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Mr C Scott,
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07 March 2016

Your Ref: R/4282/4

Please ask for:
Simon Davis
Planning Department

ADC Ref: P/97/15/PL
MMO Ref: MLA/2015/00390
CDC Ref: SY/15/03053/FUL

Direct Dial: 01903 737874

Dear Mr Scott,

Re: Planning Application and application for Marine Licence by Pagham Parish Council for managed breach of shingle spit, blocking of adjacent tidal inlet channel with shingle barrier and formation of Shingle Island within Pagham Harbour following excavation of adjacent area of spit

This response represents the joint response from Arun District Council (ADC), Chichester District Council (CDC) and the Marine Management Organisation (MMO) who are working in conjunction under the Coastal Concordat. Following our meeting on the 11th February 2016, I write to you as promised to outline the further information that is required in order to progress both the marine licence and planning permission applications. Furthermore this document details the additional information required for CDC to conduct an Appropriate Assessment under the Habitat Regulations Assessment Regs.

Firstly, as stated during our meeting, I would like to confirm that the competent authorities have completed screening for likely significant effects and all agree that an Appropriate Assessment (AA) is required to address the impacts of the proposal on the Pagham Harbour SPA/Ramsar site. Furthermore, I would also confirm that ADC will act as the lead for the planning application, CDC will lead on the AA and the MMO will carry out the Stage 1 Assessment for the Marine Conservation Zone (MCZ). ADC will also remain the point of contact for submitting information.

I now set out the information required in respect of (a) the Appropriate Assessment (in terms of the impacts on the SPA/Ramsar site), (b) in respect of potential derogation tests and (c) the Environmental Statement & MCZ1 Assessment (in terms of the impacts on the SSSI/MCZ).

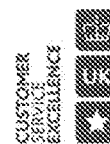
Please note that I have used the following abbreviations for the relevant contributors to this letter.

NE – Natural England;
RSPB – The Royal Society for the Protection of Birds;
HE – Historic England;
EA – Environment Agency;

Nigel Lynn Chief Executive
Nigel Croad Resources Director and Deputy Chief Executive

1

Environmental Health
Littlehampton and Bognor Regis
Customer Services Help Points



MMO – Marine Management Organisation (who are leading on the MCZ1);
CDC EC – Chichester District Council's Environmental Coordinator (who will be leading on the AA);
CDC CE – Chichester District Council's Coastal Engineer; and
ADC PP – Arun District Council Planning Policy

Information Required for the Appropriate Assessment (AA)

The overall purpose of the AA is to enable the competent authority to ascertain that a plan or project will not adversely affect the integrity of a European site. This assessment needs to be undertaken in respect of the site's conservation objectives. Please also note that although the application can be assessed as submitted, where there is a lack of information or where there is "reasonable scientific doubt" as to the absence of effects then the precautionary principle applies.

It is considered that the main issues that need to be considered are:

- (1) Impacts to the Little Tern population - through loss of breeding habitat and the potential increased risk of disturbance and predation due to the altered accessibility of their nesting habitats;
- (2) Impacts to SPA/Ramsar bird populations due to changes in supportive habitat within the harbour through the risk of any subsequent harbour closure following the initial re-opening of the breach. This should include analyses of the probability of such an occurrence as well as its severity. The emphasis is on the applicant to identify the mitigation measures which might be applied and how these will be maintained after the initial 8 year period;
- (3) The impacts of construction on bird SPA/Ramsar bird population – via disturbance from personnel working on site and changes to supportive habitat.

NE/CDC/RSPB advises that further information is needed to clarify these impacts and to set out in detail how these will be addressed by any proposed mitigation measures. It was suggested in respect of the closure of the harbour that a "What-If Matrix" should be provided.

In respect of the construction information needed, please note the following:

- Cold weather restrictions are needed to ensure bird fitness - there should be an avoidance of working in cold weather to prevent disturbance to birds when they are resting/keeping warm;
- There needs to be a watching brief undertaken during the Tern nesting period;
- More detail is required as to the construction method to include details/numbers of machinery & people and to give different buffer zones for machinery and for people;
- The construction period should take place between the departure of breeding birds and the arrival of over-wintering birds;
- The duration of the construction period needs to be agreed with the applicant to agree the least sensitive time;
- A Construction Schedule and/or Construction Management Plan would be a good way to address these issues; and
- As discussed at the meeting, the EA has refined their comments in respect of the avoidance of working during the bathing season. They now consider that there is scope to allow certain works to take place before October.

