand forecasts**

HPUK remains committed to the implementation of the container terminal development in the long term. However, the current economic recession and reduction in global trade, which has severely impacted on the container shipping industry, has lowered the volume of containers handled in UK ports. In turn, this has eased the short term demand pressures for new terminal capacity. This is recognised in the draft NPS for Ports (para.s 1.11.1-7). There, it is estimated that the underlying projected growth rate of 7m to 20mTEU<sup>3</sup> per annum in container traffic will be maintained, and in the longer term it remains the Government's view that there will be no reduction in the eventual level of demand for port capacity predicted by its forecasts. Accordingly, the projected need for port terminals, including Bathside Bay "would be broadly in line with forecast demand over the next 20 years or so".

We discuss the draft NPS for Ports further below, under '4.3.1 National transport policy' and '4.5 Changes in the development plan or other relevant material considerations which indicate that the applications are to be treated favourably'.

### **4.3 Need**

#### **4.3.1 National transport policy**

In granting the 2006 permissions, the Secretary of State concluded that "the proposals would accord well with national transport policy and advice on promoting sustainable transport choices".

There has been considerable development in policy at national level over recent years, not least through the proposed introduction of National Policy Statements pursuant to the Planning Act 2008. These provide policy and guidance at national level on broad infrastructure needs as well as on Nationally Significant Infrastructure Projects (NSIPs) that are due to be assessed by the Infrastructure Planning Commission (IPC), also established under the Planning Act 2008. They are also expressed to be capable of constituting material considerations in the determination of planning applications under the existing development consent regime under the Town and Country Planning Act 1990.

The draft NPS for Ports, published in November 2009, sets out "...the Government's conclusions on the need for new port infrastructure, considering

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<sup>3</sup>TEU: twenty-foot equivalent unit, the standard measure of container capacity. Around two thirds of containers are 40' long, and are classed as 2 TEU each.

*the current place of ports in the national economy, the available evidence on future demand, and the options for meeting future needs” (para. 1.2.2).*

The draft NPS for Ports sets out robust long term demand forecasts as the basis for port growth over the period to 2030. It sets out the Government’s belief that *“there is a compelling need for substantial additional port capacity over the next 20-30 years”* (para. 1.11.12) and that, even though the current recession has had a bearing on short-term demand, *“...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”* (para. 1.11.4).

The role of Bathside Bay in delivering capacity to handle the forecast demand is specifically recognised at Paragraph 1.11.6, which attributes 1.7m TEU to Bathside Bay based on the Bathside Bay permission. In determining applications for in relation to ports, decision-makers are encouraged to accept the need for future capacity to:

- cater for this long-term forecast growth;
- support the development of offshore sources of renewable energy;
- offer choice of facilities and locations;
- ensure effective competition between ports and provide resilience; and
- contribute to regional and local economies.

#### **4.3.2 Habitats Regulations & IROPI**

Prior to the submission of the original planning applications, a scoping opinion was sought from Tendring District Council under Regulation 10 of the Town & Country Planning (Environmental Impact Assessment) (England & Wales) Regulations 1999 and the full Environmental Statement submitted with the planning applications had regard to the formal response received in respect of that scoping opinion. Although Bathside Bay was then outside of the boundaries of the Stour and Orwell Estuaries Special Protection Area (SPA), the approach adopted throughout the Environmental Statement was to consider the Bay as though it were part of the SPA. It is now part of the SPA.

In determining the Bathside Bay permission, the Secretary of State had careful regard to the then proposed, but now designated SPA, and the requirements of the Conservation (Natural Habitats, &c.) Regulations 1994 (‘the Habitats Regulations’). These transpose into domestic legislation Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (‘the Habitats Directive’).

There was no issue between all parties that the proposal for a container terminal at Bathside Bay would have an adverse effect on the integrity of the Stour and Orwell Estuaries SPA which could not be mitigated and that this led to the need to apply the requirements of Regulation 49 of the Habitats Regulations, those being:

- first, to ascertain whether there were any alternative solutions to the proposal;
- secondly, and if not, then to establish whether there were imperative reasons of overriding public interest (‘IROPI’) justifying the proposal; and
- finally, if there were no alternative solutions to the project, and there were imperative reasons of overriding public interest, the Secretary of State would need to secure necessary compensatory measures, in line with the requirements of Regulation 53 of the Habitats Regulations, to ensure the overall coherence of Natura 2000 is protected, if the project were to be approved.

