

WIGHTLINK LIMITED
(Registered Number 1059267)
(the "Company")

MINUTE OF EXTRAORDINARY MEETING OF THE BOARD OF DIRECTORS

**held at Berwin Leighton Paisner LLP, Adelaide House, London Bridge,
London EC4R 9HA on 21 April 2016 at 10.30 am**

Record of formal Appropriate Assessment undertaken by Wightlink Limited ("Wightlink" or the "Company"), as the harbour authority for Fishbourne Pier ("Fishbourne Ferry Terminal") and hence a competent authority for the purposes of the UK Habitats Regulations¹ (that implement the EC Habitats Directive²), of the effects of the project comprising the introduction and operation of a new 'G' class ferry and upgraded St Clare on the Company's Fishbourne to Portsmouth Gunwharf route, and completion of associated physical works to both terminals (the "Project") on the Solent and Southampton Water SPA and the Solent and Southampton Ramsar (collectively the "European Sites"), as well as the Ryde Sands and Wootton Creek SSSI and King's Quay Shore SSSI.

Present:

Wightlink Limited Board

Steven Lowry - Chairman

John Burrows – Interim Chief Executive

Jonathan Pascoe - Finance Director and Company Secretary

John Hanna - Director

Rob Gregor - Director

Richard Sammons – Non-Executive Director

Others in attendance

¹ Conservation of Habitats and Species Regulations 2010.

² Council Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora of 21 May 1992.

Elwyn Dop – Wightlink Operations Director

Colin Scott - ABPmer

James Good - Berwin Leighton Paisner LLP

Robert Gowing - Berwin Leighton Paisner LLP

1 **CHAIRMAN, NOTICE AND QUORUM**

1.1 Mr. Steven Lowry took the chair for the meeting. The Chairman confirmed that the meeting of the Board had been convened in accordance with the Bye-Laws of the Company and that the required quorum was present. Notice of the meeting had been given to all of the directors of the Company in accordance with the requirements of the Company's articles of association.

1.2 It was noted that none of the directors present at the meeting had any interests in arrangements or transactions, or any actual or potential conflicts of interest (which have not previously been disclosed), with that of the Company, whether direct or indirect, to report for the purposes of section 175 and 177 of the Companies Act 2006 and the Company's Articles of Association.

2 **PURPOSE OF THE MEETING**

2.1 The Chairman reported that the purpose of the Board meeting was for the Company to carry out its formal Appropriate Assessment ("AA") of the effects of the Project on the European Sites further to its duty as a competent authority under the EC Habitats Directive and the UK Habitats Regulations and further to the AA methodology for the Project adopted by the Board on 22 April 2015. Following completion of the AA, in light of the Board's conclusions on the AA, to resolve whether or not to implement the Project.

2.2 The Board confirmed that in addition to the Report for the meeting it had received and considered the following documentation in advance of the meeting:

- (1) Board Report for the 22 April 2015 Board meeting;
- (2) Technical Report to inform the AA of the Project (October 2015)³;
- (3) ABPmer Further Clarification report (February 2016);
- (4) Marine Management Organisation ("MMO") Record of Likely Significant Effects in respect of the Project; (April 2016);
- (5) Natural England's detailed advice on the effects of the Project (January – March 2016);
- (6) AA in respect of the Project prepared by the MMO in its capacity as nominated lead competent authority (April 2016);
- (7) MMO marine licence for works below the mean high water mark at Fishbourne Ferry Terminal (15 April 2016);
- (8) Officer's Report for Portsmouth City Council ("PCC") in respect of the Gunwharf planning application and planning permission granted 19 April 2016;
- (9) Officer's Report for the Isle of Wight Council ("IoWC") in respect of the Fishbourne planning application and planning permission granted 15 April 2016;

³ The Board noted that this Report was linked to the Environmental Statement ("ES") prepared for the applications for planning permission and for the marine licence. Colin Scott of ABPmer confirmed that the sections in the ES relating to the marine effects of the Project were summarised in detail within the Report, and James Good confirmed that the ES could be made available to the Board if required. The Board confirmed that in the light of the advice from Colin Scott it did not require sight of the ES for the purpose of making its decision on the AA of the Project.

(10) Section 106 Undertaking to IoWC dated 23 March 2016 and report summarising the obligations; and

(11) Environment Agency ("EA") flood defence consent for works at Gunwharf dated 5 April 2016.

2.3 The Board had the benefit of technical and legal advice in the Board meeting from their technical advisers ABPmer and legal advisers Berwin Leighton Paisner LLP.

