

PROPOSED ABLE MARINE ENERGY PARK

IPC REFERENCE: TR030001

STATEMENT OF COMMON GROUND

between

ABLE HUMBER PORTS LTD

and

**THORNGUMBALD INTERNAL DRAINAGE BOARD, KEYINGHAM LEVEL INTERNAL
DRAINAGE BOARD AND OTTRINGHAM INTERNAL DRAINAGE BOARD**

Draft Version 9, dated 16 July 2012

SIGNED on behalf of
Able Humber Ports Ltd

Signature

Signature removed

Position

*DESIGN MANAGER,
ABLE UK LTD.*

Date

19-7-12.

SIGNED on behalf of:
**Thorngumbald Internal Drainage Board,
Keyingham Internal Level Drainage Board;
and
Ottringham Internal Drainage Board**

Signature

Signature removed

Position

Chairman Keyingham Level IDB.

Date

17/7/12

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FIGURE 2: Map identifying Ottringham IDB drains and boundary

FIGURE 3: Map identifying Keyingham IDB drains and boundary

SECTION 1: INTRODUCTION AND SCOPE

Document Structure

1. This SoCG comprises 2 sections:

Section 1: Introduction and Scope

Section 2: Statement of Common Ground between AHPL and Thorngumbald Internal Drainage Board, Keyingham Level Internal Drainage Board and Ottringham Internal Drainage Board.

General

2. On 12 January 2012 the Infrastructure Planning Commission ('IPC') accepted an application ('the application') that was submitted by Able Humber Ports Limited ('AHPL') for a development Consent Order ('DCO') to construct and operate a harbour capable of handling over 5 million tonnes of material per year together with associated works.
3. The application incorporates three geographically distinct areas.
 - a. A harbour and associated industrial development on the south bank of the Humber within the administrative area of North Lincolnshire ('AMEP').
 - b. An intertidal compensatory habitat site on the north bank of the Humber within the administrative area of East Riding of Yorkshire ('the compensation site').
 - c. A wet grassland, Old Little Humber Farm, site also within the administrative area of the East Riding of Yorkshire ('OLHF').
4. This document is the statement of common ground ('SoCG') between AHPL and:
 - a. Thorngumbald Internal Drainage Board,
 - b. Keyingham Level Internal Drainage Board
 - c. Ottringham Internal Drainage Board.

Collectively these are referred to herein as 'the 3 IDBs'.

5. IDBs are long established bodies operating predominantly under the Land Drainage Act 1991 and have permissive powers to undertake work to secure drainage and water level management of their districts and undertake flood risk management works on ordinary watercourses within their districts (i.e. watercourses other than 'main river'). Much of their work involves the maintenance of rivers, drainage channels and pumping stations, facilitating drainage of new developments and advising on planning applications. They also have statutory duties with regard to the environment and recreation when exercising their permissive powers.
6. The areas covered by the 3 IDBs are illustrated in the maps at Figure 1 to 3.

7. The Infrastructure Planning (Examination Procedure) Rules 2010, defines a statement of common ground (SoCG) as, 'a written statement prepared jointly by the applicant and any interested party, which contains agreed factual information about the application'.
8. Section 87 of the Planning Act 2008 provides that when making any decision about how an application is to be examined, the Examining Authority must have regard to any guidance issued by the Secretary of State on how applications for development consent for nationally significant infrastructure projects ('NSIPs') are to be examined. In 2010, the Department for Communities and Local Government issued, 'Planning Act 2008: Guidance for the examination of applications for development consent for nationally significant infrastructure projects'. That guidance provides the following advice on the contents of an SoCG:

'63. The statement of common ground is a written statement prepared jointly by the applicant and the main objectors, setting out the agreed factual information about the application. A statement of common ground is useful to ensure that the evidence at the examination focuses on the material differences between the main parties. Effective use of such statements is expected to lead to a more efficient examination process.'

64. The statement should contain basic information on which the parties have agreed, such as the precise nature of the proposed infrastructure, a description of the site and its planning history. In addition to basic information about the application, agreement can often be reached on technical matters and topics that rely on basic statistical data. For example, traffic evidence can be simplified and the issues refined by agreeing matters such as traffic flows, design standards, and the basis for forecasting the level of traffic the application would generate. The topics on which agreement might be reached in any particular instance will depend on the matters at issue and the circumstances of the case.'

