

Jeremy Content
Penwith District Council
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TR18 3QW

23 December 2008

Dear Mr Content

**Hayle Harbour development – Outlying-application
Hayle Estuary and Carrack Gladden SSSI & RSPB Nature Reserve
RSPB Response**

Please find the RSPB's response to the above application.

The RSPB recognises the social and economic benefits of the sustainable re-development of Hayle Harbour, however, Hayle's special environment and nationally important wildlife resources must be conserved and enhanced through any re-development. Specifically, the Hayle Harbour development must:

- Protect the Hayle Estuary and Carrack Gladden SSSI (*the SSSI*)'s core waterbird roost sites at Griggs Quay, Carnsew Pool and Copperhouse Creek from risks of damage and disturbance.
- Retain and protect areas of inter-tidal habitat within and outwith the SSSI that are used by wintering and migratory birds.
- Protect the special character of the RSPB's Hayle Estuary Nature Reserve.

As currently submitted, the RSPB does not believe that the proposal will achieve these objectives.

The RSPB OBJECTS to the application because it would in our view cause unacceptable environmental damage to the SSSI and to the RSPB's nature reserve. Specifically, we consider that it would result in:

- Loss of ecologically valuable habitats and species.
- Significant increased disturbance to the species that depend on the SSSI and nature reserve as a sanctuary.
- No clear monitoring and contingency plan.
- No clear plan for mitigation and compensation.
- Indirect effects

We consider these issues in detail in the attached appendix.

The RSPB has been involved in discussions with the applicants and their consultants regarding measures to offset the risks the proposal presents to the SSSI and nature reserve, to overcome any significant harmful effects it may have. We would be minded to remove our objection on the basis of legally binding conditions on any consent to secure the avoidance or minimisation of these risks to acceptable levels.

We attach a draft Heads of Terms for a Section 106 Agreement or appropriate legally binding mechanism, which goes some way to addressing the risks we identify. We are particularly concerned that the developer adequately assesses and produces a mitigation package to manage the operational disturbance issues associated with the new development proposal on the aquatic environment.

I would be grateful if you would notify us of the decision of the planning committee.

Yours sincerely

Paul St Pierre
Conservation Officer

1. Loss of ecologically valuable protected habitats and species

Whilst the RSPB welcomes the inclusion of some mitigation measures such as restrictions on sluicing operations, there is still an unreasonable loss of inter-tidal habitats. The ES does not adequately acknowledge the importance of protected sites within the planning system, or summarise the direct and indirect (through disturbance) areas of loss or damage to the area of SSSI/ BAP habitats.

Currently this includes:

- Sluicing operations at Carnsew Pool and Copperhouse Creek (direct effect SSSI/BAP) (Objection would be removed based upon proposed timing of operations and an agreed contingency plan as mitigation)
- Construction of two lane highway over Copperhouse Creek (direct/indirect effect SSSI/BAP) (objection would be removed if appropriate screening was in place, pedestrian access moved to old bridge or replacement of inter-tidal habitat provided)
- Construction of car park at the entrance to triangular spit (indirect effect SSSI/BAP) (objection removed where there is an agreed package of mitigation measures to screen and guide access in this area)
- Removal of Cockle Bank (direct effect BAP) (objection removed where an appropriate compensation package for inter-tidal habitat provided)
- Impoundment of Penpol Creek (direct effect BAP) (objection removed where an appropriate compensation package for inter-tidal habitat can be provided)
- Water-based disturbance across estuary and river mouth (indirect SSSI/BAP) (Requires appropriate assessment of the envisaged level, area of use and mitigation package on management and control measures in place PPS9/PPS20)
- Introduction of new walkway along south side of Copperhouse Creek (Objection removed where this proposal is removed from plans)
- Use and potential damage of heritage structures in our ownership (objection removed where management liabilities are attached to the operator)

2. Increased disturbance pressures

Whilst the EIA highlights disturbance as an issue for birds on the estuary it fails to assess the impact of water-based activities and their potential effects on the SSSI as required by PPS9 & PPS20. This should include an assessment of all projects, including their cumulative effects, and placed into context with land-based activities.

Whilst the EIA recognises the need for careful screening of the development around Carnsew Pool to reduce inappropriate use and disturbance, the proposal fails to include any measures to secure this avoidance. An example of this is the proposed new bridge across the end of Copperhouse Creek. The RSPB considers that the overriding interest here is the SSSI and therefore it is essential to build in mitigation against the ongoing problem of disturbance.

There does not appear to have been any assessment of the impact of the proposed new walkway along the southern side of the SSSI along Copperhouse Creek. This is a sensitive part of the SSSI and in our view, the walkway could cause considerable damage to its value as a bird roost through increased levels of disturbance. We therefore suggest its removal from the re-development package.

3. Mitigating and compensating for harm

Whilst the EIA includes a range of impacts on inter-tidal and sub-tidal habitats, the RSPB considers that the proposed replacement habitats will not provide effective compensation for those that would

be lost. Where outstanding, unmitigable harm remains, even if the development is considered to be of overriding importance, compensation should be required to offset it. Compensation needs in the first instance to seek like for like replacement, i.e. if inter-tidal habitat is lost, it needs to be replaced with inter-tidal habitat.