The Secretary of State's decision in granting the Bathside Bay permission was thus based on the following conclusions:

- there was a need for the container terminal at Bathside Bay, in addition to those proposed at Felixstowe South and at London Gateway, to meet national need for deep sea container capacity, bearing in mind this proposed time-frame and utilisation rate, as part of the development of a modern competitive ports industry which is of vital importance to the UK;
- there was no alternative solution to the Bathside Bay project;
- the development of the container terminal to help meet national need for capacity as part of a modern competitive ports industry was of vital importance to the UK; that Felixstowe with Harwich is a port of global significance; and that these factors would constitute imperative reasons of overriding public interest; and
- the managed realignment site at Little Oakley, Hamford Water, would be a suitable and adequate compensatory habitat, and would represent the necessary compensatory measures as required under Regulation 53 of the Habitats Regulations.

As an application for an extension to the time limit is considered to be a new application for development consent under the 1999 EIA Regulations and, as is the case here, the development is listed under either Schedule 1 or 2 to the 1999 EIA Regulations, due regard must be had by the decision-maker to the requirements under these regulations for EIA and the submission of an Environmental Statement. However, Paragraph 14 of the guidance<sup>4</sup> recognises that *"Where EIA was carried out on the original application, changes to the ES may not be necessary"*.

As part of these applications, the Environmental Statement submitted with the Bathside Bay permission has been reviewed to assess whether there has been any material change to the circumstances that led to that permission being granted and an assessment has been made to determine whether these applications would give rise to effects which would significantly differ from the conclusions of the Environmental Statement considered in the determination of the Bathside Bay permission, the small boat harbour permission and the train ferry gantry listed building consent. A summary of the conclusions of the Supplementary Environmental Report and the Supplementary Traffic Assessment addressing these issues is provided below.

#### **4.3.2.1 Suitability of and need for the Bathside Bay container terminal**

There continues to be a pressing need for container handling facilities in the UK which remains to be satisfied. Although there have been further decisions since the Bathside Bay permission approving container terminals at, amongst other locations, London Gateway, Teesport and Seaforth (and decisions pending at Bristol and Southampton), the suitability of and need for the Bathside Bay container terminal (in addition to these other facilities) is clearly recognised in the draft NPS for Ports. Indeed, all the listed schemes are recognised in the draft NPS as being necessary (see above and paragraph 1.11.7 of the draft NPS for Ports).

#### **4.3.2.2 Alternatives**

In accordance with the Habitats Regulations, the Council has to consider whether there are any alternative solutions to the proposed project. The draft NPS for Ports is clear that:

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<sup>4</sup> *'Greater flexibility for planning permissions'* - Department for Communities and Local Government, November 2009

- *“capacity needs to be provided at a wide of facilities and locations”* (para. 1.11.8);
- *“the Government does not wish to dictate where port development should occur”* (para. 1.11.9);
- *“there is no requirement for the decision-maker to establish whether the proposed project represents the “best” option amongst the various possible alternatives”* (para. 2.3.2);
- *“it would be reasonable to conclude that alternatives which are not in accordance with the relevant NPS cannot be relevant of important to its decision”* (para. 2.3.4);
- *“the decision-maker should be guided in judging alternative proposals by whether there is a realistic prospect of the alternative delivering the necessary infrastructure in line with the urgency of the need”* (para. 2.3.4); and
- *“In considering any alternatives, it would be reasonable for the decision-maker to conclude that alternatives which are vague or inchoate, or where the necessary development could not proceed, may be excluded”* (para. 2.3.4)

In our opinion, and based on this advice, we conclude that none of the more recently consented container terminal schemes represent an alternative solution to the scheme proposed here and that there is no alternative solution to the Bathside Bay project.

#### **4.3.2.3 IROPI**

Based on the above, the development of the container terminal to help meet national need for capacity as part of a modern competitive ports industry remains of vital importance to the UK and Harwich with Felixstowe is a port of global significance. These are factors which constitute ‘imperative reasons of overriding public interest’. The proposed extension to the time limit of the Bathside Bay permission has no impact on this conclusion and, therefore, these same factors should be considered to constitute ‘imperative reasons of overriding public interest’.

#### **4.3.2.4 Compensatory Habitat**

The managed realignment site at Little Oakley, Hamford Water is consented and remains a suitable and adequate compensatory habitat, and would represent the necessary compensatory measures as required under Regulation 53 of the Habitats Regulations.

### **4.4 Interrelationship of the developments**

The Bathside Bay permission, the small boat harbour permission and the listed building consent, whilst separate, are interrelated. This is evidenced by the Secretary of State having considered and determined the applications concurrently. Furthermore, the Section 106 Agreement associated with the Bathside Bay permission and the small boat harbour permission, which has subsequently been amended by a deed of variation, has obligations as follows:

- provision of a small boat harbour prior to implementation of any tidal works, and associated requirements;
- prior to implementation of the container terminal delivering the managed realignment at Little Oakley, payment of an air quality management

contribution and conservation area contribution, submission of a travel plan, employment strategy, wetland zone management strategy, tree planting scheme and entering into a section 278 agreement for cycling and pedestrian improvement works; and

- ongoing obligations dealing with lighting etc.

