

Our ref: R/12360/1710/7/crs/DOB

Pagham Parish Council  
The Village Hall, Pagham Road  
PAGHAM  
West Sussex  
PO21 4NJ  
  
FAO Nicola Jones  
Clerk & Responsible Financial Officer

Damon O'Brien  
Managing Director

D: +44 (0)23 8071 1878  
T: +44 (0)23 8071 1840  
E: damon.obrien@abpmer.co.uk

02 October 2017

Dear Nicola

## Pagham Spit Intervention – Post Consent Support

Following a discussion with Robin Henderson on 8 September 2017, I am pleased to provide Pagham Parish Council (PPC) with a revised proposal for conducting work to assist with the post-consenting phase of the Pagham Spit Intervention scheme.

This proposal outlines our proposed approach to providing this assistance along with the associated project management activities, programme and costs.

### Proposed Approach

Our approach to this project is centred around the completion of the following tasks:

- Meeting with stakeholders to discuss requirements to discharge planning conditions;
- Assistance with providing the necessary information to discharge specific planning conditions; and
- Applicant/Client Meeting to review proposal.

### Scheme definition and way forward

Since the scheme gained consent there have been significant morphological changes at the site, including, during summer 2017, breaching of the spit. Therefore it is important to recognise that it is unlikely that the project can be progressed according to the specifics of the originally consented scheme (see ADC **Condition 2**). Early discussion with ADC and key stakeholders (including the MMO) will therefore be required to agree the implications of this. Given the recent changes that have occurred at the site, if there is still considered to be a need for the project, it may be necessary to apply for planning condition revisions (under Section 73 of the Town and Country Planning Act 1990) and an MMO Marine Licence Variation Order. Alternatively a new planning application process may be required.

The rest of this proposal is based on the assumption that the scheme will progress as consented. This allows progress to be made on time-limited planning conditions in advance of any new agreement being reached on how to take the project forward. Once this agreement is reached, we can review any required activities with Pagham Parish Council as a new proposal.



## Regulator meeting to discuss scheme and requirements to discharge planning conditions

Following the first proposal review meeting, it is recommended that a meeting is held between Arun District Council (ADC), the Environment Agency, Natural England, the Royal Society for the Protection of Birds (RSPB), Chichester District Council and the Marine Management Organisation (MMO) and/or the Environment Agency. ADC has already written (letter dated 1 August 2017) to offer a meeting and, therefore, a date needs to be agreed with them. Recent correspondence from ADC indicates that this may take place in October although, depending on availability of attendees, this may now need to be undertaken now in November. It may be pertinent to arrange this meeting to coincide with a site visit (subject to willingness of attendees).

In effect this could be seen as the first meeting of the Stakeholder Management Group (SMG) which needs to be set up to oversee the ongoing monitoring and management of the project. The setting up of an SMG is needed to satisfy the adaptive management requirements under ADC Condition 6. As required under this condition, there will be a need to agree (during this first meeting) how the SMG operates and communicates in the future.

The ongoing involvement and engagement of an SMG with links to local voluntary groups will provide considerable benefit to the project as a whole including consistency in understanding and future decision making. We propose that the Pagham Flood Defence Community Interest Company (PFDCIC) (as project applicant and representatives for Pagham Parish Council) should facilitate this meeting through the sending of invitations as well as providing a suitable venue and subsequently taking/issuing minutes. ABPmer will attend the meeting to advise on technical issues surrounding the discharging of a number of the respective planning conditions (see below) focussing on the future management and monitoring of the site.

This meeting will be attended by Colin Scott (Project Director) and Elena San Martin (Project Manager).

## Discharging specific planning conditions

We understand that PFDCIC and Pagham Parish Council require assistance from ABPmer in advance of 27 December 2017 with respect to the following planning conditions:

- Developing the final plans for the tern island (**ADC Condition 5**);
- Developing adaptive management plan (**ADC Condition 6**) to run for the lifetime of project which must start within 3 years and include (as per Condition 1) recognition that Condition 10 for breach re-opening may need to be pursued within the subsequent 5 years);
- Proposed mitigation measures (**ADC Condition 7**);
- Tern Island management plan (**ADC Condition 8**);
- A construction management plan (**ADC Condition 9**) which will require separate specialist contractor input; and
- A tide gauge monitoring strategy (**ADC Condition 14**).

