



HARBOURS ACT 1964

PUBLIC LOCAL INQUIRY IN CONNECTION WITH THE ROSYTH INTERNATIONAL CONTAINER TERMINAL (HARBOUR REVISION) ORDER 201[X]

STATEMENT OF CASE

RSPB Scotland

1. Purpose of this document and background

1.1. This Statement of Case gives particulars of the case that the Royal Society for the Protection of Birds ("RSPB Scotland") intends to bring to the public local inquiry into an application for a Harbour Revision Order ("the RICT Order") under the Harbours Act 1964 by Port Babcock Rosyth ("the Applicants") for development of a container terminal and associated infrastructure and dredging ("the Application") at Rosyth. The inquiry has been called by Scottish Ministers in order to resolve outstanding objections to the RICT Order, following a period of consultation ending in March 2011.

1.2. The location for the Application is adjacent to the Firth of Forth Special Protection Area ("the SPA"), which is underpinned by the Firth of Forth Site of Special Scientific Interest ("the SSSI").

1.3. **RSPB Scotland** submitted and subsequently sustained an objection to the proposed RICT Order in our letters to Transport Scotland of 3rd March 2011 and 22nd June 2011.

2. The aims and remit of RSPB Scotland

2.1. The RSPB is a registered charity incorporated by Royal Charter and is Europe's largest conservation organisation, with a national membership of over 1 million, and more than 88,000 members in Scotland including 8,000 in Fife. RSPB Scotland is part of the RSPB, the UK-wide charity working to secure a healthy environment for birds and wildlife. We manage 79 nature reserves in Scotland, covering almost 69,000 hectares of land. During the past 100 years in Scotland, we have gained considerable practical experience in the successful integration of conservation land management with wider rural land uses, including farming, forestry and other enterprises. We undertake biological research to underpin our policy analysis and advocacy. We also have experience of environmental education and training for all ages. RSPB Scotland is the BirdLife International partner in Scotland.

2.2. The principal objective of RSPB Scotland is the conservation of wild birds and their habitats. RSPB Scotland therefore attaches great importance to all international, EU and national law, policy and guidance, which assist in the attainment of this objective. The RSPB campaigns throughout the UK and internationally for the development, strengthening and enforcement of such law and policy.

2.3. RSPB Scotland is involved in approximately 400 planning and other cases each year.

3. Summary of the position of RSPB Scotland over the application for a Harbour Revision Order at Rosyth International Container Terminal

3.1. The proposed development is adjacent to intertidal mudflats used by birds forming part of the qualifying interest of the SPA.

3.2. In our letter to Transport Scotland dated 3rd March 2011 responding to the original consultation, we objected to the proposed RICT Order, on the grounds that: insufficient information was provided by the Applicant to enable Scottish Ministers to carry out an Appropriate Assessment under regulation 48 of the Conservation (Natural habitats &c.) Regulations 1994 (as amended) (the "Habitats Regulations") of the effects of the proposal on the SPA ; and the RICT Order as drafted was tied to the Applicant's Environmental Statement ("the ES") in its entirety, apparently presenting Scottish Ministers and consultees with an "all or nothing" choice.

3.3. In particular, we voiced concern about the information provided by the Applicant to enable an assessment to be made on the effects of capital and maintenance dredging enabled by the RICT Order and drew attention to the absence of any modelling of changes to tidal flow and sedimentation patterns due to the capital and maintenance dredging proposed by the Applicant, and that would be enabled by the RICT Order.

3.4. In addition, we drew attention to a lack of information to allow assessment of: the effects of disturbance on SPA birds due to maintenance dredging; the disposal of dredgings; and the effect of the RICT Order on the SPA in combination with other plans or projects.

3.5. On 22nd June 2011 we wrote again to Transport Scotland, in response to a letter from the Applicant dated 6th June 2011, which invited us to comment to Transport Scotland on additional documents prepared for the Applicant since the end of the consultation period in March. In our view the new material was not sufficiently detailed or certain for us to withdraw our objection, in particular as it related to the possible effects of both capital and maintenance dredging on the SPA.