#### **4.5 Changes in the development plan or other relevant material considerations which indicate that the applications are to be treated favourably**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise. In granting the Bathside Bay permission, the Secretary of State concluded (recognising the agreement on the planning conditions and the suite of other agreements and obligations entered into) that “*the container terminal proposal would accord with the development plan*”<sup>5</sup>.

In order to satisfy the requirements of Section 38(6), it is necessary to consider whether there have been any changes to the development plan framework that may have a bearing on these applications.

For the purposes of these applications, the development plan comprises:

- the Tendring District Local Plan (December 2007); and
- the East of England Plan (May 2008) as the Regional Spatial Strategy (RSS) for the East of England.

We recognise that there has been a change in development plan policy since . However, we do not consider that there are any changes in development plan policy or other relevant material considerations which post-date the Bathside Bay permission, the small boat harbour permission and the train ferry gantry listed building consent which indicate that they should no longer be treated favourably as set out below.

Specifically, in this section of the Statement we consider the following:

- Tendring District Local Plan;
- East of England Plan;
- Relevant national policy:
  - national transport policy;
  - Planning Policy Statement 1: Delivering Sustainable Development; and
  - Planning Policy Statement 4: Planning for Sustainable Economic Growth;
  - Planning Policy Statement 25: Development and Flood Risk; and
- Other relevant material considerations:
  - Tendring District Local Development Framework;
  - Supplementary Environmental Report; and
  - Supplementary Traffic Assessment.

##### **4.5.1 Tendring District Local Plan**

Tendring District Council (TDC) adopted the Tendring District Local Plan on 11 December 2007 covering the period up to 2011. Notably, it identifies Bathside Bay for employment purposes (for major strategic development).

In this section we discuss and assess the applications against the following policies:

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<sup>5</sup> DfT letter to Rees & Freres dated 21 December 2005

- Policy HAR1 (Bathside Bay);
- Policy QL5 (Economic Development and Strategic Development Sites);
- Policy QL6 (Urban Regeneration Areas); and
- Policy QL3 (Minimising and Managing Flood Risk).

#### 4.5.1.1 Policy HAR1 (Bathside Bay)

Policy HAR1 (Bathside Bay) makes explicit reference to Bathside Bay and the Bathside Bay permission. Of note, the text preceding the policy states, at Paragraphs 9.7 and 9.8:

*“The economy of the Harwich area is heavily dependent upon the port and its associated industries and services, and this is expected to remain the case for the lifetime of this Plan. This role will increase as the expansion of Harwich International Ports and Bathside Bay proceeds.*

*The planning applications to develop the 122ha site known as Bathside Bay and comprising previously reclaimed land and inter-tidal mudflats, have been approved but not implemented.”*

The policy itself states that Bathside Bay is a strategic employment site by virtue of Policy QL5 (Economic Development and Strategic Development Sites) and that 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.

Policy HAR1 (Bathside Bay) also states that no new planning permission will be granted unless it is for substantially similar development. The policy continues:

*“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.”*

#### **Assessment**

Assessing the applications against the criteria of the policy, we consider that:

- i. there would be no change in the impact of the developments upon local amenity, by reason of increased noise, vibration, air pollution or light pollution, as the applications are for the same development already approved;*
- ii. there would be no change in the impact of the developments upon infrastructure, including the impact upon the road network and the public transport network, as the applications are for the same development already approved and, as detailed in full in the Supplementary*

Environmental Report and the Supplementary Traffic Assessment, mitigation measures remain as for the 2006 full planning permissions (i.e. remain appropriate for the applications to extend);

- iii. there would be no change in the impact of the developments upon nature conservation interests (i.e. as the approach adopted throughout the Environmental Statement undertaken in support of the development already approved was to consider Bathside Bay as though it were part of the Stour and Orwell Estuaries SPA and, as detailed in full in the Supplementary Environmental Report and the Supplementary Traffic Assessment, mitigation measures remain as for the 2006 full planning permissions); and
- iv. there would be no change in the impact of the developments upon heritage assets, as the applications are for the same development already approved.

The applications for the extension of time limits therefore comply with Policy HAR1 (Bathside Bay).

