

NEW FOREST DISTRICT COUNCIL – 18TH NOVEMBER 2002.

DIBDEN TERMINAL INQUIRY – AUTHORITY FOR AGREEMENTS AND CONDITIONS.

INTRODUCTION

- 1.1 This report is intended to update members on the likely range of agreements and conditions which the Council may agree should the Dibden Terminal development go ahead. The report also seeks specific authority to sign the relevant agreements and to make specific submissions to the Inquiry Inspectors regarding conditions and restrictions to be imposed on any Orders made by the Secretary Of State.
- 1.2 The report also updates members on the background to the negotiation process which has previously been authorised, and provides an outline of those agreements which affect New Forest District Council, and which the Council will be expected to sign up to, should members agree to the principles of the mitigation package outlined below.

INQUIRY BACKGROUND

- 2.1 The main applications for port development at Dibden Bay were submitted on 2nd October 2000. The Council considered its formal response to the applications at meetings on 9th November 2000, and 20th March 2001. Aside from its major resolutions to object to the development proposals, and to submit detailed evidence to the forthcoming public inquiry, the Council also resolved the following:
 - “h) *That officers are authorised to enter into discussions with ABP as appropriate with a view to resolving any objections if possible.*
 - i) *That the Chief Executive and the Director of Environment Services be given authority, in consultation with the Leader of the Council, and the Economy and Planning Portfolio Holder, to take any action necessary to enable the Council to respond quickly and effectively on matters relating to the Council’s objections and its presence at the forthcoming Public Inquiry.”*
- 2.2 The Dibden Terminal Inquiry opened at Applemore Recreation Centre on 28th November 2001, and has subsequently held proceedings at

the former Stena Ferry Terminal, Eastern Docks, Southampton from early December 2001 to date. The Inquiry is expected to conclude on 13th December 2002.

- 2.3 The District Council, in partnership with Hampshire County Council, has been heavily involved in most topics at the Inquiry. Evidence has been presented on the policy context of the development, the need for Dibden Terminal, and possible alternative solutions to meeting UK container capacity requirements. Evidence has also been submitted on a wide range of impacts of the development including impacts on nature conservation, transport, landscape and visual impact, and noise. At the start of the Inquiry, the Council submitted a proof of evidence outlining the range and scope of controls it would wish to see imposed on the development, should consent be given. Each topic has also included the presentation of evidence from this Council, ABP and other parties on the general form and extent of agreements and conditions each would propose.
- 2.4 The Inquiry also includes specific sessions to deal with conditions and agreements which are proposed by the applicant, supporters or objectors, and which aim to control the development should consent for the terminal be given. The final and most detailed session is due to commence on 19th November, and all agreements must be finalised by the end of the Inquiry.

PRINCIPLES OF NEGOTIATION WITH ABP

- 3.1 In any planning appeal, the planning authority (or other objector) is expected to suggest conditions or agreements in an attempt to mitigate insofar as is reasonably possible, the adverse effects of a development proposal, should the appeal be allowed, and the development permitted.
- 3.2 Whilst the Dibden terminal proposals involve a range of different applications, they are being determined broadly in accordance with the planning appeal process. As such the Council and other objectors have been invited to suggest controls on the development in a similar way. These take broadly two main forms:
 - a) Legal agreements under Section 106 of the Town & Country Planning Act 1990, negotiated with ABP and signed up to by the Council, ABP and in some cases other parties including Hampshire County Council; and
 - b) Conditions proposed by the Council to be attached either to the Harbour Revision Order, the Transport & Works Act Order, or the various planning applications. These may or may not be agreed with ABP but could be imposed by the Secretary Of State.
- 3.3 It was with this in mind that officers sought delegated authority from members in March 2001 to enter into negotiations with ABP on any aspect of the Council's case in order to attempt to overcome

objections wherever possible. These negotiations have had the dual aim both of reducing the differences between ABP and the Council at the Inquiry, and of bringing forward conditions and legal agreements which aim to control the construction and operation of the development such that, if permitted, its impact on local communities and the environment generally would be reduced.