65. As well as identifying matters which are not in real dispute, it may also be useful for the statement to identify areas where agreement is not possible. The statement should include references to show where those matters are dealt with in the written representations or other documentary evidence. Agreement should also be sought before the examination commences about the requirements that any order granted should contain.'

66. How such agreement is reached will vary depending on the nature and complexity of the application and the matters at issue. Where there are only two or three major parties involved and the issues are fairly straightforward, the Examining authority might simply encourage the parties at the preliminary meeting to get together with a view to producing a statement of common ground containing agreed facts. For major applications a more formal arrangement may be necessary, particularly where several parties are expected to bring evidence of a technical nature to the examination.'

67. However, the duty of Examining authority is not simply to accept the statement of common ground or to react to the evidence presented. The role of the Examining authority is to ensure that all aspects of any given matter are explored thoroughly, especially with regard to the matters fundamental to the decision, rather than seemingly accepting the statement of common ground without question.'

68. Consequently, the Examining authority should probe the evidence thoroughly if their judgment or professional expertise indicates that either.'

- *all of the evidence necessary for a soundly reasoned decision has not been put before them or,*
- *that a material part of the evidence they do have has not been adequately tested'*

Pre-Application Consultation

Table 1A: Meetings Held with Thorngumbald Internal Drainage Board, Keyingham Level Drainage Board and Ottringham Drainage Board During the s42 consultation

Date	Present	Matters discussed
24/02/2011	Drainage Boards Representative Black & Veatch	

Table 1B: Meetings Held with the KLDB Following the s42 consultation

Date	Present	Matters discussed	Changes made
26/03/2012	Ralph Ward Chris Martinson John Maston Tudor Williams Giles Johnson David Shepherd David Keiller (B&V)	Black and Veatch specialist gave overview of development and we discussed concerns and IPC application in detail	Pre/Post Monitoring schedule now developed along with a commitment to providing remedy solutions
18/05/2012	Ralph Ward, Chris Martinson John Maston Tudor Williams Charles Maltby David Shepherd Giles Johnson	Relevant Representation, drains at OLHF, flood defence embankment and Stone Creek Outfall	Agreed to work towards an SoCG.
4/07/12	Ralph Ward Chris Martinson John Maston Tudor Williams Charles Maltby M Cook David Shepherd Jonathan Monk	SoCG and how to move forward	As included within this draft

Brief Description of the Site

The AMEP Site

9. The AMEP site, excluding the area of ecological mitigation, covers approximately 265 ha, of which approximately 120 ha is covered by existing consent for port related storage, 100 ha is existing arable land that will be developed for industrial use and 45 ha is reclaimed land from the estuary to provide a new quay. A further 48 ha of existing arable land will be converted to managed grassland to mitigate for the effects of the development on ecological receptors including birds that use the adjacent Humber Estuary SPA.

The Compensation Site

10. The Compensation Site is located on the north bank of the Humber Estuary, within the East Riding of Yorkshire, opposite the AMEP site and some 4 km to the south-west of Keyingham. A new flood defence wall will be constructed landward of the existing flood defence to create a new intertidal area encompassing 100 ha.

Old Little Humber Farm

11. The site is existing agricultural land and will be developed as wet roosting and feeding habitat for SPA bird species.

Brief Description of the Project

12. AMEP comprises a harbour development with associated land development, to serve the renewable energy sector. The harbour will comprise a quay of 1 279 m frontage, of which 1 200 m will be solid quay and 79 m will be a specialist berth. The harbour will be formed by the reclamation of intertidal and sub tidal land within the Humber Estuary.
13. Associated development is detailed in Schedule 1 of the draft DCO and includes dredging and the disposal of arisings within the estuary. Within the district of East Riding of Yorkshire it also includes the development of compensatory environmental habitat at Old Little Humber Farm and at Cherry Cobb Sands.
14. Ancillary matters on the north bank of the Humber will include:
 - the diversion of a footpath that run along the shore of the Humber,
 - the compulsory acquisition of land and rights in land and powers of temporary occupation of land to allow Able to carry out and operate the above development.