Information required in preparation for potential future Derogation tests

You may wish to consider the following requirements now or defer any expenditure until this stage is reached.

- (1) Consideration of Alternatives – please see the section below regarding the Environmental Statement but note that the level of information required for the Habitats Regulations Alternatives test is higher/greater than that which would be required under the EIA regulations;
- (2) Project Objectives – please see the section below regarding the Environmental Statement but note that the level of information required for the Habitats Regulations Alternatives test is higher/greater than that which would be required under the EIA regulations;
- (3) Tern Island – further work needs to be carried out to develop the proposal for the new Little Tern habitat. This should include details of its design/appearance, vegetation control measures, anti-predator fencing, appropriate wardening/management and clarification of who will be legally responsible for the compensatory measures.

Information required for the ES and MCZ1

Further information is required in respect of the impacts on the SSSI and MCZ and this needs to consider the impacts on the SSSI/MCZ1 features and mitigation proposed to minimise these impacts. The identified impacts are as follows:

- On Vegetated Shingle;
- On SSSI overwintering & breeding birds (including populations of Pintail, Ringed Plover, Grey Plover, Oystercatcher & Black Tailed Godwit). This should include the impacts of stopping water flow during construction of the bund;
- On MCZ1 features including the Defolin's Lagoon Snail, it is recommended that a buffer zone of between 5 and 10m be implemented around the Little Lagoon but it is agreed that there is no need for any further surveys to determine the presence of the snail as such surveys could disturb this species; and
- On the geomorphology of the spit which is a unique feature.

Further information is also required (as a duplication to the information required for the AA) to address the impacts that may arise to the natural environment if the breach closes up a second time (noting that the proposal allows for one subsequent closure & re-breach). NE suggested that a "What-If Matrix" should be provided.

I have also had comments from CEFAS (Centre for Environment, Fisheries and Aquaculture Science) by way of the MMO to say that a breach monitoring plan should be developed and agreed with the regulator. The plan should also include plans for post-breach maintenance as specified within section 3.2.7 (page 55) of the ES. They comment on section 11.3 (page 250) of the ES which defines a requirement for ongoing (post-breach) monitoring and management which may require technical oversight (possibly by a panel of stakeholders). They ask how this panel will be formed & managed and who will chair the panel. They state that the panel's monitoring and management plan should be developed and agreed with the regulator.

Please also note that the RSPB, CDC EC and ADC PP have indicated that the Environmental Statement is deficient in certain respects. It is considered that the following amendments are required:

- In respect of Project Need & Alternatives –
 - Section 2.1.3 (Proposed Community Project and its Objectives) – distinguish clearly between those objectives that are genuine public interest objectives (and therefore relevant to the alternative solutions and IROPI tests) and those that are project-level objectives only. RSPB consider that public interest objectives could include those relating to public safety (e.g. achievement of larger and longer-term coastal defence benefits) and the need to avoid the risk of further and uncontrolled damage to the SPA/Ramsar site through unmanaged breaches;

- Section 2.2 (Alternatives) – include a section that specifically addresses the alternative solutions test (as opposed to alternatives in their ES sense). This section should compare the possible alternative solutions to meet the stated public interest objectives and set out how the proposed solution will be the least damaging (or at worst cause equivalent damage) to the SPA/Ramsar features of the various alternative solutions identified that could meet the public interest objectives. At present, the information does not yet provide a clear description that would enable the Councils to conclude that there is no alternative solution to the proposal.
 - Alternatives (general comment) – it is considered that the starting point is the underlying project objective and that this should be: “how can homes in Pagham be protected from damage?” Therefore, objectives set around concerns about the appearance and amenity value of alternative measures would not be appropriate for a habitats regulations test that is concerned primarily with minimising the impacts on wildlife. Furthermore, that there are alternatives that would defend the homes and be less damaging to the designated species of the SPA, particularly given the loss of little tern habitat and the increased access afforded to much of the remaining habitat on the former spit from the settlement of Pagham. These alternatives need to be considered;
 - Include a new sub-section that summarises the justification for imperative reasons of overriding public interest in light of the amended sections; and
 - Correct the ES (page 16 of the Non-Technical Summary) to confirm that the Tern Island is compensation not mitigation.
- To address uncertainty – for example at paragraph 8.2.8.2. The low confidence expressed raises concerns about whether the information provided for the purposes of EIA meets the criteria of providing “complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubts as to the effects of the works proposed on the protected site”;