3.4 It may appear perhaps a little unusual that the Council is negotiating agreements and conditions for the approval of a development which it opposes. However it is considered essential that such agreements and conditions are pursued for the following reasons:

a) Whilst the Council and other parties have raised significant objections to the development, there can clearly be no guarantee that the Secretary of State will refuse consent.

b) With this in mind, the Dibden Terminal Inquiry is the only opportunity for the Council to indicate to the Secretary Of State the safeguards it would wish to see imposed on the development. A failure to take the opportunity to influence the manner in which the development proceeds at this stage, could be difficult to redress in the future.

c) The negotiation of proper controls on a development of this scale represents an important duty of the Council to its residents.

d) The proper regulation of the development through the imposition of controls now, may save time and resources later in attempting to regulate the development once construction or operation has begun.

3.5 The process of negotiation on the various agreements is now almost complete, and the Council will soon be expected to formally sign the agreements, along with ABP and other parties in some cases. It is necessary therefore that members formally give officers the authority to sign the agreements, and to propose any other conditions to the Inspector.

DETAILS OF NEW FOREST DISTRICT COUNCIL AGREEMENTS

4.1 This Council has led the discussion of conditions and agreements with ABP on the topics of Landscape & Visual Impact, Noise & Vibration, Air Quality, Contamination, and on Training Initiatives. It has also been involved in similar negotiations led by Hythe Marina Village on a revised proposal for the Hythe Marina Bund. An outline of the scope of the agreements, and the extent to which they materially alter the Council's objection is set out under each topic heading.

Landscape & Visual Impact

- 4.2 Part of the Section 106 agreement being negotiated between this Council and ABP covers the landscape proposals for the Dibden Terminal and associated works including transportation infrastructure. Under this agreement the following matters are covered:
- The prior approval of measures to protect existing trees, hedgerows and other natural features.
 - The prior approval of a detailed landscape design, specification and implementation schedule. This will cover all aspects of the development including the terminal site itself, the Hythe Marina Bund, and the road and rail infrastructure.
 - The prior approval of a detailed landscape management plan covering future landscape management and maintenance.
 - The prior approval of a soil management plan dealing with the management of soil during construction and operational phases of the development.
- 4.3 In addition another schedule to the Section 106 agreement will require prior approval of a detailed lighting plan for the development. This schedule also requires that lighting on the ship-to-shore cranes is switched off whenever practicable.
- 4.4 The negotiation of this element of the Section 106 agreement has had no significant impact on the Council's overall objection to the Dibden Terminal proposals on landscape and visual impact grounds.

Noise & Vibration

- 4.5 Agreements and conditions relating to Noise & Vibration fall into two parts. Those relating to construction of the terminal fall within a Section 106 agreement, whilst those relating to operation of the terminal will form conditions attached to the Harbour Revision Order, or to the planning applications relating to the noise barriers on the Fawley Branch line. For simplicity all agreements and conditions relating to this topic are addressed here, though not all require members' authority to sign a Section 106 agreement, as ABP on their own volition are agreeing to certain controls and restrictions in any Orders made by the Secretary of State.
- 4.6 In broad terms the agreements and conditions under noise and vibration relate to the following:
- The establishment of maximum permitted noise levels for construction (taken at specified receptors). Such levels reflect both the use of percussive piling, and vary according to the time of day, and weekday/weekend.

- The establishment of criteria to deal with any specific exemption from the above limits for a specified period.
- The restriction of working hours for both construction generally and for percussive piling work specifically.
- The setting of maximum permitted ground vibration levels during construction, again varied by time of day and weekday/weekend.
- The establishment of maximum permitted noise levels for operation (taken at specified receptors).
- A restriction on the type or noise level of locomotives used to haul trains to and from the terminal.
- The employment of best practicable means for construction and operation activities to minimise noise from equipment, machinery and activities.

4.7 The controls set out above will serve to reduce to some extent the noise impact of the development on local residents, and will allow for monitoring of the noise associated with the development. The Council has nonetheless maintained its general objection to the impact of the development in noise terms, both from construction and operational noise. Indeed even with the above controls in place, the development will still generate a significant noise impact.

Air Quality

4.8 This draft schedule to the Section 106 agreement involves the control of dust and other emissions to air both during the construction and operation of the development.

4.9 The schedule contains the following major elements:

- The installation of an adequate water supply for the construction site prior to commencement of works, and the approval of water suppression methods by the Council.
- Safeguards on the storage and handling of construction materials on the site.
- Measures to control emissions during construction generally, including surfacing of internal site roads, washing of vehicles, sheeting of vehicles and earthworks, and controls on plant.
- The establishment and operation of an air quality monitoring programme during construction, including procedures to be enacted when an exceedence occurs.
- Measures to control emissions during operation of the terminal including instructions on the operators of terminal equipment and locomotives, control of handling systems at the aggregates facility, and equipment procurement instructions.
- The establishment and operation of an air quality monitoring programme during operation.