3.6. In addition, although the Applicant's letter referred extensively to an environmental management plan to be agreed by SEPA, we pointed out that no such plan had accompanied the letter, or been made available to us, in draft or even in outline, and so we were completely unable to assess its likely effect, let alone alter our position.

4. The nature conservation designations and interest potentially affected by the application

4.1. The development site lies adjacent to the Firth of Forth SPA, classified by Scottish Ministers in October 2001. The SPA supports an internationally important assemblage of waterfowl.

4.2. The Firth of Forth is also listed by the UK as a wetland of international importance under the Ramsar Convention (the "Ramsar site"); and it is a Site of Special Scientific Interest (SSSI). The boundaries of all three sites in the area potentially affected by the proposal are contiguous. The qualifying features of the SPA and the Ramsar site are identical and as it is government policy that Ramsar sites in Scotland are protected by means of the Habitats Regulations, effects on the SPA and on the Ramsar site (and their significance and potential remedies) may be taken as being identical.

4.3. The application site is 3.6km from the Forth Islands SPA, a multi-part site classified for its breeding seabird assemblage, including several species of breeding tern.

4.4. The application site is also 32km east (downstream) of the River Teith Special Area of Conservation Area (SAC) for its populations of anadromous fish.

5. Summary of our grounds for objection: the potential adverse impacts of the application on the nature conservation interest of the area

5.1. The development site lies immediately adjacent to intertidal and shoreline SPA, SSSI and Ramsar habitat east of Limekilns on the northern shore of the Firth of Forth. The habitat is used by birds that form part of the qualifying interest of the SPA (and Ramsar site) and of the notified interest of the SSSI.

5.2. The proposal requires significant capital (and maintenance) dredging that may permanently alter tidal flow and sedimentation patterns sufficiently to have an effect on the extent, quality and/or function of adjacent SPA habitat. Scottish Ministers are therefore obliged to carry out an Appropriate Assessment of the effects of dredging on the SPA.

5.3. However, the Applicant's ES is not supported by detailed information of the type provided by promoters of various port improvement schemes adjacent to estuarine SPAs in England over the last 10 years and sufficient to enable successive Secretaries of State for Transport to grant consent. Given the scale of the proposed capital (and maintenance) dredging and its proximity to the SPA, in the absence of sufficiently detailed supporting information to show beyond a reasonable scientific doubt that the new channel will not have an adverse effect on the SPA, the proposal as it stands is fatally flawed.

5.4. In addition, it is not clear how adverse effects on the SPA of maintenance dredging enabled by the RICT Order will be avoided. Any licence required from Marine Scotland will relate to disposal of dredgings only. Additional adverse effects due for example to siltation, increased turbidity or disturbance resulting from maintenance dredging operations should be addressed in consideration of the RICT Order.

5.5. The proposed development falls within the scope of one of the national developments listed in the second National Planning Framework for Scotland ("NPF2"). However, NPF2 is clear that national developments must meet the requirements of environmental legislation including the Habitats Regulations before they may be implemented. This requirement is not restricted to planning consents, but to plans and projects of all types.

6. Summary of Scope of Evidence including witnesses

6.1. Our evidence will be in the ecology topics in respect of the grounds of objection set out in sections 4 and 5 above. The availability of witnesses is currently being investigated and we will advise the parties to the Inquiry as soon as possible.

6.2. Evidence is expected to cover:

- a). RSPB Scotland's view of the impacts of the development and the case for protecting the interest features of the SPA from the adverse effects of development.

- b). Clarification of the outstanding areas of disagreement or uncertainty about the impacts of the development and effectiveness of proposed mitigation measures, previously set out in the objection letters and written representations of RSPB Scotland.
- c). The involvement of RSPB Scotland in the application.
- d). The amendments that should be made to the Harbour Revision Order should Scottish Ministers determine to make such an order, in spite of RSPB Scotland's objection.