With respect to the other conditions we note that there is also a requirement under **Condition 4** for archaeological investigations and a Written Scheme of Investigation (WSI) to be prepared. We understand that this work will be subcontracted separately and undertaken by local specialists. However, ABPmer can, if required, include the product within a final overarching conditions report for ADC. There is no timeline for this (expect that it must be done pre-commencement) but it is recommended that this is progressed very early to account for the time it might take to secure Historic England approval.

### *Overall approach to conditions review*

We recommend that the information required to discharge the conditions identified above is best integrated into a single overall Environmental Management and Monitoring Plan (EMMP) report. The feasibility of producing such an over-arching document will be discussed with PFDCIC and then with the key stakeholders at the two meetings described above. This approach would also offer the additional benefit of recording the additional conditions that form part of the Marine Licence as issued by the MMO.

In general our intention is to prepare relatively short chapters to cover these issues often as bulleted text. This is because, for the most part we think the information that is required needs to be concise and clear. We also think that ADC, PFDCIC and representatives of the SMG will not welcome extensive documentation at this stage. However, this report will require a clear front end description of the latest on site conditions in order to underpin the proposed project approach. Also, depending on the approach to the discharging of conditions that is agreed with the SMG, there will be a need for a thorough review of the methods for the work (including especially the health and safety and environmental considerations). This detailed review will need to be obtained from a specialist contractor.

For all of the conditions identified above, our input has been costed up to the point of production and submission of the respective technical notes to ADC. Should further amendments or input be required post submission of the required documentation additional costs will be incurred. A costed proposal for any such works will be provided once the scope of the requirements is understood.

### *Tern Island design and construction - ADC Condition 5*

In discussion with both PFDCIC, Natural England and the RSPB we will prepare a short technical note which will provide the final plans and methodology for developing the proposed Tern Island compensation measures. This will build on the discussions that have been held to date as well as the Environmental Statement, the Habitats Regulations Assessment and the corresponding supplementary information.

### *Adaptive Management Plan - ADC Condition 6*

An adaptive management plan will be developed setting out how the harbour opening will be monitored and the approved compensation/mitigation measures will be reviewed in order to assess their effectiveness. The plan will refer to proposed adaptive 'Traffic Light System' approach set out in the May 2016 report. The plan will also outline the roles of an SMG and how this will be co-ordinated. In this context the development of the plan will require engagement with the stakeholders identified for the initial meeting (outlined above).

### *Mitigation measures - ADC Condition 7*

The specific requirements of ADC Condition 7 will be captured within the adaptive management plan. More specifically this will include details of the proposed mitigation measures (and management thereof) to be employed on the spit in order to protect the Little Tern habitat.

### *Tern Island management plan - ADC Condition 8*

The specific requirements of ADC Condition 8 will be captured within the adaptive management plan. More specifically this will include details of the proposed management plan for the proposed Tern Island compensation measure.

## Construction Management Plan - ADC Condition 9

A construction Management Plan will be developed concerning the construction activities involved with both the breaching of the spit and the creation of the new Little Tern Island. This will involve discussions with PFDCIC and the proposed contractors to ensure what is proposed can be achieved. It is acknowledged that there is considerable overlap between this task and those involved with discharging ADC Conditions 6, 7, 8 and 13. Therefore, this reinforces the value in producing a single stand-alone EMMP report.

## Tide Gauge Monitoring Strategy - ADC Condition 14

We will prepare a plan for the deployment of a tide gauge within the harbour for the purposes of monitoring tidal heights and tidal behaviour in the middle of the harbour. This will be informed by our understanding of the physical processes operating within the harbour. The monitoring itself is not part of this current proposal as it will not be undertaken at this time. Instead it will be scheduled 1 month before and 1 month after the construction work.

## Applicant/Client meeting to review plan

As discussed with Robin Henderson on 8 September 2017, a meeting with PFDCIC will be required in early 2018, to discuss the plan for the project itself and to agree how it should be progressed. This is needed because the morphology at the site of the proposed development will have changed over the winter and it will be necessary to evaluate whether, how, why and when the project might need to be implemented to best effect. This is an important meeting and should be held on site. It would also be best if this visit could be informed by recent topographic data for the site. ABPmer will source any such information that is available and review it in advance.

This meeting will be attended by Colin Scott (Project Director), David Finch (ABPmer coastal processes specialist) and Prof Ian Townend (external process specialist).

It would also be best if this visit could be informed by a brief review of recent topographic data for the site. We have therefore included time for an ABPmer GIS specialist (Nicola Dewey) to collate and present the latest available survey data.