4.10 During the assessment of the Dibden Terminal applications, and through the Air Quality Joint Data Group, it was established that concerns over emissions to air primarily related to establishing

adequate controls on the development, and monitoring arrangements. It is considered that the present draft agreement provides the basis for such controls, subject to some further minor legal drafting.

Contamination

- 4.11 The major agreements relating to this topic are matters for the Environment Agency. A schedule is however in draft for the Section 106 agreement with New Forest District Council relating to land contamination covering:
- The prior approval of a risk assessment scheme for contamination including proposals to manage impacts on construction workers, protect drinking water supply, and gas protection.
 - A procedure to notify this Council in the event that previously undiscovered contaminants are found, including a possible risk assessment and remediation scheme.
 - In the case of any contamination found, remediation works are approved by this Council and any requirement for future monitoring is discussed.
- 4.12 Concerns regarding contamination have been established during the Council's assessment of the Dibden Terminal proposals as being those which related to the need for appropriate controls. Subject to some further detailed amendment it is considered that these controls have been put in place through the draft schedule to the Section 106 agreement.

Training Initiatives

- 4.13 The Council is discussing a further schedule to the Section 106 agreement which will provide a mechanism for the successful uptake of construction jobs by local people on the Waterside. This form of agreement essentially involves the applicant undertaking to resource some form of local skills based training which would help people to take up job opportunities during the construction phases of the development. This agreement is aimed both at securing that as many construction jobs as possible are available for local people, and that local people who want such jobs are equipped with the skills required to undertake them.
- 4.14 This agreement supports an element of the Council's objections to the need for the development, and specifically the local economic benefits which would stem from the proposals.

Hythe Marina Bund

- 4.15 For some time, Hythe Marina Village and officers of this Council have been discussing a revised design for the Hythe Marina Bund with ABP. The aim of this revised design is to increase the visual screening of the port development from the Marina Village, to increase the distance of construction activities (excluding those of the bund itself)

from the Marina Village, and to retain the existing bund form as amenity space. A plan showing the original bund proposal, and the revised proposal is attached as Annex A to this report. This revised layout is considered preferable to the original proposal.

- 4.16 The Council had objected both to the Compulsory Purchase Order on the existing bund, and to the Exchange Land Certificate providing land at Westcliff Hall. Should the Inspector be minded to approve the revised bund, it will remove the need for Compulsory Purchase or the provision of exchange land. This overcomes the Council's objections to the original bund proposal, but will also provide an alternative which will reduce some of the impact of the development on local residents within the Marina Village. Officers acting within a previous delegation agreed by the Council have completed an agreement to secure the provision of the revised bund (should the port development be approved) including acceptable landscape provision.

OUTLINE OF HAMPSHIRE COUNTY COUNCIL AGREEMENTS

- 5.1 New Forest District Council has presented a joint case at the Dibden Terminal Inquiry with Hampshire County Council. The County Council has taken the lead role in the negotiation of appropriate conditions and agreements relating to transport, nature conservation, rights of way, and archaeology. Some of these matters fall within the Section 106 agreement to which the District Council must also sign up. However as they are matters for which the District Council would normally look to the County Council for advice, they are reported here for information only.
- 5.2 The County Council is also seeking authority from members to complete the process of signing agreements in respect of the Dibden Terminal Inquiry at a meeting of Council on 28th November.
- 5.3 There are a wide range of matters covered by agreements on the transport topic. These cover the general agreements under Sections 38 and 278 of the Highways Act for the provision of the works to the A326 road and the adopted section of the Terminal Access Road, in accordance with the revised plans produced in June 2002. In addition, the Section 106 agreement will cover a range of matters including:
- A Port Travel Plan
 - A Lorry Routeing Strategy and Freight Quality Partnership
 - A Port Closure Contingency Plan
 - A Signing Strategy
 - Funding for various measures in addition to the package of public transport proposals already proposed, including toward improvements to Marchwood and Hounslow level crossings; toward the cost of a new footbridge at Junction Road level crossing; toward the monitoring of traffic on Marchwood and New Forest roads for a period of 9 years; and towards the Southampton and Totton/Waterside Transport Strategies.