#### **4.5.1.2 Policy QL5 (Economic Development and Strategic Development Sites)**

Policy QL5 (Economic Development and Strategic Development Sites) makes explicit reference to Bathside Bay and, indirectly, to the Bathside Bay permission. The policy reads:

*“The following strategic employment sites are allocated for development in order to encourage new economic activity and employment opportunities:*

- a. *Bathside Bay (122 hectares) as an extension to Harwich International Port – for the development of a deep water quayside, container handling area, rail terminal, logistics facility and associated infrastructure;*
- b. *Land East of Pond Hall Farm (27 hectares gross) is allocated for the development of a new business park for storage and distribution, along with general and light industrial uses; and*

*Proposals will be considered against the relevant area policies.”*

#### **Assessment**

The applications are considered to meet Policy QL5 (Economic Development and Strategic Development Sites) as they are for the same development already approved and, as the text preceding the policy (para. 2.3.2) states, Bathside Bay provides a significant economic and regeneration opportunity for the District and wider Haven Gateway area. The application to extend the listed building consent is associated with the application to extend the small boat harbour permission and thereby is also considered to comply with the policy.

#### **4.5.1.3 Policy QL6 (Urban Regeneration Areas)**

Policy QL6 (Urban Regeneration Areas) states that Harwich is identified on the Local Plan Proposals Maps as Urban Regeneration Area. Within Urban Regeneration Areas the policy states:

*“...permission will be granted for development that reinforces and/or enhances the function, character and appearance of the area and contributes towards regeneration and renewal. In particular, the Urban Regeneration Areas will be the focus for:*

- i. *Investment in social, economic and transportation infrastructure; and*

- ii. *Initiatives to improve vitality, environmental quality, social inclusion, economic prospects, education, health, community safety and accessibility.*

*Planning permission will not be granted for development that would have an adverse impact on the revitalisation of any of these Urban Regeneration Areas.”*

The supporting text for the policy (para. 2.39) states (inter alia, our emphasis):

*“In Harwich the wealth of historic buildings, maritime heritage, the working quayside and the need to improve links with the port (including the new Bathside Bay development) are all central to regeneration. More detailed policies are included in the relevant Chapters.”*

#### **Assessment**

The applications for the extension of time limits satisfy Policy QL6 as they are for the same development already approved.

#### **4.5.1.4 Policy QL3 (Minimising and Managing Flood Risk)**

Policy QL3 (Minimising and Managing Flood Risk) states (inter alia):

*“The Council will ensure that flood risk is taken into account at all stages in the planning process, to avoid inappropriate development in areas at risk of flooding. Development will only be permitted in areas of flood risk when there are no reasonably available sites in areas of lower flood risk and the benefits of development outweigh the risks of flooding.”*

The policy references Planning Policy Statement 25 (PPS25): Development and Flood Risk, published 7 December 2006, and states:

*“A Flood Risk Assessment is required to be submitted with all planning applications for new development on land within Flood Zones 2 and 3 as shown on the proposals map. Within Flood Zone 1 proposals on sites of 1 hectare or more will be required to submit a Flood Risk Assessment to consider drainage and flooding from other sources.”*

#### **Assessment**

In accordance with Policy QL3 the Supplementary Environmental Report assesses the proposed developments in accordance with PPS25. The compensation/mitigation measures remain as for the 2006 full planning permissions. As detailed more fully in the Supplementary Environmental Report (in the PPS25 compliant Flood Risk Assessment), with compensation/mitigation measures the flood risk, both to and from the proposed developments, is acceptable. The applications therefore satisfy Policy QL3.

#### **4.5.2 East of England Plan**

The East of England Plan, the Revision to the Regional Spatial Strategy (RSS) for the East of England, was published on 12 May 2008<sup>6</sup>.

In this section we discuss and assess the applications against the following policies<sup>7</sup>:

<sup>6</sup> In June 2008 Hertfordshire County Council and St Albans District Council made legal challenges against parts of the East of England Plan. A High Court hearing in May 2009 resulted in a legal judgment that the challenge on Harlow failed, while the challenge in respect of Hemel Hempstead and Welwyn Garden City and Hatfield was successful. The majority of the policies in the East of England Plan are unaffected and retain full development plan status.

<sup>7</sup> These policies are unaffected and retain full development plan status.

- Policy HG1 (Strategy for the Sub-Region);
- Policy SS9 (The Coast);
- Policy E3 (Strategic Employment Sites);
- Policy T6 (Strategic and Regional Road Networks);
- Policy T10 (Freight Movement);
- Policy T11 (Access to Ports);
- Policy HG2 (Employment Generating Development); and
- Policy HG3 (Transport Infrastructure).

#### 4.5.2.1 Inter-Regional Linkages

Under the heading 'Inter-Regional Linkages' it is stated that the RSS has been informed by and responds to the relationships between the East of England, adjacent regions and the rest of Europe (para. 1.13) and that the "*Ports of Felixstowe, Harwich, and Great Yarmouth together with Port of London facilities in Essex provide major gateways for UK foreign trade*" (page 5, our emphasis).