6.3. In respect of d) above, whilst RSPB Scotland considers that the RICT Order, as submitted, should not be made, because of the potentially severe impacts on nature conservation, in the event that a Harbour Revision Order is made by the Scottish Ministers, we will submit recommendations as to amendments that should in our view be made to the draft RICT Order, including conditions that should be imposed. These will relate to submission of further ecological information, the design and ecological management of the container terminal and any mitigation measures that might reduce the otherwise significant potential harm to nature conservation interests.

7. Estimate of Length of Case

7.1. In light of the above, and normal Inquiry procedure, with only the summary precognition being read and supplementary oral evidence being given, RSPB would expect their case to last approximately one day including a reasonable estimate for cross examination by other parties, although the extent of cross examination cannot be forecast until the position of the Applicants and the Council is set out in their respective Statements of Case.

7.2. If the Applicants' Statement of Case indicates departures from the ES and supplementary environmental information or new information is submitted we reserve the right to consider submitting a wider scope of evidence, including more detailed evidence, in respect of the aspects of the impacts on nature conservation. It may be necessary to call an additional witness specialising in the subject that may become a matter of dispute. We will try to minimise the extent of oral evidence at the Inquiry, but should the case for the Applicant, either in the Statements of Case or precognitions, raise new issues or different conclusions about the impacts on nature conservation and mitigation, or interpretation of policy or law, not previously expressed, we may need to respond by way of rebuttal precognitions or additional material to deal with any new areas.

8. Further Explanation of the Case

8.1. RSPB Scotland may submit a supplementary Statement of Case, if necessary, in response to the statements of case of other parties.

9. List of Productions to be referred to in evidence

Documents

The following productions constitute the provisional list of those which will be referred to by RSPB Scotland, in addition to core documents which it has been agreed will be produced by the Applicant and Fife Council, these will include all relevant legislation, policy documents, development plan documents and guidance. In addition, we expect to identify further references as written statements and precognitions are prepared and these will be referenced appropriately and provided as productions to the Inquiry as necessary.

Policy

1. European Commission. 2000. *Managing Natura 2000 Sites: the provisions of Article 6 of the "Habitats" Directive 92/43/CEE*. Luxembourg.
2. European Commission 2011. *EC Guidance on the implementation of the EU nature legislation in estuaries and coastal zones*. Luxembourg.
3. European Commission 2011. *Integrating biodiversity and nature protection into port development*. Commission Staff Working Document SEC (2011) 319. Brussels.
4. Jacobs Arup (2009) *Forth Replacement Crossing Environmental Statement* – chapter 9 and supporting appendices
5. Scottish Executive. 2000. *Habitats and Birds Directives – Nature Conservation: Implementation in Scotland of EC Directives on the Conservation of Natural Habitats and of Wild Flora and Fauna and the Conservation of Wild Birds ("The Habitats and Birds Directives")*. Revised Guidance Updating Scottish Office Circular No. 6/1995.
6. Scottish Natural Heritage: Firth of Forth Special Protection Area citation and conservation objectives.
7. Scottish Natural Heritage: Firth of Forth Site of Special Scientific Interest notification, site management statement and list of operations requiring consent.
8. Scottish Natural Heritage: Forth Islands Special Protection Area citation and conservation objectives.
9. Scottish Natural Heritage: River Teith Special Area of Conservation citation and conservation objectives.
10. The Bristol Port Company 2008. *Bristol Deep Sea Container Terminal – Environmental Statement and supporting information, including reports on wave studies, flow modelling and sediment transport*.
11. Department for Transport 2010. *Bristol Deep Sea Container Terminal – decision letter*.
12. Natural England 2008. *Bristol Deep Sea Container Terminal response*.
13. Royal Society for the Protection of Birds 2008. *Bristol Deep Sea Container Terminal response*.
14. Environment Agency 2008. *Bristol Deep Sea Container Terminal response*.