3 **REQUIREMENT FOR AN AA**

3.1 The Board noted and acknowledged that Wightlink is a competent authority and that Wightlink is therefore under a duty to complete an AA of the Project under the EC Habitats Directive and UK Habitats Regulations and further that Wightlink could not delegate that duty to complete the AA to a third party. The Company is required to consider the effects of the Project as a whole on the integrity of the European Sites as a whole by reference to the European Sites' conservation objectives.

3.2 The Chairman asked, and the Board agreed, that this minute should record that the Board takes its responsibilities as a Competent Authority extremely seriously. The Chairman reiterated it was important the Board discharged its duties in respect of the AA decision that it was meeting to undertake in accordance with their duties as Competent Authority. The Chairman noted that the Extraordinary Board Meeting had been convened for that purpose and the AA decision was the only item on the Agenda for the meeting.

3.3 The Board noted:

(a) that the AA of the Project by Wightlink must not be influenced by commercial considerations - the individual Directors confirmed they understood this requirement and noted the advice set out at paragraph

9.1.6 of the Board Report. None of the Directors felt that they were unable to discharge their duties in the required manner;

- (b) that the AA of the Project by Wightlink must be taken on the scientific and technical advice alone; and
- (c) that for the Project to proceed having regard to the technical and other information and advice available in the Board Report and other papers for the meeting, and Wightlink must be certain beyond all reasonable scientific doubt that the Project (when considered in combination with any other relevant plans or projects) would not have an adverse effect on the integrity of the European Sites by reference to the European Sites' conservation objectives.

4 **MATTERS RELEVANT TO THE AA DECISION**

4.1 The Board confirmed it understood that the Project in respect of which it was required to complete the formal AA was:

- (a) the introduction and subsequent operation of one new 'G' Class ferry (with proposed vehicle capacity of 178 cars) onto the Fishbourne to Portsmouth route;
- (b) modifications to the existing St Clare vessel to provide for an extended upper car deck to increase capacity from 150 to 171 cars, and operation of the upgraded St Clare on the route together with the existing St Faith and 'W' class ferry;
- (c) works to the berth at Fishbourne Ferry Terminal to accommodate the new 'G' class ferry and the upgraded St Clare including the addition of a two-tier link span, and construction of a new access ramp supported on piles; and

- (d) works to the berth at Gunwharf to accommodate the new 'G' class ferry and upgraded St Clare including with the addition of a two-tier link span; and the construction of a new decked car parking area with associated ramp access.

4.2 The Board noted that the following applications had been submitted in respect of the Project:

- (a) In relation to the proposed works at Fishbourne Ferry Terminal applications to:

- (i) the Marine Management Organisation (MMO) for a marine licence; and

- (ii) Isle of Wight Council (IoWC) for planning permission.

- (b) In relation to the proposed works at Gunwharf applications to:

- (i) the Environment Agency (EA) for flood defence consent; and

- (ii) Portsmouth City Council (PCC) for planning permission.

4.3 The methodology adopted by the Board at the meeting on 22 April 2015 required that the Company's formal AA would not be completed until the consents necessary to complete the Project had been received and consequently the Company had available to it:

- (a) the AA carried out by the MMO (which was reviewed and endorsed by Natural England) - the Board noted that the MMO had agreed with the other competent authorities (i.e. PCC, IoWC, EA) and Natural England to be the "lead competent authority" for the purposes of producing the AA of the Project for the purpose of issuing the consents necessary for the Project to proceed (as described in paragraph 4.2 above);

- (b) the advice of Natural England in respect of the Project-: the Board noted that Natural England had issued their advice to the MMO and had made this available to Wightlink;
- (c) the AA's of the effects of the Project on the European Sites completed by the other competent authorities (PCC, IoWC and the EA) determining the applications for the consents necessary to complete the Project, which as indicated above was based on the AA completed by the MMO as lead competent authority in conjunction with PCC, IoWC and the EA and taking account of the advice provided by National England; and
- (d) any representations of the general public and others in respect of the applications for the consents necessary for the Project: the Board noted that the Officer reports from both IoWC and PCC, and the equivalent reports from the MMO identify, summarise and consider the representations made by third parties and members of the public in relation to their respective applications.

4.4 The necessary consents (the marine licence, planning permissions, and flood defence consent) set out in paragraph 4.2 above had been granted⁴ and the Board confirmed that they had read and considered the contents and conditions of these consents. This includes the MMO AA (completed in its capacity as nominated lead competent authority) and its consideration and adoption by the other competent authorities, and which concluded that the Project would not have an adverse effect on the integrity of the European Sites.

4.5 In considering the reports and technical information provided, the Board took advice from Mr James Good of Berwin Leighton Paisner LLP on the requirements of

⁴ The EA flood defence consent was granted on 5 April 2016; the MMO marine licence, and the planning permission by IoWC were granted on 15 April 2016; and the planning permission by PCC granted on 19 April 2016.

an AA. Mr Colin Scott of ABPmer provided technical advice on the effects of the Project on the European Sites.

