

MINUTES OF MEETING HELD AT HOUSE OF COMMONS ON MONDAY 4TH JUNE 2018 AT 12.30 PM

PRESENT: Sir Roger Gale, (**RG**), MP for North Thanet (Chair)
Craig Mackinlay, (**CM**), MP for South Thanet
Charlie Elphicke, (**CE**), MP for Dover & Deal
John Tuckett, (**JT**), Chief Executive, MMO
Ms Trudi Wakelin, (**TW**), Director of Marine Licensing, MMO
Mrs Fiona Punter, (**FP**), Goodwin Sands SOS (GWS SOS)
Mrs Joanna Thomson, (**JBT**), Goodwin Sands SOS
David Steed, (**DS**), Goodwin Sands SOS, President Thanet Archaeological Trust
Cllr Peter Wallace, (**PW**), Dover Town Council, Dover District Council
Cllr Callum Warriner, (**CW**), Dover Town Council

APOLOGIES: Andy Ashenhurst, Simon Cullingworth, Goodwin Sands SOS

Everyone had introduced themselves before the meeting started. **RG** commenced by stating that GWS SOS had asked for the meeting on account of Ms Wakelin meeting one party concerned with the Goodwin Sands marine aggregate dredging licence and not the other, so there was considered to be an imbalance. **JT** reminded everyone that particular details of this licence application were not up for discussion at this meeting.

Account of the role of Director of Marine Licensing (DoML) and overview of the marine licencing process

TW explained she had been appointed DoML in February 2017 in response to a strategic review of the marine licensing process by **JT** and others at the MMO. Issues had been raised by stakeholders and as result of the MMO's vision to improve and streamline the marine licensing application process, it was decided that a dedicated resource at senior level was required to achieve this.

TW outlined her background; she was previously Director of Operations and Harbour Master at the Norfolk Broads (Broads Authority) where she had achieved a balance of conservation, navigation and recreation in a Protected Landscape lying within a National Park that also hosted 13,000 registered vessels.

TW stated that the MMO exists to contribute to the Government's policy of creating clean, healthy, safe, productive and biologically diverse oceans and seas whilst allowing for sustainable development. Her role is to remove the perception that the MMO presents a barrier to development and to improve the MMO's licensing performance. Historically, the MMO has been considered as remote, impersonal and a black hole for applications. There was a lack of consultation from both consultees and applicants and a lack of mutual understanding about the MMO's role.

TW stated that the MMO aims to develop a process of timely, cost and risk proportionate and evidence-based determinations (licence decisions). This is intended to provide an excellent customer service through a user friendly system. **TW** started doing this by restructuring the team into 3 pillars:

- People** deliver a career path, training and support to reduce the high turnover of staff, which has resulted in time delays in applications and lack of corporate memory and build up of expertise
- Expertise** create a strategic licensing team to provide an independent resource available to case officers so they can find experts. The team also provides QA by doing internal audits and for signing off procedures. This team is also to address the issues of lack of transparency, the public register and to ensure that public responses will ultimately be published on it, unless there is good reason not to and to develop stakeholder relationships
- Systems** improve customer services by ensuring that appropriate, fit for purpose systems are put in place. **TW** has also instigated an on-going education system whereby people visit the MMO and vice versa (industry interchange). Marine conferences have been hosted and both good and bad feedback used to develop new guidance.

A blue-print has been created in association with the Local Government Association Coastal Special Interest Group which can also be shared with planning applicants to give people a better understanding of the whole licensing process.

CE joined the meeting at 12.45 approx.

TW explained that marine planning is much more complex than terrestrial planning. Many more organisations are potentially involved to acquire consent to activities and there is often confusion about regulations. The Coastal Concordat has been developed to help streamline the approach the aim is to include local Councils as they are often the first point of contact for anyone wishing to submit a marine licensing application, although **TW** admitted that to date there has been a low take up by local councils for this idea.

The blue-print sets out the steps of the application process and is intended to make it more speedy and efficient. The target is to process an application within 13 weeks (consistent with terrestrial planning).

Step 1 An application is received and validated by case officers. Is it fit for purpose and is all the required information present and correct. An estimate of the time needed to determine the licence is given and a fee estimate generated. The applicant must agree the fee estimate before any further work is done.