## Project Management

The ABPmer Project Manager, Elena San Martin, will be the primary point of contact for the Client. She will be supported by the Project Director Colin Scott, the Quality Manager Natalie Frost and physical processes expertise from David Finch and Prof Ian Townend. Elena will, as a minimum, provide the following:

- Discussions with the MMO on the finalisation of the marine licence;
- Managing activities and costs against the agreed work programme;
- Managing the scope against the agreed tender, internal Quality Plan, and the risk register;
- Identify when risks are likely to occur and act appropriately; and
- Participation in an inception meeting and a further client progress meeting via teleconference.

Elena will manage the project in accordance with our quality management system (QMS), which is certified to ISO 9001:2015, for the delivery of Environmental Consultancy and Research Services. The QMS comprises a manual of procedures to ensure standards for company systems and capabilities, products and customer care. The QMS is subject to external audit on an annual basis.

We understand that the deliverables are required by 27 December 2017, and will work with PFDCIC and Pagham Parish Council as required to ensure these are achieved (subject to the timing of appointment and agreement from the SMG regarding the scope of the information requirements for each condition).

## Project Budget

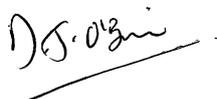
The cost for providing the post consent support is provided in Table 1 below. This offer is exclusive of VAT and is valid for a period of 30 days. The offer is subject to our standard terms and conditions of contract, which are attached. If we were appointed then invoices would be submitted on a monthly basis.

**Table 1. Project budget (exc. VAT)**

Phase 4 Task (Fixed Costs)	ABPmer Staff	Directs	Cost
Project Management	£1,350		£1,350
Regulator (SMG) Meeting (October/November 2017)	£1,260	£80	£1,340
Note advising on proposed tern island approach (Dec 2017)	£1,588		£1,588
Preparation of the EMMP Report (Dec 2017)	£6,503		£6,503
Applicant/Client Meeting (Early 2018)	£1,730	£669	£2,399
Mapping and briefly reviewing latest topography data (early 2018)	£2,047		£2,047
<b>Total</b>	<b>£14,478</b>	<b>£749</b>	<b>£15,227</b>
NB Directs cover 1.5 days of input from Prof Townend and travel to one meeting			

I hope this has been helpful and that ABPmer will be able to assist you further with this project. If you have any questions arising then please do contact me (02380711849) or Colin Scott (02380 711860; cscott@abpmer.co.uk).

Yours sincerely  
for ABPmer



**Damon O'Brien**  
**Managing Director**

Att. ABPmer Terms & Conditions



## Conditions of Contract (Clients)

### 1. Definitions

- 1.1. The "Company" means ABP Marine Environmental Research Limited, Quayside Suite, Medina Chambers, Town Quay, Southampton, SO14 2AQ, whose registered office is at 25 Bedford Street, London WC2E 9ES.
- 1.2. The "Client" means the contracting party who requires particular Services (as defined in clause 3 below) from the Company.
- 1.3. The "Contract" means the legal relationship between the Company and the Client for the supply of Services (as defined in clause 3 below) that is subject to these terms and conditions.

### 2. Contract

These terms and conditions shall apply to the Contract to the exclusion of any other terms that the Client seeks to incorporate or impose or which are implied by trade, custom, practice or course of dealing.

### 3. Services

The services to be provided by the Company to the Client under the Contract (the "Services") shall be as agreed in writing between the parties together with any additional services agreed pursuant to clause 6. The Client shall make available such services, facilities, information and documents, and shall give such instructions and decisions in reasonable time so as not to delay or disrupt performance of the Services by the Company.

### 4. Programme

Subject always to matters beyond its reasonable control (including acts or omissions of the Client or third parties) the Company shall use reasonable endeavours to perform the Services in accordance with any programme comprised in the Services or changes agreed pursuant to clause 6.

### 5. Payments

- 5.1. Unless otherwise agreed in the Contract, the Company shall issue invoices monthly in respect of its charges for the Services.
- 5.2. Payments under the Contract will be made on the following terms: -
  - (a) strictly thirty (30) days from invoice date provided that the invoice will have been delivered to such address as may be notified by the Client to the Company;
  - (b) charges outstanding beyond thirty (30) days from invoice date will accrue interest payable in accordance with the Late Payment of Commercial Debts (Interest) Act 1998; and
  - (c) all payments due and owing to the Company by the Client will be made without set-off, withholding or deduction of any kind.
- 5.3 All charges will be exclusive of VAT, which if payable will be paid against appropriate VAT invoices.