The applicants should in our view identify sites on which compensatory habitat could be provided. Suitable areas to be considered for new inter-tidal habitat creation could include land at Wilson's Pool, the Hayle River, and Red River at Gwithian. Where it is not possible to provide like for like, then a suitable alternative should be identified through consultation with NE. The "*creation of additional dredged sub-tidal habitat*" (page 58) in the harbour (under the proposed marina) and the reference to vertical structures such as metal sheeting cannot in our view be considered acceptable compensation for the loss of inter-tidal habitats.

There is no consideration of the potential disturbance effects of the additional water sport activity proposed. A rigorous assessment is in our view needed on restrictions on water sports activity imposed by the harbour and its protected wildlife, the current levels of water sport activity and its impacts and the future capacity of the different areas of the Harbour and estuary for water sports. Currently there are strict controls on water sports users within the harbour jurisdiction, and the "three councils agreement" which controls the use of Copperhouse Creek. The RSPB consider that these set an appropriate level of use and therefore that they should form the basis of activity following the re-development. This would in our view need to be secured by a legally binding agreement.

Furthermore, plans for recreational and sporting activity should include additional areas of open space that offer robust areas for formal and informal recreation, including new areas of 'Green Infrastructure', which can be used to divert recreational pressures from sensitive sites.

4. Monitoring and Contingency Planning

Whilst the EIA identifies that some operations could potentially damage the SSSI e.g. the sluicing operations and sand ingress into Lelant Water, the type and scale of monitoring proposed to assess this is in our view inadequate.

Invertebrate monitoring, pre- and post- development will be fundamental to assess the impact of this operation on the inter-tidal areas of Carnsew Pool and Copperhouse Creek, but has not been included in the monitoring proposals.

Given the scale of the development and the sensitivity of the site, there should in our view be a comprehensive monitoring strategy developed to determine the effects of the proposal. This should be coupled with a clear contingency plan, agreed by NE, to remedy any damaging unpredicted effects arising from the re-development.

The sluicing regime should be agreed and reviewed by a group, which includes the RSPB and NE.

An agreed Management Plan for the Hayle Estuary (currently in preparation) needs to be in place, supported by an appropriate licensing procedure between the statutory bodies and the owners, for future users of the tidal waters

5. Construction Environmental Management Plan

The RSPB welcomes the inclusion of an Environmental Management Plan. This should be implemented with the help of an on-site ecologist employed by the developer.

6. Indirect effects

The RSPB considers that it would be valuable for the application support materials to clearly set out the ongoing management obligations that fall to the relevant authorities, including those that relate to disturbance management and enforcement. These responsibilities will need to be adequately resourced.

As part of the re-development package, a strategy should be required to prevent disturbance:

- to the SSSI at low water/neap tides by fishermen, dog walkers, horse-riders *et al.*¹
- at high water, e.g. manage water sport activity in and around the Harbour so as not to disturb sensitive bird populations, in consultation with RSPB and Natural England.¹

7. Enhancing wildlife and 'green infrastructure'

It is disappointing that the EIA does not include proposals to enhance the estuary's wildlife. The Draft Regional Spatial Strategy sets out clear targets for delivery of BAP habitats (Appendix 1, p.200) and incorporates *South West Nature Map* (Map 7.3, Policy ENV4), which identifies areas in which ecological enhancement should be focused. The extension of this principle to masterplanning site-specific developments should see habitat enhancement proposals incorporated into plans from the outset, and the Hayle Harbour Development in our view provides an ideal opportunity to implement this holistic approach. One enhancement would be to seek to halt the influx of sand into the estuary at Lelant Water, potentially via channel realignment, dredging or other means, in agreement with RSPB and Natural England. This would need to be carefully modelled to give an appropriate level of confidence that the desired outcomes are achieved. Another is the removal of overhead power lines at key bird flight lines to eliminate bird fatalities (at Carnsew Pool, Copperhouse Creek and Ryan's Field).

In addition, there are a range of opportunities to benefit the existing site, which the development can support including the following, notably adoption and implementation of a strategy to:

- address the safety needs for recreational users within the area identified in the management plan, as required by the District Council e.g. life guards on Porth Kidney Beach;
- routinely remove rubbish, fly-tipping and water-borne litter, including that brought in on the tides;

8. Maintenance of structures

The proposal highlights the need for the routine use of heritage structures, which will need to be assessed in terms of their condition and consequent ability to withstand the uses being proposed for them, as well as ongoing maintenance. These include the embankments around Carnsew Pool and Copperhouse Creek. It would be necessary for the proponents to take responsibility for the maintenance of these structures.

¹ Could include CCTV on HMML property overlooking Carnsew Pool, Copperhouse Creek and Lelant Water for the purpose of addressing and reducing wildlife crime (disturbance)