

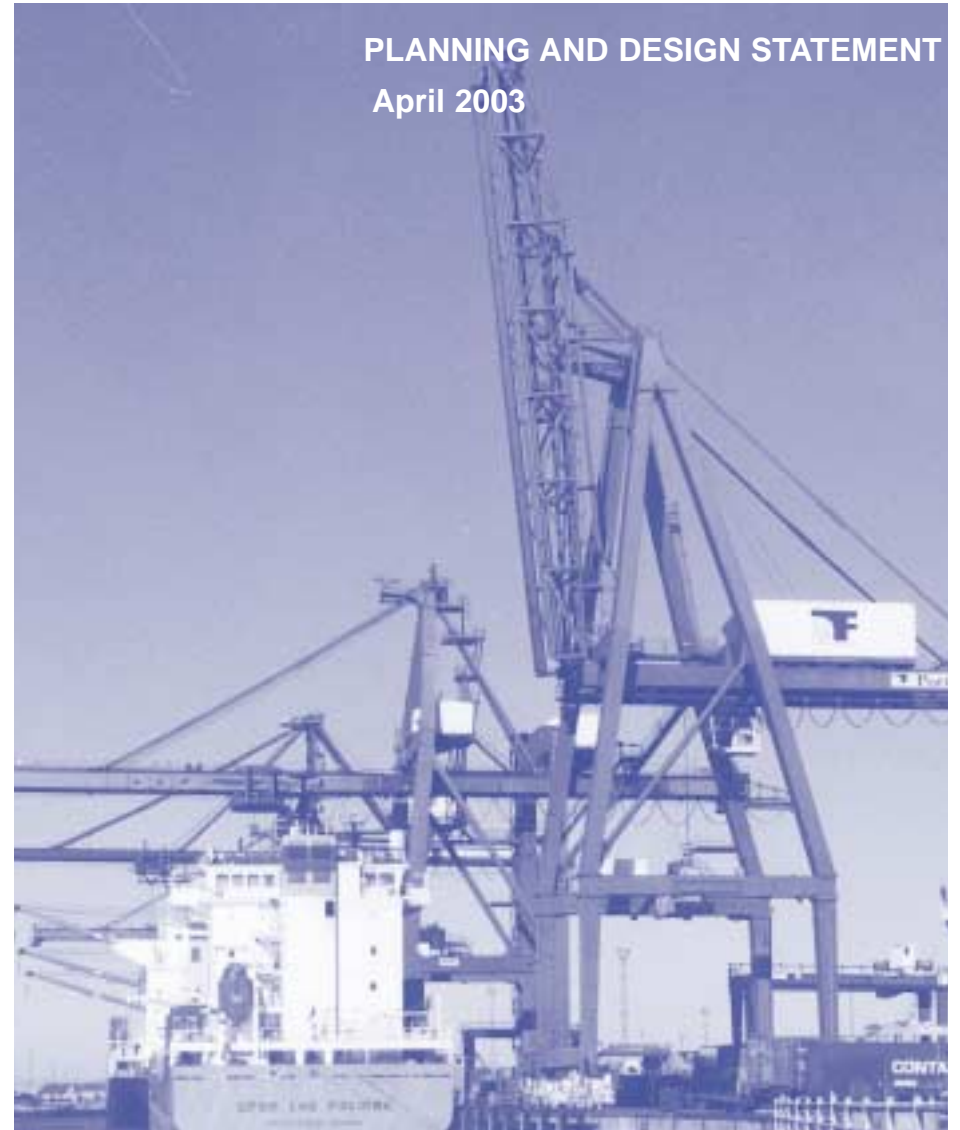
BATHSIDE BAY

PLANNING AND DESIGN STATEMENT
April 2003



Harwich
International Port

A member of the Hutchison Port Holdings Group





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Hutchison Ports UK LTD
Harwich International Port





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1.0 INTRODUCTION

1.1 Introduction

The purpose of this statement is to describe and explain the proposals made by Hutchison Ports (UK) Limited ("HPUK") on behalf of Harwich International Port Limited ("HIP") to reclaim Bathside Bay and to construct a container handling and stacking facility comprising a 1400m quay wall, container handling and stacking area and associated workshops, office, warehousing, HGV parking and rail terminal including access and landscaping. Consequent on this proposal, HPUK also proposes the construction of a small boat harbour at Gas House Creek comprising the construction of a sheltered water area for boats, lock-up facilities for local fishermen, boat storage, slipway and mooring facilities for sailing club and public use and environmental and landscape works providing public access and a public viewing area.

