



# **Able Marine Energy Park**

## *Statement of Reasons*

01 December 2011  
Revision: 0  
Bircham Dyson Bell

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### **1 Summary**

- 1.1 This Statement of Reasons (“the Statement”) has been prepared on behalf of Able Humber Ports Ltd (“Able”). It relates to the application for a development consent order (“DCO”) by Able to the Infrastructure Planning Commission (“the IPC”) under the Planning Act 2008 (“the Act”) for their proposal for powers to construct and operate a new quay with associated onshore facilities (collectively referred to as the Able Marine Energy Park, “AMEP”) on the south bank of the River Humber, north of Immingham, in North Lincolnshire, together with a compensatory environmental habitat on the north bank of the Humber (“the Compensation Site”), in the East Riding of Yorkshire.
- 1.2 The Statement has been prepared in compliance with the requirements of Regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (“the APR 2009”) and the “Planning Act 2008: Guidance related to procedures for compulsory acquisition” produced by the Department of Communities and Local Government (“the Guidance”).
- 1.3 This Statement forms part of the suite of documents accompanying the application submitted in accordance with section 55 of the Act and Regulation 5 of the APR 2009. The Statement has been submitted because it is necessary to acquire land, create new rights over land and to override existing rights over land for the purposes of the proposed AMEP and the Compensation Site, to enable AMEP to be built.
- 1.4 This Statement seeks to justify the compulsory acquisition of land sought in the draft DCO and in particular seeks to show why there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition within the DCO.

### *The requirement for a Statement of Reasons*

1.5 Annex 2 of the Guidance details what the Statement should include as follows (suitably adapted and supplemented according to the particular DCO application):

- a brief description of the land to be subject to compulsory acquisition and its location, topographical features and present use;
- an outline of the promoter's purpose in seeking to acquire the land, including brief details of the wider project for which development consent is sought;
- a statement of the promoter's justification for compulsory acquisition, including how regard has been given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights, and Article 8 if appropriate;
- the details of any reference to the land in a national policy statement, or if none, details of any other views which may have been expressed by a Government department about the proposed development of the order site;
- a description of the proposals for the use or development of the land;
- any special considerations affecting the land to be compulsorily acquired, e.g. ancient monuments, listed buildings, conservation areas, special category land, consecrated land, renewal areas, etc.;
- details of how the promoter intends to overcome any obstacle or prior consent needed before the order scheme can be implemented, such as the need for an operational licence; and
- any other information which would be of interest to someone affected by the order, such as proposals for re-housing displaced residents or for relocation of businesses, and addresses, telephone numbers, websites and email addresses where further information on these matters can be obtained.

### *Statement structure*

1.6 In particular consideration of Annex 2 of the Guidance, this Statement includes:

- at section 2, a description of the AMEP project proposals, including the location and description of the land required to undertake the proposals ("the DCO Land");
- at section 3, an outline of the background and purposes for which the compulsory acquisition powers are required;
- at section 4, the statutory powers to be used to acquire the DCO Land;
- at section 5, the justification for using compulsory powers to acquire the DCO Land;
- at section 6, related applications, orders etc (Crown Land, EA permits etc);
- at section 7 special categories of land; (Crown Land)
- at section 8, Human Rights Act considerations; and
- at section 9, conclusions.

## **2 Location and description of the land required to undertake AMEP**

### ***Brief outline of the AMEP proposals***

- 2.1 In brief, the proposed project comprises AMEP, a harbour development on the south bank of the Humber, with associated onshore development, together with the Compensation Site, compensatory environmental habitat on the opposite bank. The harbour will comprise a quay and will include the reclamation of intertidal and sub-tidal land within the Humber Estuary.
- 2.2 Associated development will include:
- (i) the provision of onshore facilities for the manufacture, assembly, storage and installation of wind turbines and related items;
  - (ii) dredging of an area of the Humber in front of the new quay and its approach;
  - (iii) any necessary upgrade works to surrounding roads (Humber Road and Rosper Road);
  - (iv) the diversion of existing drainage ditches and the creation of new drainage ditches;
  - (v) the provision of mitigation environmental habitat on the south bank of the Humber; and
  - (vi) the provision of compensatory environmental habitat on the north bank of the Humber.
- 2.3 Ancillary matters will include:
- (i) the diversion of two footpaths that run along the south and north shores of the Humber respectively;
  - (ii) the conversion of a railway into a private siding;
  - (iii) the interference with rights of navigation;
  - (iv) the creation of a harbour authority;
  - (v) a deemed marine licence under the Marine and Coastal Access Act 2009;
  - (vi) the modification of public and local legislation; and
  - (vii) 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.

