THE LONDON RESORT

National Infrastructure Planning

Temple Quay House

2 The Square

Bristol, BS1 6PN

23 May 2022

FAO Edwin Maudsley (Case Manager)

Your ref: BC080001/ CAPP-017B (part) (Comb)

Dear Sirs

Planning Act 2008 (as amended) – section 95

Application by Mr Doug Hilton for LD Developments Ltd., Sabotcastle Ltd. and others for an award of costs against London Resort Company Holdings Limited ("LRCH") for an order granting development consent for the London Resort

We refer to your letter dated 09 May 2022 and to the costs application dated 26April 2022 made by Mr Doug Hilton for LD Developments Ltd., Sabotcastle Ltd. and others ("the Costs Application").

We note that the Examining Authority ("the ExA") has made a preliminary decision relating to the first part (''the First Part'') of the Costs Application relating to LD Developments Ltd., Sabotcastle Ltd. and others' status as Affected Persons and that it is valid, having regard to the Costs Guidance, notwithstanding that the London Resort Development Consent Order ("DCO") application was withdrawn before the examination of the application commenced. In reaching this view, the ExA draws on what it considers to be analogous cost decisions in relation to the withdrawn application for the Atlantic Array offshore wind farm ("AA Decisions").

We also note that with regard to the second part ("the Second Part") of the Costs Application an allegation of unreasonable behaviour by LRCH, the ExA as made a preliminary decision that the Costs Application was made within 28 days of the withdrawal of the application and is therefore considered 'timely'' but the ExA has not reached a concluded position on the question of whether it is a valid application and whether it has the jurisdiction to consider the costs application citing: *"Whilst there are circumstances (including those in respect of which the section 51 advice referred to in paragraph 4 above was given) in which successful objector costs claims can arise in the time prior to a Preliminary Meeting, further to paragraph 12 of the Costs Guidance, it is not clear that costs for unreasonable behaviour can do so, but neither are such claims conclusively excluded…..*"

Your letter invites LRCH to make any observations on the Costs Application by 23 May 2022.

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With regards to the First Part of the Costs Application and Matter 1 of your letter, we confirm that LRCH does not dispute that the Cost Application is valid as a matter of principle. LD Developments Ltd., Sabotcastle Ltd. and others' made a relevant representation in respect of the proposed compulsory acquisition of those third-party interests, amongst other matters, and this representation was still maintained by LD Developments Ltd., Sabotcastle Ltd. and others' at the date that the DCO application for the London Resort was withdrawn.

We note that the costs awards made by the ExA in the AA Decisions were full costs awards in respect of: "*the costs incurred in the preparation and submission of RRs in respect of their land and/or rights and in preparation or making of their objections to the proposed compulsory acquisition affecting their rights until the withdrawal of the application on 26 November 2013 and the costs of making this costs application, such costs to be assessed in the Senior Courts Costs Office if not agreed*."

Were equivalent wording to be adopted by the ExA in respect of the Costs Application, LRCH is concerned that it could lead to disputes about the precise scope of any costs award in the due course, in the Court or otherwise. In circumstances where the DCO application was withdrawn before the examination commenced, paragraph 13 and Part D of the Costs Guidance provide a limited exception to what would otherwise have been a bar to the recovery of costs. Such costs should only properly relate to those incurred by LD Developments Ltd., Sabotcastle Ltd. and others in objecting to the impacts of the proposed compulsory acquisition, in its capacity as a person with an interest in land for the purposes of section 44 of the Planning Act 2008. Costs that LD Developments Ltd., Sabotcastle Ltd. and others may have incurred in engaging in or making representations on other aspects of the DCO application are not recoverable pursuant to the Costs Guidance given that the examination of the London Resort application did not commence.

The scope of the relevant representations made by LD Developments Ltd., Sabotcastle Ltd. and others in respect of the London Resort DCO application extends far beyond matters relating to the impacts on LD Developments Ltd., Sabotcastle Ltd. and others' land as a result of the proposed compulsory acquisition.

LRCH submits that costs incurred by LD Developments Ltd., Sabotcastle Ltd. and others in preparing, making, or pursuing its relevant representations in relation to the above matters fall outside of the limited scope of paragraph 13 and Part D of the Costs Guidance and should be expressly excluded from any costs award which the ExA may make in respect of the Costs Application.

Furthermore, LRCH submits that any such costs award should expressly state:

1. That only the costs incurred in the period between the service of the section 56 notice until the date of withdrawal of the application by LRCH are payable. This is consistent with the rationale in paragraphs 13-15 of the AA Decisions in which the ExA distinguished between the express encouragement in the section 56 notice to persons affected by compulsory acquisition to submit an objection, and the stage prior to the opening of the relevant representations

period where parties had a greater choice as to whether to engage in consultation on the proposed application;

2. That costs incurred in negotiating the private treaty acquisition of any land belonging to LD Developments Ltd., Sabotcastle Ltd. and others are excluded; and

3. That the quantum of any costs incurred should be assessed upon the standard basis rather than the indemnity basis, the standard basis being the normal basis of costs awards in a compulsory purchase context. In this regard, paragraph 24.11 of the Practice Directions of the Upper Tribunal (Lands Chamber) dated 19 October 2020 Upper Tribunal (Lands Chamber) Practice Directions | Courts and Tribunals Judiciary) advises that costs payable on the standard basis are allowed: "*to the extent that they are reasonable and proportionate to the matters in issue, and any doubt as to whether costs were reasonably incurred or reasonable and proportionate will be resolved in favour of the paying party*."

With regard to the Second Part and Matter 2 of your letter, whilst we are not in a position to comment on the ExA's jurisdiction we would contend that Paragraph 12 of the Award of costs: examinations of applications for development consent orders guidance is very clear: *"For costs purposes, the examination is treated as starting at the beginning of the Preliminary Meeting held under Section 88 of the Planning Act 2008."*

It is a statement of fact that the application was withdrawn prior to the beginning of the Preliminary Meeting and therefore the examination had not commenced.

We are also of the belief that whilst paragraph 12: does not conclusively exclude any type of claim we contend that when read in conjunction with the paragraph that immediately follows: "*Some additional and different considerations apply to compulsory acquisition requests which are dealt with in Part D"* that this paragraph, paragraph 13 clearly sets out the exclusion to paragraph 12.

Additionally, the application was withdrawn as a result of one the key issues identified by the Examining Authority which would result in a material change to the application. At Part C of the Guidance under Paragraph 3, bullet point 8 states: *"….if the application is withdrawn as a clear result of consultation and discussions between the applicant and any interested party and the reason for the withdrawal relates to any of the key issues identified by the Examining Authority prior to the Preliminary Meeting, an award is unlikely to be made in favour of any interested party."*

We have not commented specifically on Matter 3 as we believe that following our comments on the Second Part of the Costs Application and Matter 2 does not warrant it.

LRCH has not disputed Cost Applications made on the grounds of the First Part where validity is a matter of principle and where applications qualify under paragraph 13 and relate to Part D as the Guidance is clear about how Cost Applications made under Part D qualify.

LRCH therefore requests that in making any costs award, the ExA expressly limits the scope of any such costs award as submitted above and follows clearly the Guidance.

Yours faithfully

For and on behalf of

London Resort Company Holdings Limited