#### 4.5.2.2 Growth Areas, Growth Points and Ecotowns

Paragraph 3.6 states that Haven Gateway, Norwich and Thetford were identified as New Growth Points in October 2006. Paragraph 3.7 continues:

*"The growth areas and new growth points provide opportunities to capitalise on existing drivers of growth, notably London, Cambridge and the major ports and airports, and to use growth as a catalyst to address regeneration needs."*

#### 4.5.2.3 Haven Gateway and Policy HG1 (Strategy for the Sub-Region)

Haven Gateway Sub-Region spans part of northeast Essex and southeast Suffolk. Paragraph 13.27 states that it is focussed on the key centres for development and change of Colchester and Ipswich, the towns of Clacton, Felixstowe, and Harwich and the major ports at Felixstowe and Harwich (Bathside Bay). Paragraph 13.27 also states that the sub-region has substantial potential to develop further as a major focus for economic development and growth, which is recognised in its identification by the Government as a new growth point.

The sub-regional strategy aims to achieve transformational development and change throughout Haven Gateway which will (inter alia) develop the diverse economy of the sub-region (Policy HG1 (Strategy for the Sub-Region)).

We discuss Policies HG2 (Employment Generating Development) and HG3 (Transport Infrastructure) below.

#### 4.5.2.4 Policy SS9 (The Coast)

Policy SS9 (The Coast) states (inter alia):

*"The strategy for the coast is to adopt an integrated approach that recognises:*

- *its needs for environmental protection and enhancement;*
- *the economic and social role of the region's ports, seaside towns and coastal areas important to tourism; and*
- *predicted sea level rise and the adaptation challenge this presents to coastal communities and decision makers."*

#### Assessment

We consider that the strategy for the coast is satisfied as:

- the applications are for the same development already approved;

- there would be no change in the impact of the developments upon nature conservation interests (i.e. as the approach adopted throughout the Environmental Statement undertaken in support of the development already approved was to consider Bathside Bay as though it were part of the Stour and Orwell Estuaries SPA and, as detailed in full in the Supplementary Environmental Report and the Supplementary Traffic Assessment, mitigation measures remain as for the 2006 full planning permissions); and
- as detailed more fully in the Supplementary Environmental Report (in the PPS25 compliant Flood Risk Assessment), with compensation/mitigation measures the flood risk, both to and from the proposed developments, is acceptable.

#### 4.5.2.5 Policy E3 (Strategic Employment Sites)

Policy E3 (Strategic Employment Sites) states that Local Development Documents should identify readily-serviceable strategic employment sites of the quality and quantity required to meet the needs of business identified through the employment land reviews referred to in Policy E2. It states (our emphasis) that sites should be provided particularly, but not exclusively, at the following regionally strategic locations:

*“Haven Gateway, to support growth and regeneration at Colchester and Ipswich, including the latter’s role in ICT, and development associated with port expansion at Harwich and Felixstowe.”*

Paragraph 4.13 supporting the policy states:

*“Strategic employment sites are needed for the reasons in Policy E3. In some areas appropriate land has already been allocated and the need is to safeguard and promote its use or redevelopment. In other areas additional sites will need to be allocated in locations which satisfy the criteria in Policy E2.”*

#### Assessment

We have assessed the applications against Tendring District Local Plan Policies HAR1 (Bathside Bay), QL5 (Economic Development and Strategic Development Sites) and QL6 (Urban Regeneration Areas) above. With reference to the same, we consider that the applications satisfy Policy E3.

#### 4.5.2.6 Policies T6 (Strategic and Regional Road Networks), T10 (Freight Movement), T11 (Access to Ports), HG2 (Employment Generating Development) and HG3 (Transport Infrastructure)

##### ■ Policy T6 (Strategic and Regional Road Networks)

Policy T6 (Strategic and Regional Road Networks) states:

*“The strategic and regional road networks identified on the key diagram should be improved, managed and maintained in accordance with priorities for the strategic and regional functions of the region’s motorway, trunk road and primary route network with the aim of achieving the following outcomes:*

*... the effective operation of ports and airports which act as international gateways.”*

##### ■ Policy T10 (Freight Movement)

Policy T10 (Freight Movement) makes explicit reference to Bathside Bay. It reads (inter alia, our emphasis):

*“Priority should be given to the efficient and sustainable movement of freight, maximising the proportion of freight carried by rail and water where those are the most efficient modes:*

- *high priority should be given to measures to provide adequate rail freight capability and capacity on routes to the region’s major ports of Bathside Bay (Harwich), Felixstowe, London (including Tilbury), and London Gateway;”*

Policy T10 also seeks to safeguard existing well-located freight wharves and facilities for rail and water freight interchange for future use where there is a reasonable prospect of developing them for port operational uses. Improved provision should, it is stated, be made in locations with good road and rail access.