Planning History of the Site

The Compensation Site and Old Little Humber Farm

15. There is one extant planning consent within the Old Little Humber Farm but none in the Compensation Site. Details of this and other nearby planning applications approved in the last 15 years are described in Table 3.

Table 3: Extant Planning Consents within and near the Compensation Site (Source: ERYC Public Access for planning applications website)

Planning Ref.	Location	Details	Status
08/01993/STP LFE	Humber Gateway onshore installation	Cross country cable from Easington to Saltend	Granted
96/61327/PLF	8 Cherry Cobb Sands Burstwick East Riding of Yorkshire HU12 9JU	Erection of an attached domestic garage.	Granted
98/00205/PLF	New House Farm Cherry Cobb Sands Road Burstwick East Riding of Yorkshire HU12 9JX	Erection of a general purpose agricultural storage building.	Granted
04/02377/PLF	Little Humber Farm Thorngumbald Road Paull East Riding of Yorkshire HU12 8AY	Erection of a replacement dwelling (renewal of planning permission 98/02287/PLF)	Granted
05/02858/PLF	Thorn Marsh Cottage Bellcroft Lane Thorngumbald East Riding Of Yorkshire HU12 9JR	Erection of a single and two storey extension	Granted
11/02438/OHL	OHL Replacement North West Of Little Humber Farm Newlands Lane Paull East Riding Of Yorkshire	Erection of 2no. additional poles for overhead line	No objections

Summary with reference to Environmental Statement

16. The project comprises Schedule 1 development in accordance with Regulation 2(1) of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) ('the EIA Regulations). Accordingly, the application to the IPC in respect of AMEP included an Environmental Statement (ES) and the ES referred to in this SoCG is the document accepted by the IPC on 12 January 2012.

17. In accordance with Schedule 4 of the EIA Regulations, the ES provides:

'(a) description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long- term, permanent and temporary, positive and negative effects of the development, resulting from:

(a) the existence of the development;

(b) the use of natural resources;

(c) the emission of pollutants, the creation of nuisances and the elimination of waste,

and the description by the applicant of the forecasting methods used to assess the effects on the environment.'

18. The likely significant effects of the project were initially identified by AHPL in a Scoping Report accepted by the IPC on 13 September 2010. The IPC subsequently issued their Scoping Opinion on 27 October 2010 following consultation prescribed consultees. It is agreed, nevertheless, that the Scoping Opinion does not limit the effects of the project that are to be considered and that all likely significant effects need to be assessed.
19. Chapters 1-3 of the ES provide a brief introduction to the project, the EIA process and the overall planning framework relating to the application. Since the completion of the ES, national planning policy has changed significantly with the publication of the National Planning Policy Framework. This publication, inter alia, revoked all Planning Policy Statements and Planning Policy Guidance documents.
20. Chapters 4 and 28, 5 and 29, and, 6 and 30 of the ES provide, respectively: a detailed description of the project; an explanation of why the project is needed and a review of the alternative sites considered by the applicant.
21. Chapters 7-24 of the ES report on the significant environmental effects of the proposed development on the south bank of the River Humber, while chapters 31-43 report on the significant effects of the proposed development on the north bank of the river. Each chapter of the ES addresses a specific environmental issue and provides:
 - d. A review of the specific planning policy context relating that the topic;
 - e. A record of the existing baseline conditions;
 - f. Identification of the receptors that are likely to be affected by the proposed development;
 - g. An assessment of the impact of the development alone on the receptors taking into account baseline conditions;
 - h. An assessment of the impact of the development cumulatively with the impacts of other projects that are not yet implemented but for which planning permission has been granted, or other projects for which an application for consent has been submitted.
 - i. Proposed mitigation measures where the impact of the development when added to the baseline is sufficient to have an effect on a receptor that is significant.
22. 'Baseline' means the assessment of the current situation at each location. 'Impact' means the impact of the construction and operation of AMEP and the compensation site. 'Receptor' is any component of the environment (population, flora, fauna, water, air, soil, geology, geomorphology, heritage and landscape), whether specifically protected by statute or not. 'Mitigation' means the measures that are proposed in the ES to reduce the impacts to a lower level than would otherwise occur.