### ***Site Location***

- 2.4 The site for the proposed AMEP development is located on south bank of the Humber Estuary. It is surrounded by industrial development on all three land sides: the

Humber Sea Terminal to the north, an E.ON power station, a Conoco Philips CHP plant and a Total oil refineries to the west and the South Killingholme Oil Jetty and Ministry of Defence site to the south. The centre of the site has an approximate grid reference of TA170 183.

- 2.5 The proposed industrial site covers approximately 223 ha of existing terrestrial land and 45 ha of the existing estuary. Around 122.4 ha of the site's terrestrial area is currently developed or has extant planning permission for port related storage; a large area of this land, to the north and north-west of the site, is currently used for the storage of imported cars. A railway line passes through the site, and a redundant sewage works can be found along the western boundary of the site. Former clay pits to the north of the site, which are now flooded, are classified as a Site of Special Scientific Interest (SSSI). A raised embankment along the eastern boundary acts as a flood defence wall and protects the site from tidal flooding.
- 2.6 The site for the proposed permanent compensatory habitat is currently agricultural land. Its centre has an approximate grid reference of TA220208. A new flood defence bund will be built around approximately 100 ha of the site, and the existing bund will be breached to allow the land to flood and become intertidal. The whole site covers approximately 115 ha. A further area of 38ha at Old Little Humber Farm will be developed as wet grassland and will act as a temporary compensation site until the permanent habitat is ready. Its centre has an approximate grid reference of TA204244.
- 2.7 The proposed AMEP site is approximately 4km northwest of Immingham and approximately 11km north-west of Grimsby. The nearest communities are located in the villages of East Halton, North Killingholme and South Killingholme, with a few isolated individual houses on the boundaries of the site. The main Compensation Site is near some farms, and the nearest settlement, Keyingham, is around 5km away. The Old Little Humber Farm site is around 2km from Thorngumbald.
- 2.8 The AMEP site is wholly within the administrative boundary of North Lincolnshire Council, approximately 1.2km from its border with North East Lincolnshire Council's area. The main and temporary Compensation Site is wholly within the administrative boundary of the East Riding of Yorkshire Council. All three are unitary authorities.

***Description of the land to be subject to compulsory acquisition***

- 2.9 The land to be subject to compulsory purchase powers is fully set out in the land and rights plans and the Book of Reference accompanying the application. The land can be described in general terms as follows.
- 2.10 The largest area of land – approximately 268 ha – is onshore land on the South Humber Bank that will house wind farm manufacturing and assembly facilities, and 48.5 ha of environmental mitigation land. That which is not already owned by Able consists of fields, hedgerows and some trees. There is also a private road crossing the land, where the freehold will be acquired but the private rights to use the road for any users whose land is not being acquired, will be re-granted in the same form. Other than three residential properties, which are being acquired due to their proximity to

the proposed development, there are no buildings on the land, although some utility infrastructure crosses it, as follows:

- (i) a cooling water pipeline and cables owned by Centrica that will be left in situ;
- (ii) a second cooling water pipeline owned and cables by E.ON that will be left in situ;
- (iii) a drainage ditch for which the North East Lindsey Drainage Board is responsible, a new pumping station will be constructed and the drain diverted to it;
- (iv) a railway that will be left in situ, although it will be taken out of the national railway network and become a private siding;
- (v) oil pipelines that will be left in situ;
- (vi) an overhead power line and single pylon that will be left in situ;
- (vii) Anglian Water brine and sludge outfalls that will be diverted under separate arrangements.

2.11 The next largest area of land is the Compensation Site on the north bank. The main site is currently agricultural land owned by three different farmers, and is about 115 ha in extent. The temporary site is around 38 ha and is already owned by Able.