JBT asked for clarification of the fees and **TW** responded that there are 3 bands of set fees: **Band 1** – simple applications that can be done online and are effectively self-service - £50. **Band 2** – applications for works that do not require an EIA. This band is further subdivided into 5 sections subject to the capital value of the project. The maximum fee is £999,000. **TW** confirmed that this band is currently being rationalised via a Statutory Instrument process. **Band 3** is for works requiring an EIA and is currently charged at an hourly rate of £94. This rate is soon to be amended via Statutory Instrument. VAT is not payable on statutory work but is payable on non-statutory work.

RG commented that he assumed that all the paperwork including an EIA, if required, would be part of the validation process. If an EIA is not submitted, what information is? **TW** replied that the validation looks at who the applicant is, if they have provided the correct information on the application form and provides a description of the project.

JT added that the pre-application phase is very important and that applicants are encouraged to talk to the MMO at this stage to remove any potential problems early on. This non-statutory work is chargeable at £94 / hour plus VAT. **JT** has spoken at several conferences advertising this facility.

CE commented that since ports are VAT registered this charge should not be a problem for them. He then queried the length of time it was taking for an application lodged on 19 May 2016 to be still undecided after 'two years and counting'. The MMO did not reply to this comment.

Step 2 The application is allocated to a case team who qualitatively review it. They use a GIS tool on the Marine Information System to pick up local site sensitivities and highlight any potential issues (coordinates of the development must be included in the application). A list of consultees is prepared. The team go back to the applicant if necessary for additional information and the 'clock' is stopped until any further information is collected. **TW** gave an example of an application being put on hold for a year whilst a survey of over-wintering birds was carried out.

Step 3 The application goes out for consultation. This includes erecting site notices, advertising in geographically assessed local papers, contacting statutory consultees and other parties believed to be likely to have an interest where known and uploading the application on to the public register. Comments are invited over a period of 4 weeks, though it can sometimes be longer.

DS asked at what stage is information provided to the MMO made public. **TW** replied that this is done when the MMO is satisfied it has all the necessary information.

Step 3 contd. Whilst the above is going on, the case team are considering impacts of the application against the local marine plan. The draft South marine plan is a material consideration. Where a Marine Plan has not yet been developed for an area the Marine Policy statement is used. Using this marine plan, the team can identify any environmental impacts and mitigations that may be required and any further evidence that is needed. Public responses are reviewed as soon as they are received. Discussions regarding questions and issues raised are on-going with the applicant during this stage. If statutory consultees require further information, the application clock is put on hold until the information is received.

TW confirmed that the MMO's statutory consultees are Natural England to the 12nm maritime limit, Cefas, Historic England, Environment Agency and JNCC who cover the 12 – 200 nm area of the sea around our coastline. The MoD is not a statutory consultee but is on the list if needed for site specific issues .

Step 3 contd. If any significant new information is received e.g. survey work, the need for reconsultation is decided upon on a case-by-case basis.

Once all the information is received, an internal QA process rates each case on a risk level using the RAG rating:

Green cases can be signed off by a case officer, as they are low risk

Amber cases can be signed off by a case manager

Red cases are signed off by a senior case manager with the Head of Strategic Licensing providing support for the final sign off. **JBT** asked if this was Shaun Nicholson to which **TW** confirmed it was. He provides an independent opinion external to the case team.

NB TW also mentioned later in her account that there is now also a **Black** rating (see later).

TW reported that she is also concerned with the end-to-end process and how the MMO can support applicants from a whole host of industries to improve the quality of their submissions. They are being encouraged to complete informal local consultations with all interested parties prior to submission where appropriate, for example through Port master planning exercises. By 2021 the marine plan should be fully functional and the aim is that this will be the first port of call for any developer.

Post-consent activity, both by the applicant and the MMO, is also important. In addition to the MMO's Head Office in Newcastle, there are 14 regional offices. When a licence is determined, the relevant local office takes it over. They carry out inspections and oversee the compliance of any conditions and have the authority to enforce any non-compliance. **TW** admitted that this system needs streamlining and improving further the integration between the 2 teams.

JT gave an example of where a dredging licence was not being adhered to in Devonport. The dredging company was taken to court and fined £40,000. **FP** noted that it was a third party who alerted the MMO to what was happening; it was not the MMO who observed it although they did instigate the prosecution. **JT** assented.

JT explained that licence conditions could be related to geographical area, seasonal (affecting environmental species) and the presence of on board observers (on dredgers). There are many and varied conditions determined on a case by case basis.