This statement also explains the various means by which HPUK is required to secure consent for the proposed works, encompassing planning applications under the Town & Country Planning Acts and applications under transport, environmental and conservation legislation, and considers the issues relevant in the context of these complex legislative requirements.

1.2 Masterplan

The new facility, which will have a dredged depth at the quayside of 15m below Chart Datum ("CD"), will share the same approach channel as the nearby Port of Felixstowe and utilise the existing road and rail connections of Harwich International Port. The development will involve the reclamation of some 65 hectares (ha) of intertidal mud flats and existing reclaimed land and the construction of a modern container port comprising quayside berths

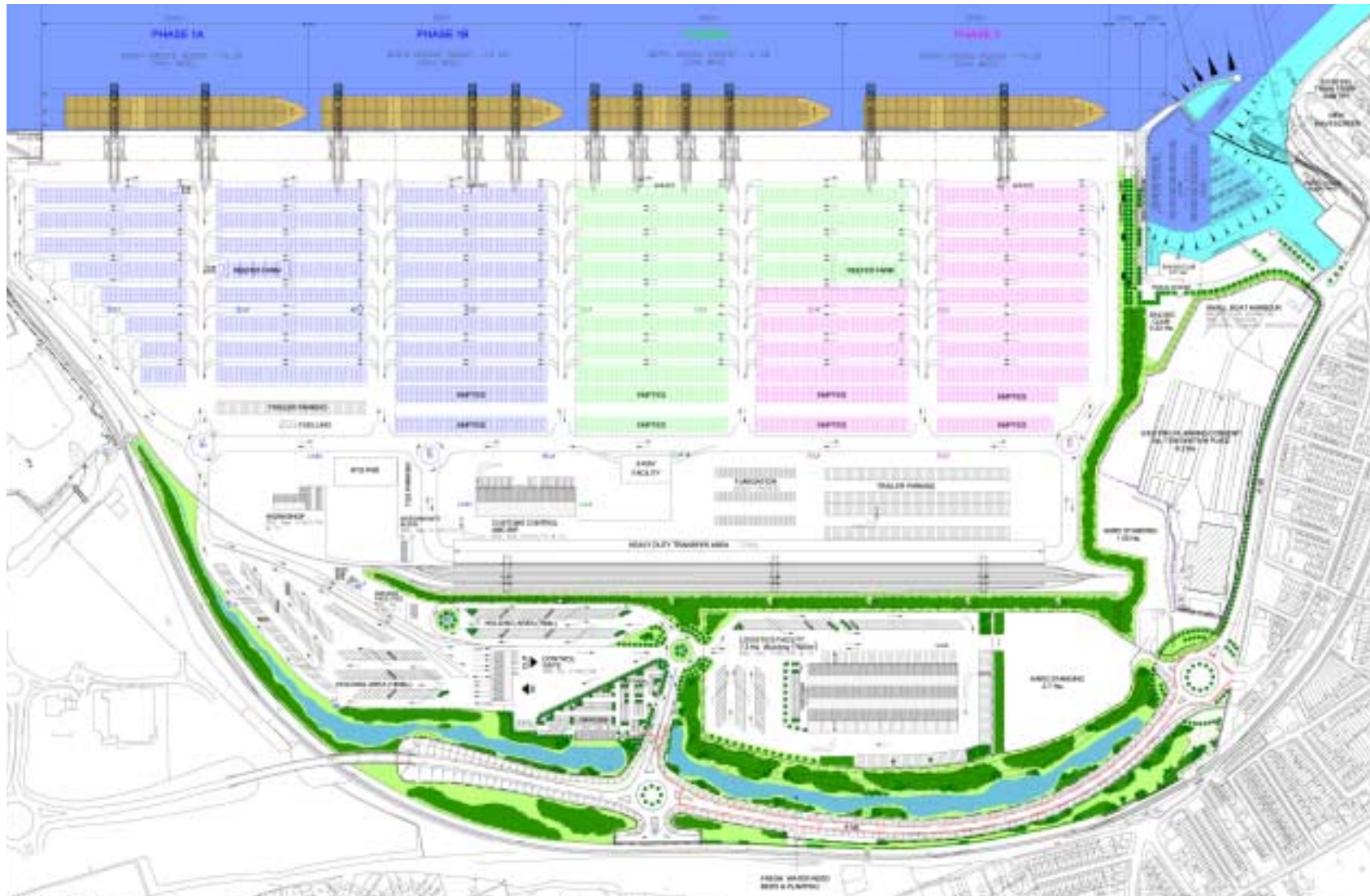
supported by quayside gantry cranes, a container storage area immediately to its rear, a 775 metre length rail terminal and heavy duty container transfer area, and associated facilities in all giving an annual capacity of some 1,680,000 twenty foot equivalent units (TEUs). In addition, the construction of the small boat harbour will require the dredging of 4ha of intertidal area. Therefore, the overall area of intertidal directly affected by the construction works for the port and small boat harbour will be 69 ha.