4.6 The Board noted that the Company, as Harbour Authority for Fishbourne Ferry Terminal also had environmental duties under section 48A of the Harbours Act 1964 and consequently in carrying out the assessment of the Project, the Company also had a duty to have regard to the conservation of the natural beauty of the countryside and natural features of special interest and the effect the Project may have on those features.

4.7 By virtue of that duty and their responsibilities as a statutory undertaker (again as a result of being the Harbour Authority for Fishbourne Ferry Terminal) the Board were also required to consider the impact of the Project on the interest features of the nationally designated Sites of Special Scientific Importance (SSSI).

5 **APPROPRIATE ASSESSMENT**

5.1 The Board considered and discussed the applicable conservation objectives (referred to in paragraph 4.1 of the Board Report) for the European Sites; the specifications and nature of the Project and the characteristics of the Project that may affect the European Sites and the proximity of the Project to the European Sites.

5.2 The Board considered the papers provided to the Board in detail, in particular the advice from Natural England, and the MMO AA (carried out as lead competent authority) and decisions of the MMO, IoWC and PCC.

5.3 The Board reviewed the Officer reports from both IoWC and PCC in detail which both take account of all scientific evidence collated as part of the ES, Technical Reports inform the AA, the ABPmer Further Clarification Report and the representations for both statutory consultees and members of the public.

- 5.4 Mr Colin Scott of ABPmer clarified the context under which the Further Clarification report was prepared (item 3 at paragraph 2.2 above), and the specific nature of the precautionary mitigation measures which were proposed and agreed with the other competent authorities. Mr Scott confirmed that in relation to the potential effects of the ferries (in terms of drawdown and the potential to cause scour to the intertidal habitat), the monitoring and assessment in the Technical Report to Inform the AA was based on all the relevant and available scientific information, and that the conclusions were that the effects of the ferries cannot be distinguished from the dominant natural processes on the European Sites.
- 5.5 The Board discussed and considered the detailed officer reports, the advice of Natural England, and the MMO AA, and noted in particular that there were four main issues in relation to potential environmental effects of the Project on the integrity of the European Sites.

Piling and resulting scour on intertidal habitats

- 5.5.1 The Board noted that the location of the single intertidal pile group proposed as part of the Project actually falls outside the boundary of the European Sites, and also the SSSI designations, with the closest pile being either 5.5 m or 6.5m from the boundary depending on the nature of the piling (i.e. two-piles or three-piles). On that basis the MMO had concluded in the AA that there will be no direct loss of habitat within the European Sites as a result of the construction of the Project.
- 5.5.2 The Board noted that Natural England had sought further information on the potential for modification of the intertidal habitats due to scour around the new piles, and this was provided in the Further Clarification report prepared by ABPmer (on behalf of Wightlink). Natural England accepted the conclusions provided by ABPmer that the potential radius for scour was 0.8m and therefore still outside the boundary of the European Sites, and concluded that the new piles would have no direct effect on the European Sites.

5.5.3 Natural England confirmed that there would be a relatively modest area of scour resulting in loss of the intertidal Biodiversity Action Plan (BAP) priority habitat, and while they considered this did not constitute a significant effect, it welcomed Wightlink's proposal to carry out measures to mitigate this loss, which the Board noted would involve the creation of new artificial rock pool features on the caisson walls of the existing berth at Fishbourne Ferry Terminal, and that these measures had been secured by conditions in both the IoWC planning permission and the MMO marine licence.

Materials extracted as part of the piling and release of silt during construction

5.5.4 Queries had been raised by the MMO on the nature of the piling and the sediments which will be drilled and/or displaced during the piling operations. Further to the ABPmer clarification report, the MMO AA confirms that Wightlink committed to ensuring that the majority of pile arising's will be removed and disposed of on land, and on that basis, only a negligible amount of material would be released, which the MMO considered to be minor and have no adverse effect on the marine environment generally and in particular the European Sites. The Board noted that the methods of construction of the pilings (including removal of the pile arising's), are secured by conditions in the IoWC planning permission and MMO marine licence.