TW explained that case teams are divided into 5 sectors: ports and marinas, aggregates and cables, renewable offshore wind, coastal development (e.g. flood defences, jetties) and coastal energy including nuclear and the Thames Tideway project.

TW confirmed that she has met with a wide range of organisations including BPA, Seabed Development Users Group, BMAPA, Thames Tideway, DEFRA, DfT, local government associations and has visited many places as part of introductory stakeholder meeting round.

FP asked **TW** for a copy of the MMO's written policy on licensing procedures and of **TW**'s role as DoML. **TW** agreed to provide both. **FP** also asked for confirmation that Shaun Nicholson reports to Trudi. **TW** confirmed this to be correct and also confirmed that she does not sign off any cases. The risk rating of a case determines who signs them off. **TW** mentioned that the highest rating was black. **JBT** queried why **TW** had not mentioned earlier. **TW** replied that it was a new innovation and that only Shaun Nicholson had the authority to sign off black cases.

JT added that Shaun Nicholson signs off on behalf of the MMO but he can discuss his decision with **JT**.

RG asked if **JT** can over ride a decision and **JT** confirmed that he could.

TW confirmed that all decisions are evidence led and that post-consent a full report is written with an audit trail included to show how the MMO reached their decision.

JBT asked questions about Marine Conservation Zone (MCZ) assessment. She referred to two documents from the government website entitled Marine Conservation Zones and Marine Licensing dated April 2013 and 9 March 2015. They describe the introduction of a new process of MCZ assessment that is to be included in all new licence applications. **TW** agreed to provide the date this new process started. **TW** confirmed that this new process involves **Screening, Stage 1** and **Stage 2** assessments for both recommended and fully designated MCZ's.

JBT then queried how the public benefit requirement stated in Stage 3 is assessed. **TW** replied that she is not the appropriate person to answer the question. Shaun Nicholson, as the technical expert, is the person to answer this, but DEFRA is the body who produce the guidance. **JBT** agreed to ask them.

JT confirmed that there is a public interest test 'IROPI' (Imperative Reasons of Overriding Public Interest) which can be used under the Habitat Regulations if an assessment shows there will be environmental damage caused by the planned activity. Proof is first required that there will be 'significant adverse impact' to the protected feature.

JBT asked **JT** where information regarding the IROPI test could be found and **JT** replied "Google it". **JT** then added that the process is produced by DEFRA but that it does not apply to the Stage 3 MCZ assessment. **FP** further asked how the IROPI test was reconciled. **TW** responded that it not only applied to the Habitats Directive but to a whole series of directives.

CM then posed a hypothetical question about cable laying in the English Channel and the need to avoid an SSSI and an old MoD ammunition dump. He commented that the MMO appeared to have much more discretion about determining licences than terrestrial planners. **CM** added that there were many steps along the way and that the MMO hold a lot of power. He also asked if there is a route of appeal against a licence decision.

TW answered that marine licensing is much more complex than terrestrial planning and that theirs is a very young system in comparison. The marine plans are still being worked through and currently there is a certain amount of freedom and uncertainty as policies are not yet all finalised. She added that in marine environments there is greater potential for peaceful co existence between activities in the four marine dimensions – on the surface, in the water column, on the seabed and buried below the seabed. If a project is planned properly early on adverse impacts can be avoided.

TW further stated that the MMO is an independent regulator acting on advice received from its statutory consultees. **CM** commented that the MMO is in fact acting on behalf of The Crown Estate who owns the seabed.

(NB this is incorrect as the MMO licence development activity and The Crown Estate separately license or lease the sea bed)

CE interjected that 'it (the licence application process) takes too long', that 'it is ludicrous that it should take two years and unfair on everyone involved who has had to put their lives on hold'. He continued 'the MMO should make a decision and move on'. **TW** responded that stakeholders had commented on the 'muscularity' of the MMO and that it needs to be able to make a decision and stick to it however as explained above the decision is evidence led and therefore the evidence needs to be provided in a timely manner for a swift determination.

TW confirmed that there is a route of appeal and a case can be challenged at a Judicial Review. She added that the MMO has not lost one (JR) yet. **JT** corrected her that the MMO had lost the JR regarding Rame Head (NB dumping toxic waste in Whitsands Bay, Cornwall). **TW** apologised for not mentioning this. **CE** commented that 'the threat of a JR should not leave the MMO quivering in the corner'.