2.12 The third main area of land comprises the foreshore and part of the Humber Estuary that will house the quay and will be dredged around the quay. The land to house the quay is about 45 ha in extent and the dredged area is around 65 ha. The land consists of intertidal mudflat and sub-tidal land, and is part of the Humber Estuary SPA/SAC. The project will therefore undergo appropriate assessment under the Habitats Regulations.

2.13 Finally there are additional small areas of land that will be subject to permanent acquisition or temporary occupation, as follows:

- (i) land occupied by the railway mentioned above from the north of the site to the point at which a railway track is no longer laid (this is the land for permanent acquisition);
- (ii) land consisting of the junction of Rosper Road and Humber Road and the junction of the latter with the A160/A1173, and a sewage treatment works adjacent to Rosper Road. This is to be occupied temporarily for highway works and sewage treatment works.

2.14 Around 40 landowners are listed in the Book of Reference; those with the greatest amount of land being acquired are Total Oil and ABP, and the Crown Estate on the north bank.

### **3 Background and purpose in seeking compulsory acquisition powers**

### ***Able UK Ltd***

- 3.1 Able is a development company operating from its headquarters on Teesside. It has been in operation for 40 years and, in that time, has engaged in extensive development, land remediation and reclamation, demolition, waste disposal and port operation.
- 3.2 The South Humber Bank is one of the last remaining strategic development sites fronting a deep water estuary in the UK and comprises the largest employment land allocation in the Yorkshire and Humberside region. It is attracting significant global development interest, with a predicted £3 billion of investment potential over the next ten years.
- 3.3 Able has a considerable land holding on the South Humber Bank, totalling approximately 819 ha and has the benefit of extensive frontage directly onto the River Humber. The land holding is less than 2 km from Immingham Port, the UK's largest port by tonnage and, given its central UK location, it represents a significant resource of national significance.
- 3.4 The proposed AMEP will be developed on the southern part of the Able land holding, which is closest to the shore. The AMEP site includes 122.4 ha of AHP land that is currently developed or has the benefit of planning permission for port related storage.

### ***Able's Objectives for AMEP***

- 3.5 The UK is under an EU obligation to produce 15% of its energy from renewable sources by 2020. Under the UK government's Renewable Energy Plan, most of this will be achieved through generating electricity from renewable sources, with the aim of producing about 30% of electricity this way by 2020.
- 3.6 The largest single contribution from new renewable electricity generation is to be achieved through offshore wind power (see paragraph 3.4.3 of the Overarching Energy National Policy Statement, EN-1), which describes the need for new electricity generation as '*urgent*' (paragraph 3.3.15).
- 3.7 The required scale of offshore wind infrastructure will only be delivered through a consequent increase in port capacity that is designed to handle it. The Department for Energy and Climate Change issued a 'Ports Prospectus' in 2009 that identified Able's site as the largest suitable site on the east coast of the UK. More details about the National Policy Statements and the Ports Prospectus are given in what follows.
- 3.8 One of the objectives for AMEP is to supply the port capacity that is capable of delivering a large quantity of offshore wind turbines, minimising the journeys taken by materials and finished products by concentrating as much of the supply chain as possible at the same site, and regenerating a depressed area of the UK.

### ***Justification and need***

#### ***Energy Policy***

- 3.9 In July 2009, the UK Government published *The UK Renewable Energy Strategy*, which sets out the path for meeting the legally binding target established by the Renewable Energy Directive, 2009/28/EC. The strategy sets a target for producing more than 30 per cent of electricity from renewable sources by 2020, up from 5.5 per cent in 2009. It establishes that most of this renewable energy will derive from onshore and offshore wind power, with biomass, hydro wave and tidal also playing an important role.
- 3.10 In 2009, the Department for Energy and Climate Change (“DECC”) completed a full Strategic Environmental Assessment of offshore energy and concluded that 25 GW of new offshore wind farm development (“Round 3 sites”) would be acceptable in addition to existing plans for 10.2 GW of offshore development (“Rounds 1 and 2 sites”). Such an increase in offshore wind farm development will require significant investment in the infrastructure relating to the manufacture, assembly and installation of offshore wind energy.