23. The structure of the SoCG that follows, considers, only those chapters of the ES that are relevant to the interests of the 3 IDBs

**SECTION 2: STATEMENT OF COMMON GROUND BETWEEN AHPL AND THORNGUMBALD
INTERNAL DRAINAGE BOARD, KEYINGHAM LEVEL INTERNAL DRAINAGE BOARD; AND
OTTRINGHAM INTERNAL DRAINAGE BOARD.**

Introduction

24. The Thorngumbald Internal Drainage Board, Keyingham Level Internal Drainage Board and Ottringham Internal Drainage Board ('the 3 IDBs') agree that given their statutory interests and responsibilities, the impact of the project assessed in chapter 36 and its annex are the limits of their interest.

Chapter 36 Drainage and Flood Risk

General

25. Chapter 36 provides an assessment of the impacts of the Compensation Site on drainage and flood risk to determine whether, and if so how, the Compensation Site will affect the hydrology, surface water drainage and flooding of the site and its surrounds.

Baseline

26. It is agreed that the information in Section 36.5 describes the existing surface water drainage system at Cherry Cobb Sands and Old Little Humber Farm
27. It is agreed that the 3 IDBs have recently taken over the responsibility for a temporary dredging programme, part funded for 5 years by the Environment Agency and East Riding of Yorkshire Council, to alleviate the existing siltation issue.

The Works at Cherry Cobb Sands

1. It is proposed that a new set-back tidal flood defence embankment be constructed from material within the site and then the existing embankment will be breached. Within the intertidal area, ground levels will be re-contoured to provide new habitat of functional value to wildfowl and wading birds as well as other flora and fauna. A soke dyke will be created on the landward toe of the embankment to collect any seepage.
2. It is agreed that the design of the flood defence bank should comply with the "Technical Guidance to the National Planning Policy Framework" (March 2012) in order to provide protection for a 1 in 200 year flood event.

Receptors

3. Possible receptors:
 - a. Houses and Farmland flooded if Stone Creek Silts up due to the development.
 - b. Houses and farmland flooded if new flood defences fail

Direct Impacts

4. It is agreed that the proposals do not directly impact or affect the maintenance of drains before they outfall into Stone Creek.

Indirect Impacts

5. It is agreed that Stone Creek is currently maintained by dredging (last undertaken in 2008 and next planned for early 2013) in order to ensure the free discharge of surface water from:
 - Cherry Cobb Sands Drain – responsibility of The Crown Estate
 - Keyingham Drain – responsibility of Keyingham Level Internal Drainage Board
 - Ottringham Drain - responsibility of Ottringham Internal Drainage Board, and;
 - Sunk Island Drain – responsibility of The Crown Estate
6. It is agreed that the possibility of siltation rates at Stone Creek being affected by the Cherry Cobb Sands development cannot be excluded.
7. It is agreed that the impact of increased siltation at Stone Creek could have a negative impact on local land drainage and flooding by preventing free drainage at the outfalls.

Mitigation

8. It is agreed that the risk of increased siltation preventing the free outfall of surface water into Stone Creek can be mitigated by implementing an appropriate Monitoring Plan. The Monitoring Plan will be agreed with the Environment Agency, EYRC and the 3 IDB's. AHPL understands the IDB's will procure external support from Design / Engineering Consultants in relation to agreeing the Monitoring Plan. AHPL is prepared to make a contribution towards these costs to a maximum limit of £2,000. AHPL will reimburse the IDB's retrospectively upon the provision of verified receipts demonstrating that costs have been defrayed.
9. It is agreed that AHPL will undertake the monitoring and report to the drainage boards.
10. It is agreed with the 3 IDBs that the implementation of these mitigation measures would result in no residual significant negative impact on the drainage network.
11. By studying historic siltation and rainfall rate data at Stone Creek outfall, an average rate of siltation will be identified to provide a baseline for the assessment of the future impact that Cherry Cobb Sands has on the outfall.
12. If the development of Cherry Cobb Sands is found to be causing siltation above the baseline AHPL agrees to make a proportional contribution towards the routine dredging activity i.e. if the siltation rate increases by 20% as a direct result of the Cherry Cobb Sands development, AHPL will contribute 20% towards the routine dredging costs..