TW agreed that applications could take a lot longer than they should do and she has spoken to many disgruntled applicants. However, it all relies on the amount of information produced in the first place.

Account of TW's meeting with Tim Waggott of Dover Harbour Board in July 2017

TW related how she had attended the UK Ports Conference in May 2017. Speakers at the conference included a planning consultant who spoke of the need for ports to undertake a master planning exercise. He reported that ports were reluctant to share their plans with the wider sector for commercial reasons. Another speaker, James Trimmer, Director of Planning at the Port of London Authority described the PLA's pro-active and strategic thinking behind their wharves development.

TW recounted how Tim (Waggott) displayed a slide showing a skull and crossbones beside the MMO logo and proceeded to condemn their whole system, saying 'you will never get what you want and the system is appalling'. Owing to the political purdah in force at the time and the fact that **TW** was new to the organisation (MMO), **TW** stated that it was not appropriate for her to respond to these allegations at the conference. **TW** reported how both Jim (James Trimmer) and Tim (Waggott) had bent her ear at the coffee break, at which she agreed to visit both ports to see at first hand the successes and difficulties they encountered.

CW asked **TW** if she was aware of the controversial licence application from Dover and if so, did she not consider it a conflict of interest to visit at that time. **TW** replied that she was aware of the sensitivity of the application and did not consider her visit to Dover to be a conflict of interest. **TW** further confirmed that her visit was not minuted as it was an informal visit.

JBT asked **TW** what Tim W was bending her ear about if it was not the dredging application licence. **TW** did not reply to this question.

TW gave an account of her day at Port of Dover, which included visits to the Harbour Office, Control Office, Port Office, cargo handling area and Border Control Office. **TW** reported that she had made it clear to Tim at the outset that the dredging licence application could not be discussed although they did talk about the piling works as consent for this had already been granted. On the way back to Dover Priory station Tim gave **TW** a tour of DHB's waterfront property portfolio. **TW** confirmed that Port of Dover's main concern at the moment is Brexit.

TW reported that by the end of the visit she felt that she and Tim had a better mutual understanding. By explaining her professional background, **TW** hoped that Tim would appreciate the level of expertise and technical ability available within the MMO and understand the issues they encountered. By visiting Dover, **TW** stated that she wished to correct Tim's misapprehension that the MMO were 'a bunch of numpties who knew nothing about anything'.

DS asked **TW** if Tim mentioned anything about the landfill when showing her the waterfront properties, which are situated adjacent to the proposed landfill sites. **TW** replied that he did but they talked about work for which

consent had already been granted. The licence application is about extraction whereas the Western Docks project is already consented.

JT interjected that it would be impossible and unfeasible to put a ban on the MMO talking to people during a licence application. **FP** agreed that she understood that but did not understand why, as a government regulator, no one accompanied **TW** on her visit and why minutes were not kept.

TW responded that she went alone because “I am a big girl” and that it was an informal sharing of information. **FP** responded that she felt best practices were not being adhered to. **JT** replied that he knew of no best practice that demanded every meeting be minuted or accompanied. **CE** and **RG** agreed with this comment.

PW asked if it was possible for Goodwin Sands SOS to have 1-2 hours of an MMO officer’s time to discuss the issues surrounding the dredging licence including missing information. **TW** replied that that should be taken outside the meeting.

CE declared that two years and three consultations is too long to take to determine a licence decision. The MMO needs to make a decision asap.

CE left the meeting at 13.35.

CW asked **TW** if she felt it was fair to comment on social media about her visit to Dover whilst the licence application was pending. **TW** replied that her post should be looked at in its whole context and that at the end of it she had invited people to contact her. **FP** and **JBT** responded that they had contacted her immediately on reading the post. Discussion followed about how long it had taken to arrange this meeting.

JBT asked **TW** that if she was aware of the controversial nature of the dredging licence application, would it not have been sensible to a) take someone with her and b) take minutes or was she comfortable that Tim would not push her into making a decision she wasn’t ready to make? **TW** replied that she had felt entirely comfortable about the meeting. **JBT** further asked **TW** if she was happy to answer to the public that there was no threat of partiality or bias and **TW** replied that she was.

JT added that this was a standard way of doing business and that he trusted his Directors to exercise their discretion and not get involved in inappropriate discussions.