- 5.4 The details of several of these matters are still in discussion with ABP. In addition, the County Council has sought to restrict the final stage (phase 3) of the development unless a predicted rail modal share of 15% can be achieved, this being ABP's lower band forecast. This has not been accepted by ABP and if not agreed will be a matter for the Secretary Of State to determine.
- 5.5 The proposed agreement on nature conservation covers the establishment and future management of the Church Farm Nature Conservation area, including the intertidal creek. A Habitat Establishment and Management Plan for Church Farm has been submitted to the Inquiry. The plan identifies the principal environmental aims of the area, and its management. The County Council is considering the technical provisions of the management plan to ensure that adequate provision and financial commitment is made to the plan.
- 5.6 The County Council has also led the negotiations on agreements covering Archaeology and Rights of Way. The agreement on Archaeology requires the provision and implementation of a Working Scheme of Investigation for the site prior to commencement of construction. The agreement on Rights of Way requires the establishment of the revised rights of way network prior to the operation of the terminal, and to provide funding for future maintenance of the network in the locality of the site.

OUTLINE OF OTHER CONDITIONS TO BE ATTACHED TO THE HRO

- 6.1 In addition to the agreements set out in sections 4 and 5 above, there are a number of other restrictions on the development which have been put forward as conditions to be attached to the Harbour Revision Order. These will be proposed by the County and District Councils to the Inspector as conditions to be imposed on any approval of the Dibden Terminal development by the Secretary Of State. The conditions cover a range of matters as follows:
- General control over the use of the development to specifically tie the development to that which has been assessed.
 - The control of operational noise as set out in paragraph 4.6 above.
 - A restriction on the height of the ship-to-shore cranes.
 - Further control on the design detail of the ship-to-shore cranes.
 - Controls to be imposed on the aggregates wharf.
- 6.2 In some cases, ABP has already drafted possible conditions in respect of these restrictions which the Councils are considering. In the event that such conditions cannot be agreed, the Councils will make submissions to the Inspector to put forward the form of conditions it seeks.

CONCLUSION

- 7.1 Whilst this Council has maintained its extensive objections to the Dibden Terminal proposals, it must nevertheless be recognised that there is a possibility that the Secretary Of State may give consent for the development. With this in mind, officers have engaged with ABP and others throughout the Inquiry process in an attempt to provide limitations and safeguards on the development which might alleviate some of its impact.
- 7.2 As we near the conclusion of the Inquiry, the Council is in the process of finalising a range of agreements and conditions on landscape, noise, vibration, air quality, contamination, and training initiatives, all of which are aimed at mitigating the effect of the development on local communities. The Council will also be a signatory to agreements on transport, nature conservation, rights of way and archaeology which have been negotiated by Hampshire County Council, and will also propose a series of conditions to be attached to the Harbour Revision Order which serve to further control the development permitted.
- 7.3 It is recognised however that even with a substantial range of safeguards in place, the development will have a very significant impact and will substantially change the character of the local communities in Hythe, Dibden and Marchwood in particular, and the Waterside generally. The Council's overall objections to the development remain, and will of course be set out again during closing submissions to the Inquiry in December.
- 7.4 Members are however recommended to endorse the general terms of the agreements as set out in this report, and to authorise officers to sign the detailed agreements prior to the end of the Inquiry.
- 7.5 Due to the fact that negotiations are ongoing, it will also be necessary for senior officers to be given delegated authority to make any additional changes to the agreements and conditions.

RECOMMENDATION

- 8.1 It is recommended: -
 - a) that officers conclude negotiations on the basis of the heads of terms set out above, and make appropriate submissions to the Inquiry as to conditions to be imposed on the relevant Orders and agreements to be entered into with ABP and other parties;
 - b) that the Chief Executive and the Head of Legal and Democratic Services be authorised to agree the detail of legal agreements set out under the heads of terms above and make any appropriate changes if they consider it necessary and thereafter complete such agreements on behalf of the Council.

Further Information:

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Background Paper

Report to HCC New Forest

Transportation Strategy Members

Panel (06/11/02) – Dibden Terminal

Transport Infrastructure Proposals.