FIGURES

- Figure 1 : Thorngumbald IDB drains and boundary
Figure 2: Ottringham IDB drains and boundary
Figure 3: Keyingham IDB drains and boundary

FIGURE 1

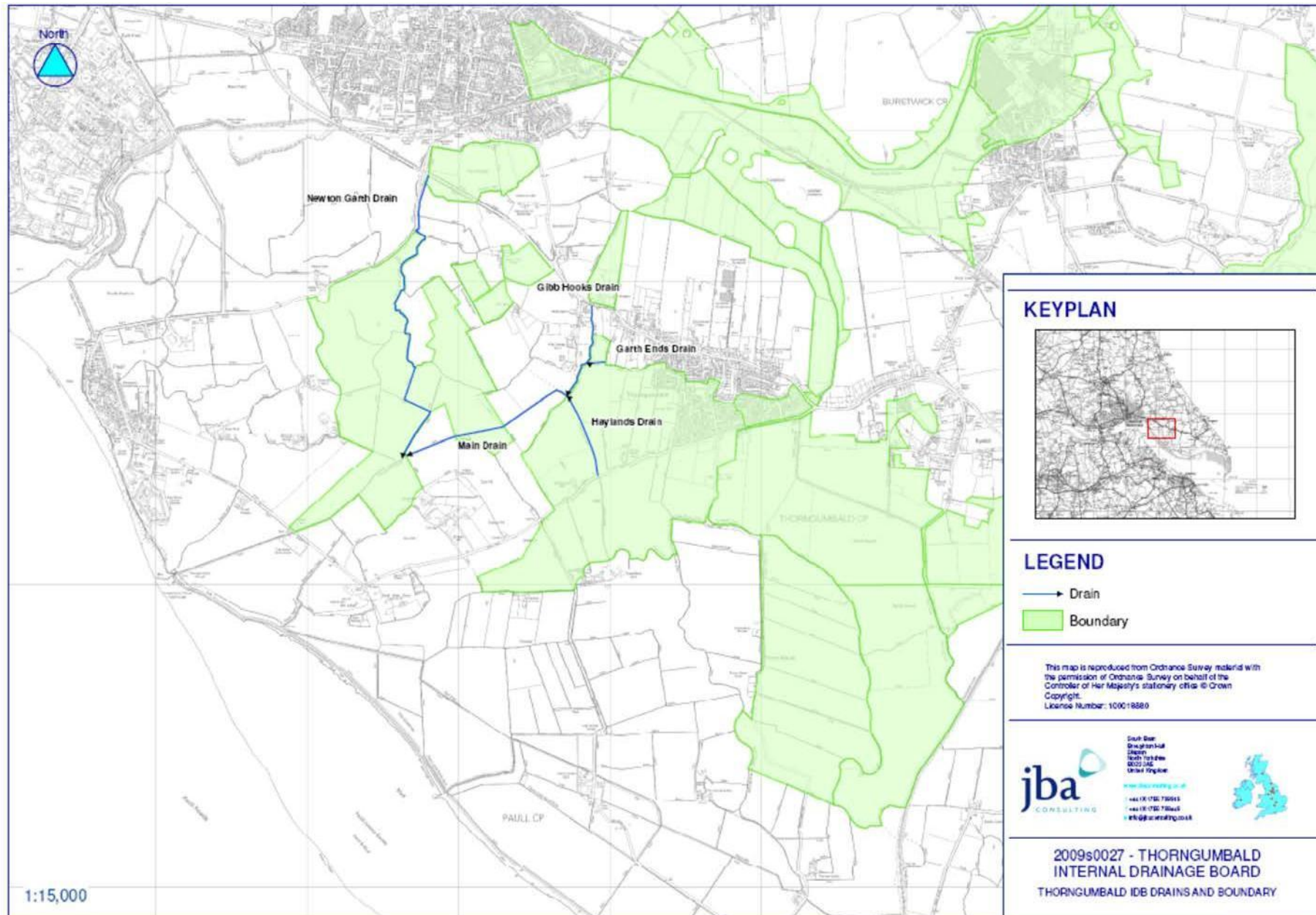


FIGURE 2

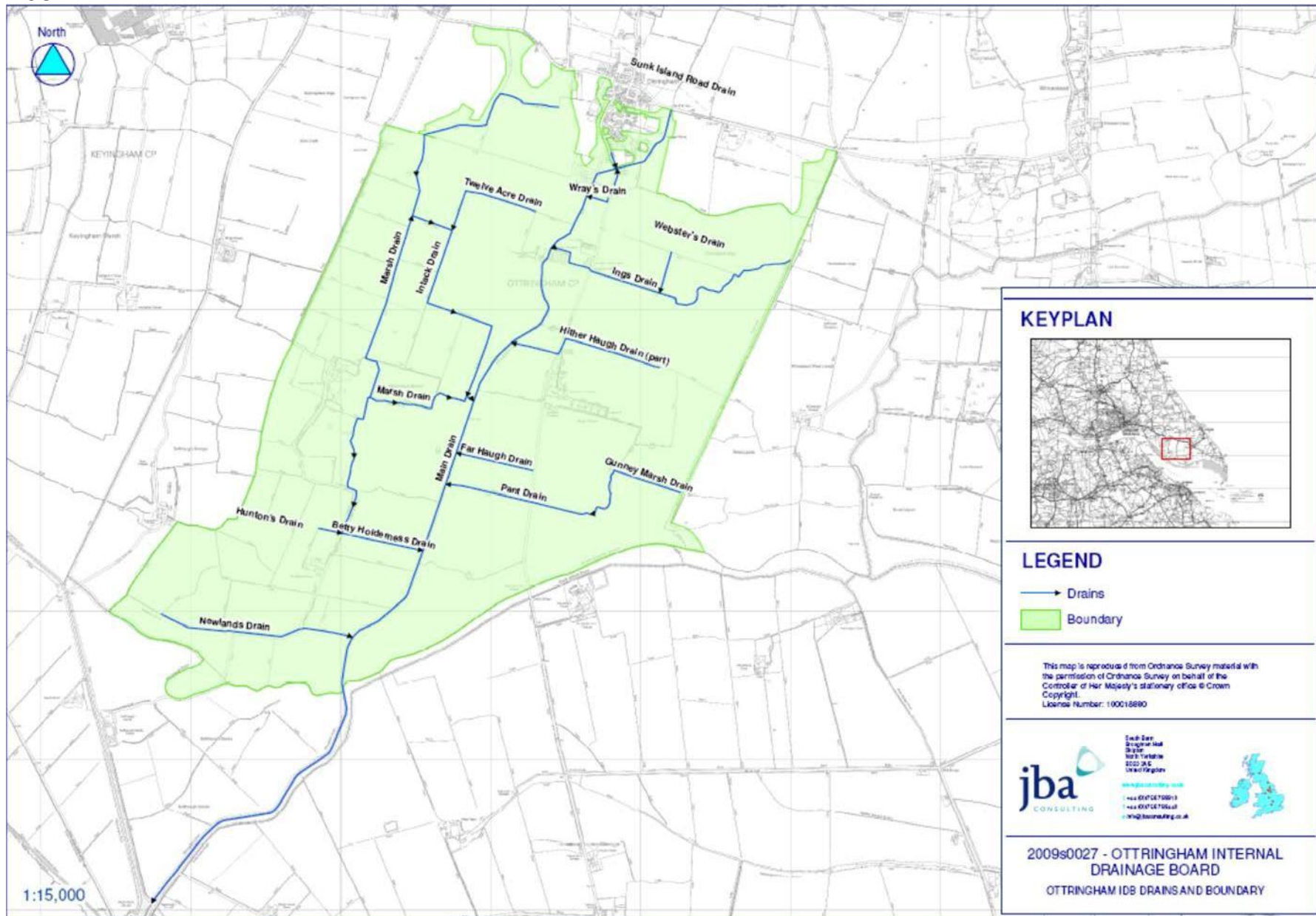


FIGURE 3