#### *NPS for Ports*

- 3.11 The National Policy Statement (NPS) for Ports, expected to be designated on 30 November 2011, recognises the need for port development to support the offshore renewable energy sector through the provision of facilities to construct and transport components to the offshore sites. The NPS for Renewable Energy Infrastructure also recognises that offshore wind farms are expected to make up a significant proportion of the UK’s renewable energy capacity up to 2020 and towards 2050.

- 3.12 The NPS notes that:

*“despite the recent recession, the Government believes that there is a compelling need for substantial additional port capacity over the next 20–30 years, to be met by a combination of development already consented and development for which applications have yet to be received.”<sup>1</sup>*

- 3.13 It also states that *“when determining an application for an order granting development consent in relation to ports, the decision-maker should accept the need for future capacity to .... support the development of offshore sources of renewable energy”<sup>2</sup>*

#### *Overarching Energy NPS*

- 3.14 The Overarching Energy NPS was published in July 2011. This declares the need for all forms of electricity generation to be ‘urgent’. Thus there is the clearest signal from the government that renewable electricity generation is needed as soon as possible. The proposed AMEP would deliver a significant proportion of the offshore wind element of this urgently needed generating capacity.

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<sup>1</sup> Ports NPS, Paragraph 3.4.16

<sup>2</sup> Ports NPS, Paragraph 3.5.1



## *Renewable Energy NPS*

- 3.15 The NPS on renewable energy infrastructure was also published in July 2011. The proposed AMEP is designed specifically to support the implementation of Government policy on offshore wind energy.

## *UK Offshore Wind Ports Prospectus*

- 3.16 DECC issued its UK Offshore Wind Ports Prospectus (“the DECC Prospectus”) in September 2009, listing potential port capacity that could supply the offshore windfarm sites. Of the potential facilities identified, the proposed AMEP has the benefit of being the largest in terms of availability of onshore land. Large scale development is necessary if a large supply chain is to operate at a single site and thus deliver maximum renewable energy and environmental benefits.
- 3.17 The proposed AMEP site was identified in the DECC Prospectus as being:
- “... an ideal location for development for both offshore construction and manufacturing. It is located centrally on the east coast with good existing links and it is envisaged that the development will include new quays specified to meet the occupier’s requirements”<sup>3</sup>*
- 3.18 Without a single manufacturing and delivery hub such as AMEP, the required quantity of offshore wind energy infrastructure is unlikely to be delivered from within the UK. The *Ports Prospectus* shows that the site for the proposed AMEP is of the most suitable size and location on the east coast of the UK. The need for AMEP to be as large as possible is therefore compelling.
- 3.19 There are constraints on the size of the quay that can be accommodated, given that the site sits between two existing harbours: the Humber Sea Terminal and the South Killingholme Oil Jetty, and is also close to cooling water outflows for two power stations. Having consulted its neighbours, Able considers that the largest length of quay that can be practicably accommodated without affecting the quays or power stations is 1 279 m.
- 3.20 The question that remains for the purposes of land acquisition is therefore what appropriate amount of onshore land is required to support a quay of that length.
- 3.21 Able commissioned BVG Associates, who also produced *UK Ports: A Time to Act* for the government, to consider this question. It is assumed that the quay will be divided into six 200 m berths; an additional berth is proposed for specialist vessels that can transport fully assembled offshore wind turbines. For the purposes of the assessment it is assumed that four of the quay berths and the specialist berth will be used as construction quays for wind turbines, one quay berth will be used for turbine foundations and one for general import and export of required or surplus parts or raw materials. The actual configuration may vary depending upon economic factors and the operational decisions of developers and manufacturers.

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<sup>3</sup> Page 11 of the UK Offshore Wind Ports Prospectus, DECC September 2009.