PLAN A – ORIGINAL ABP BUND DESIGN

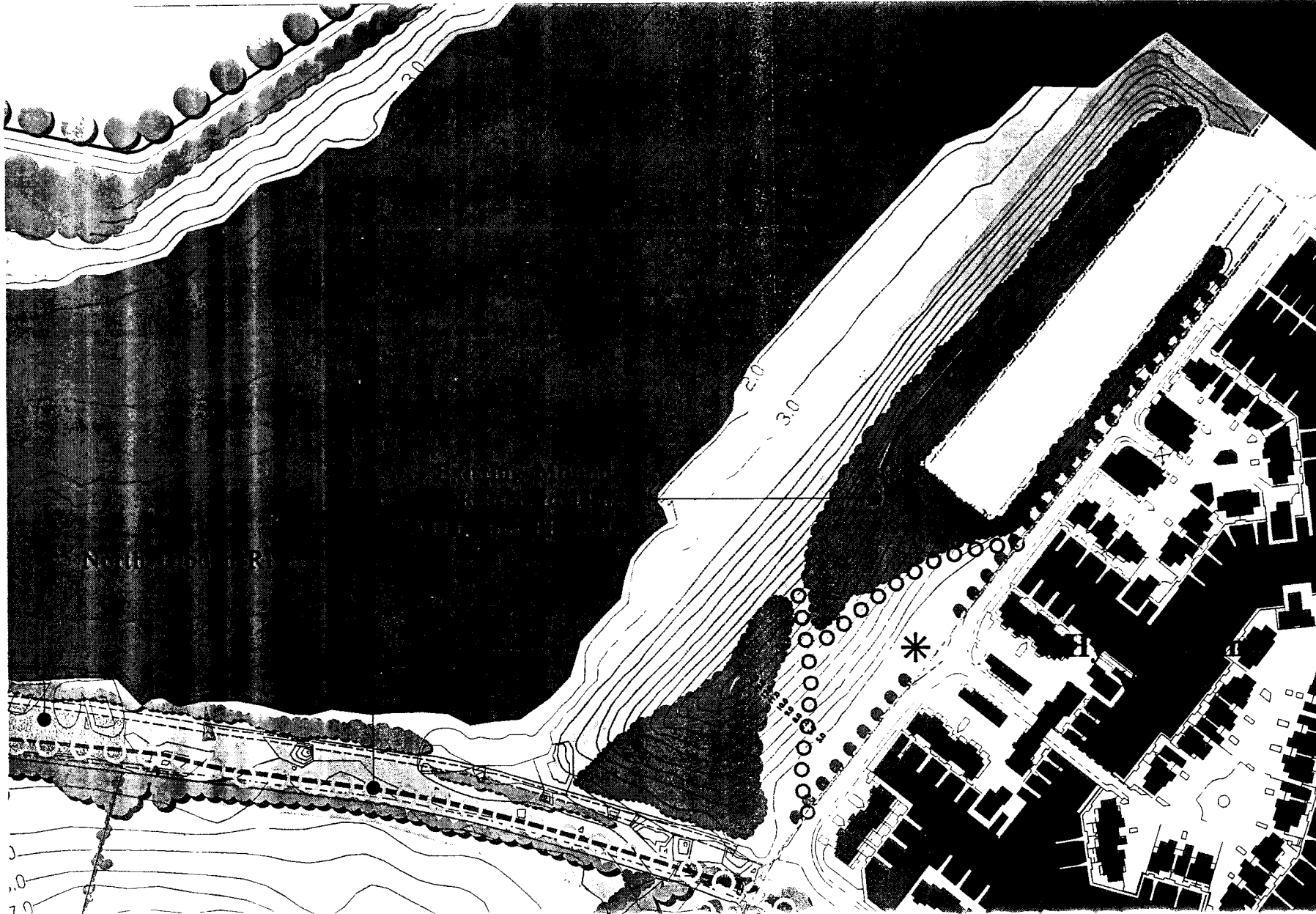

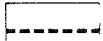


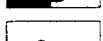
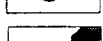





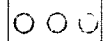
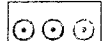

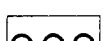



Figure 17
Additional Landscape Propo:
Hythe Marina Bund

-  Proposals Boundary
-  New Forest Heritage Boundary
-  Existing Vegetation
-  Proposed Woodland
-  Proposed Avenue P
-  Proposed Hedge &
-  Creek Proposals
-  Proposed Dry Grass
-  Proposed Back-Up
-  Proposed Amenity C
-  Existing Public Foc
-  Existing Public Foc
Public Footpath - C
-  Proposed Public Fo
-  Permissive Footpath
-  Proposed Acoustic I
-  Existing Feature Re