Paragraph 7.26 supporting Policy T10 states (inter alia) that opportunities for moving freight along the coast and on inland waterways are encouraged by national policy and coastal shipping could lead to increased use of the region’s smaller ports.

#### ■ **Policy T11 (Access to Ports)**

Policy T11 (Access to Ports) reads:

*“Access to the region’s ports should be managed and enhanced to support their development and enable them to contribute to national and regional objectives for economic growth and regeneration.*

*In accordance with Policy T10, a key priority will be to maximise the proportion of freight, particularly longer distance freight, by modes other than road, consistent with commercial viability.”*

Paragraph 7.29 supporting the policy reads (our emphasis):

*“The investment and management required for the network to provide for ports, particularly the major ports: Bathside Bay (Harwich); Felixstowe; London (including Tilbury); and London Gateway needs to be considered in the context of the approach to freight movement of Policy T10. Port developers should contribute to the delivery of improvements, and all development associated with the region’s ports avoid any adverse impact on sites of European or international importance for wildlife.”*

#### ■ **Policy HG2 (Employment Generating Development)**

Policy HG2 (Employment Generating Development) begins (our emphasis):

*“Local Development Documents should provide an enabling context for not less than 50,000 additional jobs in Haven Gateway distributed as in Policy E1.*

*The local authorities, supported by regional and local partners, should facilitate this increase in jobs by promoting a competitive sub-regional business environment through:*

- *supporting the maintenance and appropriate expansion of the ports, maritime and related activities, recognizing the role they play in making the sub-region a major economic growth point and approved proposals for container handling capacity at Bathside Bay and Felixstowe South;”*

The supporting text for the policy states that the economic structure of the area is diverse, principally based on (inter alia) a concentration of transport

and logistics industries related to the internationally important Haven Ports (para. 13.30).

#### ■ **Policy HG3 (Transport Infrastructure)**

Policy HG3 (Transport Infrastructure) states that priorities for transport in the sub-region should focus on the urban centres of Colchester and Ipswich and on the strategic infrastructure and services to facilitate access to and from the Haven Ports.

#### **Assessment**

The Bathside Bay container terminal is aligned with the development plan, both at the local (see above) and regional level.

A Supplementary Traffic Assessment has been prepared in support of the applications, which are for the same development already approved. The Supplementary Traffic Assessment concludes (see below) that suitable mitigation measures have been secured by condition.

As these applications do not seek the variation of any of the other conditions, the same conditions can be attached as previously, save for the time limiting conditions.

#### **4.5.3 Material considerations**

In this section we consider the consistency of the applications with national and emerging local policy. We also summarise the assessment work (as detailed in the separate technical reports) undertaken in support of the applications.

Specifically, we discuss and assess the applications against the following:

- national transport policy;
- Planning Policy Statement 1: Delivering Sustainable Development;
- Planning Policy Statement 4: Planning for Sustainable Economic Growth;
- Planning Policy Statement 25: Development and Flood Risk; and
- Tendring District Local Development Framework.

We then summarise the Supplementary Environmental Report and the Supplementary Traffic Assessment for the applications.

##### **4.5.3.1 National transport policy**

The Department for Transport published the 'Developing a Ports National Policy Statement: Consultation Document' on 9 November 2009. It sets out the broad need for ports capacity looking ahead to 2030 and beyond, taking into account forecasts of port freight demand and the regional and local economic benefits of port activity.

Paragraphs 13 to 15 read:

*"The NPS [draft NPS for Ports]...explains that we wish to see substantial additional port capacity developed over the next 20-30 years in order to allow for sufficient capacity to cater for the projected growth in demand.*

*This is not a matter of simple arithmetic, matching supply exactly to demand. It is important that there is sufficient spare capacity to allow our ports to operate efficiently, to make the most of new commercial opportunities, to compete effectively with each other and to offer national resilience in the event of an unexpected problem at one or more facility.*

*It is also not a simple matter of the quantity of capacity nationally. Capacity must be in the right places if it is effectively and efficiently to serve the needs of import and export markets. So capacity needs to be provided at a wide range of facilities and locations, to match the changing demands of the market.”*

The Government’s policy is therefore “...not locationally directive, and leaves it open for port developments to come forward where and when the market considers them necessary” (para. 19, our emphasis).