Once fully operational with 4 berths in 2010, it is expected that the port will employ 772 workers directly at Bathside Bay, with a further 430 jobs being created across the Haven Gateway as a result of multiplier effects. In addition, it is predicted that a further 500 jobs will be created in associated port activities such as warehousing, haulage and freight forwarding activities.

Roger Tym & Partners (Environmental Statement Supporting Document 8) assess that by 2015 (when the beneficial multiplier effects of the proposals have had time to work through into the economy), the result would be to raise Gross Value Added (GVA), or output, in the Haven Gateway by just under £50m (at 1995 prices). The major impact will be in the transport and communications sector (£28m), but there will also be consequential impacts that raise GVA by £4m each in both the manufacturing and distribution and hotel sectors.

1.3 Consents Process

Plans to reclaim and develop Bathside Bay have existed in one form or another since the 19th Century. Indeed, the Harwich Parkeston Quay Act 1988 ("the 1988 Act") already authorises interference with navigation by the construction of a quay wall, the construction of a culvert for the diversion of the Dovercourt Dock River and the filling in of the area



Bathside Bay - The Overall Masterplan



landward of the quay wall by reclamation or the completion of reclamation (which extends the consents granted under the earlier Parkeston Quay Act 1983). Non-specific ancillary works within the limits of deviation of the quay wall and culvert are also permitted including:

"... all such [subsidiary or ancillary] works and conveniences...and all such railways, machinery and apparatus as [the Company] may from time to time deem necessary or convenient for any purpose of, or in connection with those works or the accommodation of those works or traffic thereat."

The 1988 Act also permitted the use of the reclaimed land as part of the harbour undertaking of Harwich and had the effect of granting planning permission for the works. This consent was granted subject to a number of conditions and restrictions, the most notable of which were:

1. All the tidal works require approval by the Secretary of State in advance of implementation;
2. Planning permission deemed to have been granted under the Act is limited so as to expire after 15 years from the passing of the Act (that is, on 27 October 2003).

Bathside Bay came into the ownership of HIP (a subsidiary of HPUK) in 2000, at which point the relevant statutory powers to develop the Bay passed to the Company which immediately announced its intention to progress the development.

Consistent with the requirements of the 1988 Act, HPUK and Harwich Haven Authority have submitted a series of applications in mid/late 2001 as follows:

- An application pursuant to Section 11 of the Parkeston Quay Act 1983 to permit the carrying out of tidal works comprising the construction of a quay wall and reclamation of

intertidal area at Bathside Bay;

- Application under Section 34 of the Coast Protection Act 1949 for channel dredging and the disposal of dredged arisings relating to the Bathside Bay proposals;
- Applications for licences under the Food & Environment Protection Act 1985 for construction of the quay wall, the deposit of materials for reclamation of Bathside Bay and for the disposal of dredged arisings.

Accompanying these applications, an Environmental Statement was submitted in accordance with Regulation 4(6) of the Harbour Works (Environmental Impact Assessment) Regulations 1999. This followed a ruling by the Department for Transport, Local Government and the Regions (Ports Division) ("DTLR") dated 27 September 2001 that the proposed tidal works constitute a project falling within Annex II to the Directive and a project which would be likely to have significant effects on the environment by virtue of factors such as its size, nature or location. The DTLR also concluded that the dredging component of the application for consent under Section 34 of the Coast Protection Act 1949 also required EIA.

In addition, early consultation indicated that it was the opinion of English Nature and the Environment Agency that the works proposed were likely to have a significant effect on the Stour and Orwell Estuaries Special Protection Area ("SPA"). Therefore, and as a consequence of legislation introduced and enacted after the 1988 Act consent, it is necessary under the terms of the Conservation (Natural Habitats &c.) Regulations 1994 ("the Habitats Regulations") for both the Secretary of State (in respect of the tidal works) and the local planning authority (in respect of the tidal works and all other development) to carry out an 'appropriate assessment' of the proposals.