- 3.22 Based on installation rates achieved by the industry it is estimated that a single berth can handle the assembly and export of around 100 complete wind turbines each year. The five proposed berths for OWTs would therefore have the capacity to handle around 500 complete units per annum.
- 3.23 BVG Associates calculated that 10-15ha of manufacturing space is needed to produce 200 nacelles per year; 20-25ha to produce 200 blade sets and 20-25ha to produce 200 towers. 2-4ha would be needed for smaller components and 5-6ha for nacelle covers. In addition each berth needs approximately 5ha of land for storage and component assembly.
- 3.24 Given that another objective is to create a significant socio-economic benefit for a relatively deprived region of the UK, many of the component parts of the exported turbines are proposed to be manufactured on the site, the indicative AMEP proposal provides for the production of 600 nacelles (30-45ha), 400 towers (40-50ha) and 300 blade sets (40-50ha) per year. In addition to this, a foundation factory (20ha) and several supply chain factories (35ha) are also proposed as well as an overflow storage area (20ha).
- 3.25 Allowing for around 15 percent of the land area to be needed for roads, drainage ditches, boundary fencing, landscaping and other infrastructure between 217ha and 258ha would be required. This therefore justifies the 223ha that is to be provided, it enables a substantial proportion of the quay handling capacity (in relation to OWTs) to be manufactured and assembled on the site with the balance to be imported and any surplus to be exported.
- 3.26 The remainder of the land requirement is to mitigate and compensate for the loss of, or disturbance to, habitat that is part of a Natura 2000 site and the consequential impacts on its features of interest that will arise from the construction of the quay.
- 3.27 Able has sought advice from Natural England as to the appropriate amount of mitigation (i.e. on-site) and compensation (i.e. off-site) land and will only acquire as much land as it is advised. In accordance with the advice received, Able has included 48.5 ha of mitigation land within the AMEP development and 100 ha of intertidal compensation land and 38 ha of terrestrial compensation land.

#### *Enterprise Zone Status*

- 3.28 In August 2011 the UK Treasury granted Enterprise Zone (EZ) status to what it has described as the Humber Estuary Renewable Energy Supercluster. The principal aim of this EZ is to incentivise large-scale manufacturers to locate at AMEP, through the provision of Enhanced Capital Allowances (ECAs). The ECA EZ encompasses 248 hectares of AMEP and is the largest site of its type in the UK. A further 25 hectares, also within the EZ, will provide Rate Relief for companies locating within the AMEP supplier park. In addition to the financial incentives, the area is also designated as a 'Special Planning Zone'. This demonstrates the recognition by the Government of a need for development of renewable energy infrastructure in the EZ area. This need would be fulfilled in part by the AMEP project.

## 4 Statutory Powers

### *Requirement for a DCO*

- 4.1 The application must be made under the Planning Act 2008 because the quay, once built, will be capable of handling 5 million tonnes of cargo per year, making it a ‘nationally significant infrastructure project’ by virtue of section 24(3)(c) of the Act.
- 4.2 It is noted that the Planning Act threshold is calculated on what a harbour is ‘*capable of handling*’. Evidence of the expected capacity of the quay is provided by the project engineers, Hochtief, as one of the application documents.

### *Associated Development*

- 4.3 In accordance with section 115 of the Act, development consent may be granted for development which is:

*“(a) development for which development consent is required; or*

*(b) associated development”.*

- 4.4 Pursuant to section 115(2) of the Act, “associated development” is development which: (a) is associated with the development for which development consent is required (or any part of it); (b) is not the construction or extension of one of more dwellings; and (c) is wholly within England or in waters adjacent to England up to the seaward limits of the territorial sea. It includes development in the field of energy in a Renewable Energy Zone.
- 4.5 The Act provides that it is for the IPC to decide whether development is associated development, but in doing so it must have regard to the provisions of section 115 of the Planning Act 2008 and to any guidance issued by the Secretary of State. Such guidance is published as “*Guidance on Associated Development: Applications to the Infrastructure Planning Commission*” (“the CLG Guidance”), which was issued by CLG in September 2009. In exercising its discretion on what may be considered as associated development, the IPC must take account of the CLG Guidance.
- 4.6 Paragraph 10 of the CLG Guidance contains associated development principles. These include that associated development “should be subordinate to and necessary for the development and effective operation to its design capacity of the NSIP”. Further, that associated development is expected to include:
- “measures necessary to mitigate the impacts of the primary development;
  - innovative development ideas where the resulting development would fulfil the principles outlined in the [CLG] Guidance”.
- 4.7 The CLG Guidance also indicates that development “should not be treated as associated development if it is actually an integral part of the NSIP”
- 4.8 The associated development for which the draft DCO for this project seeks authorisation includes:

- dredging and land reclamation associated with the construction and operation of the quay (the quay itself being the ‘nationally significant infrastructure project’);
- the provision of onshore facilities for the manufacture, assembly, storage and installation of wind turbines and other marine energy items;
- any necessary upgrade works to surrounding roads;
- the reconfiguration of on-site drainage and a new drainage outfall; and
- the creation of a compensatory environmental habitat on the north bank of the Humber.