The Consultation Document recognises that ports not only support the “...*the long-term growth of our national economy by facilitating the movement of the imports and exports which are essential to our national prosperity*” but also “...*support growth through their role in local and regional economies; supporting regeneration and tourism, providing jobs, and bringing together businesses and industries*” (para. 27). The Consultation Document explains that these regional and local contributions should be given substantial weight by the decision-maker (para. 28).

We have discussed the draft NPS for Ports above, under ‘4.3.1 National Transport Policy’.

### **Assessment**

With the draft Ports NPS leaving it open for port developments to come forward where and when the market considers them necessary and given the guidance to decision-makers on the economic impacts of port infrastructure we consider that the applications to extend are acceptable in principle.

#### **4.5.3.2 Planning Policy Statement 1: Delivering Sustainable Development**

Planning Policy Statement 1 (PPS1): Delivering Sustainable Development, published 31 January 2005, sets out overarching planning policies on the delivery of sustainable development through the planning system. Sustainable development is the core principle underpinning PPS1 (para. 3)<sup>8</sup>.

The policies included within PPS1 have been designed to guide the production of Regional Spatial Strategies by Regional Planning Bodies and Local Development Documents by LPAs.

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<sup>8</sup> Paragraph 4 reads:

*“The Government set out four aims for sustainable development in its 1999 strategy<sup>2</sup>. These are:*

- *social progress which recognises the needs of everyone;*
- *effective protection of the environment;*
- *the prudent use of natural resources; and,*
- *the maintenance of high and stable levels of economic growth and employment.*

*These aims should be pursued in an integrated way through a sustainable, innovative and productive economy that delivers high levels of employment, and a just society that promotes social inclusion, sustainable communities and personal well being, in ways that protect and enhance the physical environment and optimise resource and energy use.”*

### Assessment

PPS1 pre-dates the Bathside Bay permission, the small boat harbour permission and the train ferry gantry listed building consent. The policies in PPS1 were fully considered and addressed in the determination of those planning applications in 2006.

#### 4.5.3.3 Planning Policy Statement 4: Planning for Sustainable Economic Growth

Planning Policy Statement 4 (PPS4): Planning for Sustainable Economic Growth, published 29 December 2009, sets out the Government's national policies for economic development. It states that its development management policies can be applied directly by the decision maker when determining planning applications (para. 3) and states that for the purposes of its policies economic development includes development within the B Use Classes, public and community uses and main town centre uses (para. 4). The policies also apply to other development (save for housing development) which achieves at least one of the following objectives:

1. *provides employment opportunities*
2. *generates wealth or*
3. *produces or generates an economic output or product*

Development management Policy EC10 (Determining Planning Applications for Economic Development) states (our emphasis):

*“Local planning authorities should adopt a positive and constructive approach towards planning applications for economic development. Planning applications that secure sustainable economic growth should be treated favourably.”*

### Assessment

The Bathside Bay permission which permits an operational container port would provide employment opportunities and generate wealth. The policies of PPS4 therefore apply to the application to extend the Bathside Bay permission.

The developments are, as set out above, interrelated. It is therefore considered that the policies of PPS4 apply not only to the Bathside Bay permission but also to the applications to extend the small boat harbour permission and, therefore, the train ferry gantry listed building consent.

In accordance with the development management Policy EC10 TDC should adopt a positive and constructive approach to the applications to extend. As applications that secure sustainable economic growth they should be judged to be acceptable in principle.

#### 4.5.3.4 Planning Policy Statement 25: Development and Flood Risk

PPS25, published 7 December 2006, sets out Government policy on development and flood risk. Its aims are to ensure that flood risk is taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding and to direct development away from areas of highest risk. Where new development is, exceptionally, necessary in such areas, policy aims to make it safe, without increasing flood risk elsewhere, and, where possible, reducing flood risk overall.

### Assessment

As noted above, the Supplementary Environmental Report assesses the proposed developments in accordance with PPS25. The compensation/mitigation measures remain as for the 2006 full planning

permissions. As detailed more fully in the Supplementary Environmental Report (in the PPS25 compliant Flood Risk Assessment), with compensation/mitigation measures the flood risk, both to and from the proposed developments, is acceptable.

#### **4.5.4 Tendring District Local Development Framework**

TDC is at an early stage with the preparation of its Local Development Framework. The first Local Development Document to be prepared will be the Core Strategy Development Plan Document. TDC prepared a 'Core Strategy Discussion Document: Issues and Possible Options' in March 2009. This underwent public consultation until May 2009.