In order to address this issue and the time limitations for planning purposes under the 1988 Act, HPUK made an application for a Harbour Revision Order (HRO) under Section 14 of the Harbours Act 1964, seeking to extend the planning powers contained in the 1988 Act and to disapply Regulation 60 of the Habitats Regulations.

Whilst HPUK's powers for interference to navigation rights and construction of the quay wall subsist after October 2003, the now imminent expiration of the planning powers granted under the 1988 Act, and a desire to be clear and transparent with respect to HPUK's plans for development, have resulted in the decision being taken by HPUK to submit planning applications for the proposed Bathside Bay development. Specifically, these comprise:

- A full planning application for the construction and operation of the container port;
- A full planning application for the construction of a "small boat harbour" in the vicinity of Gas House Creek; and
- An application for Listed Building Consent for the partial demolition of the Grade II Listed Train Ferry Gantry structure at Gas House Creek.

With the submission of these applications to Tendring District Council, the need for HPUK to rely on the deemed planning consents conferred by the 1988 Act passes and the HRO (as submitted in March 2002) will formally be withdrawn and all interested parties to that submission will be notified accordingly.

The new applications essentially relate to the "landside" elements of HPUK's proposals within the jurisdiction of Tendring District Council as local planning authority. They differ from the tidal works (including the obstruction to navigation arising from the reclamation of the intertidal area, channel dredging and disposal of arisings) which in essence comprise the "wetside" works. For completeness, and in order to allow the combined influence of the

various works associated with the different applications to be considered fully, the applications for planning and listed building consent are accompanied by an Environmental Statement which addresses both the "wetside" (as addressed in the tidal works ES and supplemented by further work) and "landside" aspects of the proposed development.

Prior to the submission of the 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 now submitted with these planning applications has regard to the formal response received in respect of that scoping opinion. Although Bathside Bay is outside of the boundaries of the Stour and Orwell Estuaries SPA, the approach adopted throughout the Environmental Statement is to consider the Bay as though it were part of the SPA. The Bay is obviously an important part of the estuarine system and it is considered that it is a contributory habitat to the nature conservation interest of the European site.

The Environmental Assessment (undertaken by Posford Haskoning Environment) concludes that the direct loss of the intertidal mudflats within Bathside Bay would have an adverse effect on the integrity of the Stour and Orwell Estuaries SPA. This arises because, although Bathside Bay is outside the boundaries of the SPA, the Bay supports significant populations of overwintering waterfowl that contribute towards the overall waterfowl population of the SPA. Therefore the Bay represents an important contributory habitat to the intertidal habitats of the estuarine system as a whole.

Assuming that the competent authority's appropriate assessment concurs with HPUK's own opinion that the works are likely to have an adverse effect on the integrity of the Stour and Orwell Estuaries SPA, the provisions of Regulation 49 of the Habitats Regulations would apply. Regulation 49(1) states that:



"If they are satisfied that, there being no alternative solutions, a plan or project must be carried out for imperative reasons of overriding public interest...the competent authority may agree to the plan or project notwithstanding a negative assessment of the implications for the site."

Therefore, in order for the tidal works to proceed, a case for overriding public interest ("OPI") would have to be made. Should Regulation 49(1) be satisfied, Regulation 53 of the 1994 Regulations states that:

"Where in accordance with Regulation 49 (considerations of overriding public interest)

- a) a plan or project is agreed to, notwithstanding a negative assessment of the implications of a European site or*
- b) a decision, or a consent, permission or other authorisation, is affirmed on review, notwithstanding such an assessment the Secretary of State shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected."*

In this event, and the project receives consent, HPUK accepts that it would need to agree and implement appropriate compensatory measures, and proposes to achieve this through the creation of new intertidal habitat as a result of managed realignment. Thereafter, the majority of the container port application site (which would be the subject of planning permission) would on the grant of the permission become operational land for the purposes of Part 17B of the Town and Country Planning (General Permitted Development) Order 1995 ("the GPDO") and benefit from permitted development rights through HIP as a statutory undertaker (as provided for under Section 264(3) of the Town & Country Planning Act 1990). Any development on the reclaimed land other than development in accordance

with the Masterplan would require further planning consent except to the extent that HIP could rely on deemed planning consent for certain port related developments under Part 17B of the GPDO.

The following sections describe fully the content of the applications made to Tendring District Council and the context in which the proposals have been submitted before describing the planning context and overriding public interest case which, in the opinion of HPUK, demonstrates that the project should be approved notwithstanding any adverse environmental effects.