I also include separately the requirements as expressed by Historic England. Although these also relate to a deficiency with the ES, we consider best to keep these separate to the wildlife issues:

HE considers that the scheme has the potential to cause harm to undesignated heritage assets whether known or unknown. They recommend that a desk based assessment of the significance of the historic environment and potential impacts upon it should be undertaken. This should examine the available archaeological, geo-archaeological and marine geophysics data. HE considers it likely that follow up investigation work will be required and a program will need to be drawn up in consultation with Historic England and Chichester’s Archaeological Officer. It is stated that this can be subject to a condition but in view of the need to get on site promptly, you may prefer to provide a report prior to determination?

HE considers that the scheme has the potential to impact on the following:

- Boats, moorings, quays, platforms, fish traps and other riverside structures in the area, from prehistoric time onwards;
- Landscape features or deposits associated with the Norman castle at Church Norton and the Roman tide mill at Sidlesham;
- A potential shipwreck site in the general vicinity of the Spit;
- The existing concrete structure which will form the basis of the Tern Island (HE comment that this structure could have originated as some form of military defence feature); and
- Harbour deposits of as yet uncertain archaeological potential.

HE also considers that it would be beneficial for a small number of geo-archaeological boreholes to be drilled on the drier ground within the harbour area, to assess the nature of the harbour deposits and their likely archaeological potential. Furthermore, that the channel area where the sheet pile wall will be situated may require exploratory fieldwork or survey to establish the presence or absence of marine heritage assets. In addition, the area designated for the Tern Island will need to be investigated to see if the concrete structure is of heritage significance and whether there are any deposits in the proposed channel area adjacent to the island.

It should be also be noted that CDC CE have stated that they consider that there is too much uncertainty as to whether the re-opening of the harbour entrance in the former location of 2000-2003 will be stable and not result in any damage to the listed habitat or result in increased risk of erosion to Pagham beach.

ADC Engineers have also indicated that they have previously verbally asked you for detailed 'cut and fill' calculations (and the topography of the spit at the relevant locations), together with allowances for construction losses, in order that the viability of the proposed operation can be assessed. It is understood that we have so far only had very outline figures and we need the detail to be able to properly assess the proposal.

Finally, I believe that my Team Leader, Daniel Vick spoke to you after the meeting regarding providing drawings that are truly representative of the proposals. It is noted that the submitted plans show an apparent discrepancy in that Figure 2 shows a consistent 40m wide base channel with 20m on each side of the breach for side slopes (a total width of 80m). However Figure 4, Profile A appears to show a total width of 150m which is some 70m more than would be anticipated from an examination of Figure 2. Are you able to provide an explanation for this? If the plans need amending then please provide these within 21 days of this letter.

Next Steps

I would recommend that the additional information be set out in the form of additional addendum reports which can then be disseminated to the relevant consultees.

I would also stress that the information outlined above is required to enable the relevant authorities to properly determine the application. Whilst not wishing to pre-determine the application, we are all keen to work with you in order to reach a satisfactory conclusion.

Finally, please note that NE is working on a package of helpful advice to inform both the AA and the consideration of the SSSI/MCZ impacts and they are aiming to provide this as soon as possible.

Yours sincerely,



Simon J Davis RTP1
Principal Planning Officer

cc MMO
 Natural England
 RSPB
 Chichester District Council (Environmental Coordinator & Engineers)
 Historic England
 Environment Agency
 Arun District Council (Engineers & Policy)