### 6. Change Requests

- 6.1 If the Client wishes at any time to request changes to the Services any such changes shall be agreed in writing with the Company before such varied Services are embarked upon. Such agreement shall include details of changes to the programme and payments due to the Company including recompense for any work progressed in part or to completion and no longer required.
- 6.2 If the Company suffers disruption in performance of the Services for circumstances beyond its reasonable control, including any delay by the Client in fulfilling its obligations hereunder, or any delay caused by other unforeseeable events, the Client shall make a fair and reasonable additional payment to the Company in respect of any additional resources employed and disruption suffered. The Company shall advise the Client when it becomes aware that any such disruption is likely.

### 7. Intellectual Property Rights

- 7.1 All intellectual property created by the Company in the course of providing the Services including the copyright of all drawings, reports, software code, interfaces and data supplied by the Company for the purposes of the Contract ("Documentation") shall remain vested in the Company. The Company hereby grants the Client a non-exclusive licence to copy and use any Documentation for the purposes for which it was prepared provided that the Company is aware of and has agreed to such purposes. In the event of the Client being in default of any payments under the Contract or otherwise in material breach of their obligations under the Contract the Company may revoke the licence granted herein on giving written notice to that effect.
- 7.2 The copyright of all drawings, reports and data supplied by the Client for the purposes of the Contract shall remain vested in and remain the property of the Client. The Company shall have a non-exclusive licence to use the same for the purposes of the Contract.

### 8. Confidentiality

- 8.1 Both parties shall keep confidential and shall not disclose to any unauthorised party or make other unauthorised use of any information of a confidential nature regarding the other's business and gained in connection with the Contract.
- 8.2 The Company may disclose information to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Company's obligations under the Contract or as may be required by law, court order or any governmental or regulatory authority.

### 9. Termination

- 9.1 Either party shall be entitled to terminate the Contract forthwith by notice in writing to the other party if that other party: commits a material breach of any of its obligations hereunder and if the breach is capable of remedy, the other party fails to remedy it within 30 days of receipt of notice of such breach; passes a resolution for the winding-up (otherwise than for purpose of a bona fide scheme of solvent amalgamation or reconstruction) or if a Court of competent jurisdiction shall make an order to that effect; makes any voluntary arrangement with its creditors or becomes subject to an administration order or permit any judgement against it to remain unsatisfied for more than seven days; has a receiver or administrative receiver appointed over it or any part of its undertaking or assets; ceases or threatens to cease to carry on business or in the case of a Client who is an individual, that individual dies or has a receiving order made against him or commits any act of bankruptcy.
- 9.2 Any such termination shall be without prejudice to the rights and obligations of either party then subsisting.
- 9.3 On termination the Client shall pay to the Company all of the Client's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt.

### 10. Sub-letting

The Company shall not without the written consent of the Client, which shall not be unreasonably withheld, sub-let any the Contract or any part thereof or make any sub-contract with any third party for the execution of any part of the Services. Any such consent shall not relieve the Company from any of its obligations under the relevant Contract.

### 11. Professional Indemnity Insurance

- 11.1 The amount of professional indemnity insurance to be maintained by the Company shall be one million pounds (£1,000,000) for any one occurrence or series of occurrences arising out of these Conditions. The parties acknowledge that the amount of professional indemnity insurance to be maintained by the Company shall have no effect on any limitation of the Company's liability pursuant to clause 14.
- 11.2 This professional indemnity insurance shall be maintained for a period of 6 years from the date of the Contract, unless such insurance cover ceases to be available at reasonable rates in which event the Company shall take reasonable measures to notify the Client as soon as it is aware of such change.

### 12. Standard of Care

The Company shall exercise reasonable skill, care and diligence in the performance of the Services.

### 13. Non-Poaching of Staff

- 13.1 The Client shall not, without the prior written consent of the Company, at any time from the date of the Contract to the expiry of 12 months after the last date of supply of the Services, solicit or entice away from the Company or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Services.
- 13.2 Any consent given by the Company in accordance with clause 13.1 above shall be subject to the Client paying to the Company a sum equivalent to 20% of the then current annual remuneration of the Company's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Client to that employee, consultant or subcontractor.