PLAN B – REVISED DESIGN

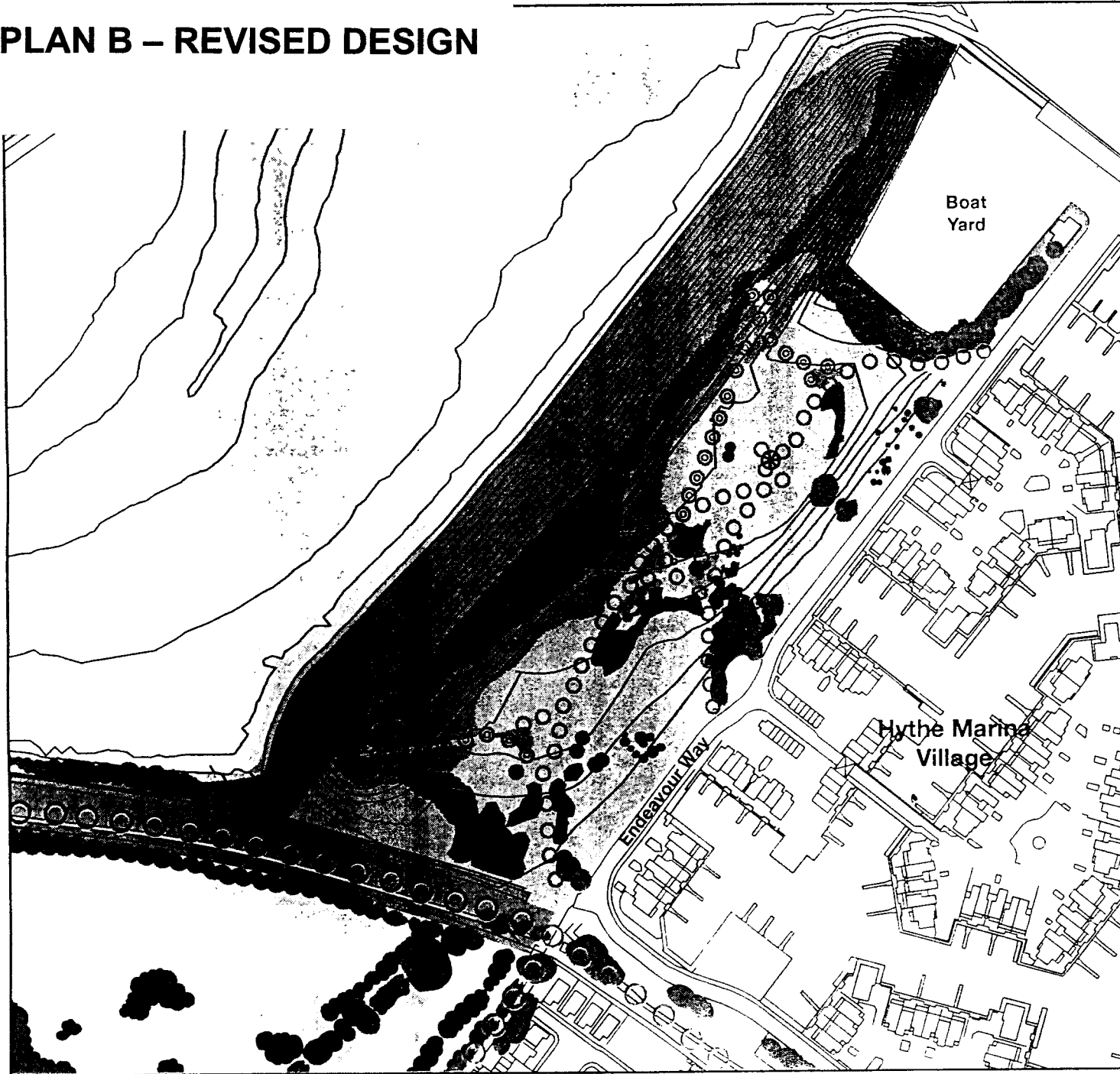














Figure 8

Landscape Proposals

-  Existing Vegetation
-  Existing Grassland
-  Proposed Woodland Planting
-  Proposed Shrub Planting
-  Creek Proposals
-  Proposed Dry Grassland to Creek
-  Proposed Amenity Grassland
-  Existing Public Footpath Retained
-  Existing Permissive Footpath
-  Proposed Permissive Footpath
-  Proposed Fence
-  Existing Feature

Scale: 1:2500

ABP/044/08/REV A/021023