DS asked **TW** if considering that Tim W is under investigation for harassment and bullying, particularly of female staff, would **TW** be available for comment if required? **TW** replied that she couldn’t imagine she can contribute anything but would be happy to provide any information she can.

Any Other Business

DS stated to **TW** that he felt that the significance of archaeology (underwater) was not being addressed as it would be if it were on land. He explained the history of the island of Lomea and how the remains of it that form the basis of what is now the Goodwin Sands pre dates Roman times. **DS** continued that as a result this area is ‘totally, totally unique as an archaeological site’. **TW** responded that Historic England (HE) is the statutory consultee on these matters and that the MMO meets them on a regular basis as part of their stakeholders’ focus group.

TW continued that in conjunction with HE, the MMO would look at method statements for works. Sometimes they will apply conditions to a licence such as the need to inspect the hold of the dredger for archaeological material or dive surveys. **JT** explained that it was difficult to apply the same methods to marine archaeology but constraints were put in place eg put an observer on board the dredger so that if anything is found, dredging is stopped immediately.

FP responded that the observation was done via a video link over the dredging period, which could be 24 hours at a time. She knew of only 2 people in the whole country qualified to do this, which meant that by the time the video is looked at it is too late.

DS commented that this was poles apart from what is accepted on land – its foraging and difficult to put the two methods together. **DS** then showed **JT** a sheet of paper showing a YouTube video of **JT** talking in front of a backdrop showing, amongst other things, a broken back ship lying on the seabed. **DS** advised **JT** that the significance of this backdrop is that it indicates that **JT** is accepting his responsibility for everything lying on the seabed up.

RG left the meeting at 13.50 and **CM** took the Chair.

DS then asked about what happens when there is a conflict between advice from statutory consultees and local opinion. **JT** answered that this often happens and it is generally best to gather people round a table to discuss their concerns.

JBT questioned **TW** about how applicant's charges were kept. **TW** answered that they were recorded on to a time sheet in 15 minute sections. Each case has an identifying code and there is also an activities code. Each month an invoice is sent out to Band 3 applicants with the time sheet and activity log attached.

FP asked **TW** for a fuller description of the black risk rating. **TW** responded that she would send **FP** a description of all the risk ratings.

CM commented that once again there seemed to be an area of huge discretion by the MMO on which rating to put a particular application. **JT** replied that the MMO has to exercise its professional judgement. **TW** added that there are rules to help case teams rate applications consistently and that cases can move between ratings as circumstances change.

TW added that when a licence is granted and handed over to the local coastal office, a risk rating is included to help the team assess the level of monitoring the licensed activity that is required.

Discussion followed on whether the MMO relies upon passive or reactive reactions from the general public and whether the MMO would hold open consultations within an area affected by a licence application. **CM** commented that the wind farm developers had held road shows around Thanet and questioned whether DHB should have done the same thing.

TW stated that notices are published in papers and there is the online system but the MMO does not 'door knock' to canvas public opinion about a particular project. **FP** asked **TW** if she had ever tried to download the MMO's public register at home and not just from the mainframe computer? **JBT** added that it takes at least 20 minutes to download the case notes, as one has to download the whole thing every time one wants an update. **JBT** declared that only 'obsessives like us are going to do that'. **FP** agreed that the public register couldn't be described as 'accessible'. **TW** thanked her for the feedback and made a note. **TW** also commented that 'a master plan would have picked that up'.

TW stated that in general terms, the MMO does not make a decision based on the voting principle. It is not about the numbers for or against a particular project but about evidence. **FP** commented that evidence based research is only as good as the evidence provided in the first place.

JBT asked **TW** if she considered it a satisfactory part of the licensing application process that EIA's are not independent documents. **TW** confirmed that she is satisfied because all the information is tested during the application process. **CM** commented that there must be a professional body to oversee the quality of EIAs.

FP asked if, on the basis of best evidence based research, would the MMO have regraded the Thames Gateway application as black after having seen the amount of archaeological material that was dredged up accidentally and which was not identified on the EIA. **TW** and **JT** replied that they could not respond to this as it was before they arrived at the MMO.

TW concluded the meeting by saying that she was very happy to come back to the group with any further information required. **JT**, **CM** and **CM** on behalf of **RG** asked to be copied in on the list of information requested from the MMO by Goodwin Sands SOS.

The meeting ended at 2pm.