### 14. Limitation of Liability

- 14.1 Subject to clause 14.4, the total liability of the Company under or in connection with the Contract whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall not exceed 110% of the charges paid to the Company by the Client under the relevant contract, provided always that any claim by the Client arising in connection with environmental pollution shall be limited to the lesser of £500,000 or 110% of the charges paid to the Company by the Client.
- 14.2 Subject to clause 14.4 the Company shall not be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract.
- 14.3 The Company accepts no liability to third parties in respect of the Services and the Client undertakes to draw this to the attention of any third party to whom it discloses any Documentation prepared by the Company hereunder. The Client shall indemnify and keep indemnified the Company from and against all claims, demands, proceedings, damages, costs, charges and expenses arising out of or in connection with the Contract, save to the extent such claims arise from the Company's breach of any provisions of the Contract.
- 14.4 Without prejudice to any other exclusion or limitation of liability, damages, loss, expense or costs the liability of the Company if any for any loss or damage under the Contract shall not exceed such sum as it would be just and equitable for the Company to pay having regard to the extent of his responsibility for the loss or damage.
- 14.5 Nothing in these Conditions limits or excludes the liability of the Company for death or personal injury resulting from its negligence or from the negligence of its employees, agents or subcontractors, or for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by the Company.

### 15. Bribery and Corruption Issues

- 15.1 The Client shall not, and shall procure that its directors, employees, agents, representatives, contractors or subcontractors shall not, engage in any activity, practice or conduct which would constitute an offence under any anti-bribery and/or anti-corruption laws, regulations and codes, including the Bribery Act 2010.
- 15.2 The Client shall have in place adequate procedures designed to prevent any person working for or engaged by the Client from engaging in any activity, practice or conduct which would infringe any anti-bribery and/or anti-corruption laws, regulations and codes including ABP's anti-corruption and anti-bribery policy which is available on ABP's website <http://www.abports.co.uk>.
- 15.3 Without prejudice to the generality of the obligations set out in clause 15.1 and clause 15.2 above, the Client must promptly report to the Company any request or demand for any undue financial or other advantage of any kind which it receives in connection with the performance of any obligations under any agreement with the Company.
- 15.4 Breach of this clause 15 shall entitle the Company to terminate the Contract with written notice with immediate effect.

### 16. Force Majeure

Neither party shall be liable for any failure to perform its obligations under the Contract where such failure results from circumstances beyond the party's reasonable control including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors. If such circumstances prevent the Company from providing the Services for more than 45 consecutive days, the Company shall, without limiting its other rights and remedies, have the right to terminate an affected Contract immediately on giving written notice to the Client.

### 17. Resolution of Differences

- 17.1 Should a dispute between the parties arise out of or in connection with the Contract, the parties' respective project managers shall initially discuss and attempt to resolve the dispute. If the project managers are unable to resolve the dispute to the satisfaction of both parties, it shall be escalated to the parties' appropriate senior managers for resolution. If the senior managers are unable to resolve the dispute to the satisfaction of both parties, it shall be escalated to the parties' appropriate directors (or equivalents) for resolution.
- 17.2 If, within fourteen (14) days of the matter being referred to clause 17.1 no agreement has been reached as to the matter in dispute the parties will consider whether the matter is appropriate for determination by an expert (for the purposes of this provision the parties should in particular consider whether matters technical or financial should be determined by an expert) and the matter will if agreed by both parties, be determined by an independent expert nominated jointly or failing such nomination within seven (7) days after request by either of them by the President for the time being of the appropriate industry body and the expert so nominated will act as an expert and not as an arbitrator and his decision will be final and binding on the parties (except in the event of manifest error) and his fees will be borne and paid by the parties in such proportions as the expert determines and if no such determination is made such fees will be borne and paid equally between them. If the parties do not agree that the matter should be determined by an independent expert nominated jointly or otherwise as nominated in accordance with this clause 17.2, then clause 18.7 will apply.

### 18. Miscellaneous

- 18.1 The Contract is personal to the Parties. Neither party will assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights or responsibilities under the Contract without the prior consent of the other party.
- 18.2 The Contracts (Rights of Third Parties) Act 1999 will not apply to the Contract. No person who is not a party to the Contract (including any employee, officer, representative or sub-contractor of either party) will have the right, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of the Contract which expressly or by implication confers benefit to that person without the express prior agreement in writing of the parties which agreement must refer to this clause.
- 18.3 Any waiver of a right under the Contract shall only be effective if the same be agreed in writing and executed by the Client and the Company as a formal amendment to the Contract.
- 18.4 If any provision of the Contract is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 18.5 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 18.6 Any notice to be given under these Conditions shall be given in writing and be delivered personally or by sending the same by first class post to the registered address of the other party.
- 18.7 These Conditions shall be governed by and construed in accordance with English Law and in the event of any dispute arising both parties, subject to the provisions of clause 17, agree to submit to the exclusive jurisdiction of the English Courts.