Harwich falls into Sub-Area 3, which is described as comprising (our emphasis):

*"...the north eastern extremities of the district and contains, most notably, the historic port of Harwich which, over the years, together with the seaside town of Dovercourt, the villages of Parkeston, Little Oakley and part of the parish of Ramsey, have merged into one large joined-up urban settlement.*

*This urban settlement is recognised as a growth point and a 'Priority Area for Regeneration' within the wider Haven Gateway sub-region and could see a significant level of job growth over the next ten years as Harwich International Port is proposed for expansion at Bathside Bay to increase its capacity as a container port. The development already has planning permission and is expected to be completed by 2016 – along with a major upgrade of the A120."*

The development of Bathside Bay is highlighted as a key issue that is likely to have a significant impact on the economy of the area. Section 7 of the Core Strategy sets out the options for the spatial strategy for TDC and highlights the role of development at Bathside Bay stimulating the provision of new jobs. It is anticipated that the local economy will be stimulated by jobs created directly by the port development at Bathside Bay; associated activities that complement the port operations; and the emergence of an employment corridor along the A120 when it benefits from upgrading.

#### **Assessment**

Emerging policy as it now relates to Bathside Bay is more strongly predicated on the container terminal development being brought forward for the economic and social benefit of the area.

##### **4.5.4.1 Supplementary Environmental Report**

As Paragraph 14 of the 'Greater flexibility for planning permissions' guidance states (inter alia):

*"Where EIA was carried out on the original application, changes to the ES may not be necessary..."*

*When it is necessary to update environmental information, provide new information or alter the proposed mitigation measures, this can normally be done by means of a supplementary ES."*

An Environmental Statement was prepared to accompany the Bathside Bay Container Port planning submission, in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. A Supplementary Environmental Report and Supplementary Traffic Assessment submitted with these applications, review and revise previous assessments with respect to the current applications and assess and update effects that may have changed over time.

The 2003 Environmental Impact Assessment (EIA) identified a range of impacts on a number of environmental receptors. The Environmental Statement reported on the assessment process, noting the nature and scale of the predicted impacts, the nature of mitigation activities, and the scale of the mitigated (residual) impact. Together with supporting information submitted following a request by TDC it was accepted as part of the application.

The Supplementary Environmental Report has reviewed that previous Environmental Statement and supporting material to determine whether the current application, to extend the time periods with respect to the Bathside Bay and small boat harbour permissions, would bring about any changes in environmental impact such that the findings of the previous Environmental Statement are no longer adequate. Through this assessment of all technical elements of the Environmental Statement it has been determined that extending the period during which the development can be constructed, and associated activities can take place, will not have a material impact on the environmental impacts predicted. The conclusions of the previous EIA are considered to remain relevant to the development consented under the current application and, as such, no further environmental assessments are considered necessary at this stage.

#### **4.5.4.2 Supplementary Traffic Assessment**

The Supplementary Traffic Assessment revisits the traffic elements relating to the development already approved in support of these applications for replacement planning permissions subject to a new time limit (to 2021) in respect of the Bathside Bay permission and the small boat harbour permission. It considers changes in baseline data as well as changes in assessment practice<sup>9</sup> and states that the recently surveyed traffic flows are generally no higher than those recorded in 2003 and considered by the previous Environmental Statement at 2022.

The Supplementary Traffic Assessment concludes that:

- suitable mitigation measures have been secured by condition; and
- there can be no highways reason why these developments should not be granted.

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<sup>9</sup> Circular 02/2007: Planning and the Strategic Road Network and guidance published by the Department for Transport in 2007 with regard to the preparation of transport assessments.

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## 5 Conclusions

Applications are made for applications for replacement planning permissions subject to a new time limit (to 2021) in respect of:

- Planning Permission 03/00600/FUL in respect of the Proposed Bathside Bay container terminal, Harwich dated 29 March 2006;
- Planning Permission 03/00601/FUL in respect of the Proposed Small Boat Harbour, Harwich dated 29 March 2006; and
- Listed Building Consent 03/00602/LBC in respect of Works to the Listed Train Ferry Gantry, Harwich dated 29 March 2006.

The applications are for the same development already approved and will result in the grant of new permissions.

The need for the Bathside Bay container terminal, and HPUK's commitment to its delivery, remain solid and constant. The developments have been judged to be acceptable and the Bathside Bay container terminal is aligned with the development plan (Tendring District Local Plan and East of England Plan), national transport policy and emerging local policy (Tendring District LDF).

With the recent Government guidance 'Greater flexibility for planning permissions' stating that in current circumstances local planning authorities should take a positive and constructive approach towards applications which improve the prospect of sustainable development being taken forward quickly (para. 23), we conclude that the applications to extend should be granted. New decision notices for the reclamation of Bathside Bay and development to provide an operational container port and small boat harbour, and the partial demolition of the long berthing arm attached to the listed Train Ferry Gantry and associated remedial works issued, should therefore be issued with the time limit for the full planning permissions and the listed building consent extended to 29 March 2021.