Drawdown effects of the new 'G' Class ferry

5.5.5 The advice from Wightlink's technical advisers is that the effects of the current ferry operations on the interest features of the European Sites (through drawdown) is effectively immeasurable against other natural factors (including the effects of climate change). The Board noted that the Technical Report to Inform the AA indicated that the extent of drawdown from the new 'G' Class ferry, operating under the same speed as the existing St-Class ferries, may be marginally greater than the existing ferries under limited occasions where vessel speed is high and the

tide is low. In the light of that finding Natural England queried whether, on a precautionary basis, it would be possible to introduced controlled and marginally reduced speeds for the new 'G' Class ferry to mitigate any potential effect on the habitats comprised in the European Sites, and further comments were raised by the Solent Protection Society, Cefas, the EA, and Fishbourne Parish Council. The Board noted in the Further Clarification report, commitment was given to ensure that the 'G' Class ferry would operate at 0.5 knots slower than the current guidance speed levels for the existing ferries on the route, and that this control would be imposed under all tidal states, providing additional comfort that any effects of drawdown would not be greater than that of the existing services.

5.5.6 The Board noted that Wightlink are legally obliged under the Section 106 undertaking provided to IoWC to restrict the speed of the new 'G' Class ferry to 9.5 knots between Wootton Beacon and Beacon 7 and 4.5 knots between Beacon 7 and the berth, to monitor and report on ferry speed and to report on the condition of the intertidal habitats of outer Wootton Creek (based on collating data collected and/or prepared by third parties) over a 5 year period following introduction of the new 'G' Class ferry.

5.5.7 The approach to speed restrictions was welcomed by Natural England, who considered that in conjunction with proposed monitoring of speed and review of relevant topographical data (all secured by the planning undertaking), these measures provided further assurance that drawdown levels would not increase over existing levels and consequently draws down from the new 'G' Class ferry as it is proposed to be operated would not have an adverse effect on the European Sites.

Construction timing and noise and the effects on overwintering birds

5.5.8 The Board noted that Natural England had sought a further review of the potential impacts of the construction at Fishbourne Ferry Terminal on overwintering birds. This was addressed in the ABPmer Further Clarification report which confirmed that

Wightlink would commit to carrying out piling works prior to October to avoid the overwintering period. Natural England confirmed its support for this approach, and the MMO AA concluded that on the basis of these timing constraints that the temporary disturbance during construction was assessed as minor adverse but not significant. The Board noted that Wightlink is required under conditions in the IoWC planning permission and MMO marine licence to submit for approval a construction environment management plan (CEMP) which will ensure appropriate construction methods and timing.

- 5.6 The Board noted that Natural England had concluded in its advice to the MMO that it had considered the information contained in the MMO AA⁵ and agreed with the conclusions reached, namely that the Project will not have an adverse effect, either alone or in combination with other plans and projects, on the integrity of the European Sites. This position was subject to the inclusion of the conditions in the MMO marine licence as noted above.

6 **FORMAL AA DECISION**

- 6.1 The Board, having considered all the technical and scientific information provided by the consultants, the advice of Natural England, the report for the Board meeting and the points noted above reached its formal AA decision of the effects of the Project on the European Sites.
- 6.2 Having considered the scientific advice received from Wightlink's advisers and Natural England, the MMO AA and decisions of the MMO, IoWC, PCC and EA, the Board reached the formal AA decision that the Project will not have an adverse affect on the integrity of the European Sites either alone or in combination with other plans or projects having regard to the conservation objectives for those Sites for the following reasons:

⁵ The final draft AA was sent by the MMO to Natural England for its review and comments.

- (a) the physical works at Fishbourne occur outside the boundary of the European Sites, and sufficient precautionary measures have been secured to ensure that such works will not affect the integrity of the Sites;
- (b) Wightlink has committed to preparing and complying with a Construction Environmental Management Plan to ensure that all measures relating to construction method and timing which were proposed, and which were accepted by Natural England as appropriate;
- (c) specific measures are proposed, and are secured by condition to offset the minor loss of habitat on the periphery of the European Sites; and
- (d) Wightlink are subject to a legal obligation under the Section 106 planning undertaking provided to IoWC to restrict the speed of the new 'G' Class Ferry to 9.5 knots between Wootton Beacon and Beacon 7 and 4.5 knots between Beacon 7 and the berth, to monitor and report on speed and to report on the condition of the intertidal habitats of the outer Wootton Creek (based on collating data collected and/or prepared by third parties). Such measures were agreed on a precautionary basis to ensure that the effects of the introduction of the new 'G'-Class ferry would be no greater than the existing ferry services.

6.3 The Board confirmed that it was satisfied that its decision was based on the best scientific data available.

6.4 The Board also concluded that the Project would not harm the conservation of the natural beauty of the countryside and the effects on the natural features of special interest given that it would not have an adverse effect on the European Sites, nor would it damage the interest features of the SSSI.

7 **Resolution**

In light of the Board's formal AA decision and their conclusion on the effects on the SSSI and other features of national interest, the Board resolved to proceed with the Project and undertake the Works.

There being no other business, the Chairman closed the meeting.