4.9 The above matters fall within the examples of associated development provided within Annex A of the CLG Guidance and also comply with the principles contained in paragraph 10 of the CLG Guidance and with the requirements of the Act in Section 115.

#### *Compulsory acquisition of land*

4.10 In order to construct and operate the nationally significant infrastructure project – the quay – and the associated development set out above, it will be necessary to acquire compulsorily the land described in section 2 of this Statement that cannot be acquired by agreement.

### **5 Justification for powers of compulsory acquisition**

5.1 Section 122 of the Act provides that an order granting development consent may only authorise compulsory acquisition if the decision maker is satisfied that two conditions are met.

5.2 The first condition requires one of three criteria to be met, as follows:

- (i) the land is required for the development to which the consent relates; or
- (ii) is required to facilitate or is incidental to the development; or
- (iii) is replacement land to be given in exchange for land which is open space or common land.

5.3 The second condition is that there is a compelling case in the public interest for compulsory acquisition.

5.4 The Guidance makes clear that, in order for the decision-maker to identify which of the three criteria in the first condition is relevant, s/he must be in no doubt as to the particular purposes for which any land is to be compulsorily acquired<sup>4</sup>. For example, for criterion (i) to be met, the promoter should be able to demonstrate that the land is needed for the development for which consent is sought and that the land to be acquired is no more than is reasonably required for the purposes of the development<sup>5</sup>. And for criterion (ii) to be met the decision maker will need to be satisfied that the

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<sup>4</sup> CLG Planning Act 2008: Guidance related to procedures for compulsory acquisition, paragraph 23

<sup>5</sup> CLG Planning Act 2008: Guidance related to procedures for compulsory acquisition, paragraph 24

land to be taken is no more than is reasonably necessary for the purpose it is being acquired for and is proportionate<sup>6</sup>.

- 5.5 The Guidance also identifies that for condition ii) to be met, the decision maker will need to be persuaded that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired. The Guidance notes that Parliament has always taken the view that there must be clear evidence that the public benefit will outweigh private loss<sup>7</sup>.
- 5.6 Furthermore the Guidance states that any compulsory acquisition provisions in a DCO must be fully justified in their own right against the two conditions in section 122 of the Act<sup>8</sup>
- 5.7 The Guidance sets out the following general matters which a promoter of a nationally significant infrastructure project must be able to demonstrate to the satisfaction of the decision maker so as to justify an order granting development consent:
- (i) that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored;
  - (ii) that the proposed interest in the land is for a legitimate purpose and is necessary and proportionate;
  - (iii) that it has a clear idea of how it intends to use the land which it is proposing to acquire;
  - (iv) that there is a reasonable prospect of the requisite funds becoming available; and
  - (v) that the purposes for which an order authorises the compulsory acquisition of land are legitimate and sufficiently justify interfering with the human rights of those with an interest in the land affected.
- 5.8 In consideration of the two conditions and of the general considerations outlined at (i) to (v) immediately above, Able would say as follows:

### **Condition 1**

*The land is required for the development to which the consent relates*

- 5.9 For the purposes of AMEP, the relevant criterion is criterion (i) – the land is required for the development to which the consent relates.

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<sup>6</sup> CLG Planning Act 2008: Guidance related to procedures for compulsory acquisition, paragraph 25

<sup>7</sup> CLG Planning Act 2008: Guidance related to procedures for compulsory acquisition, paragraph 28

<sup>8</sup> CLG Planning Act 2008: Guidance related to procedures for compulsory acquisition, paragraph 29

- 5.10 The vast majority of the land subject to compulsory purchase on the south bank of the River Humber falls under this category. Other than some land for environmental mitigation, some to acquire three residential properties and the acquisition of the railway, all the land that is to be permanently acquired will be used for the quay or the onshore manufacturing facilities. There is also some land that will be occupied temporarily for associated infrastructure works such as flood defence works, road improvements and a sewage treatment upgrade.
- 5.11 The following table sets out the use that each parcel of land to be acquired or temporarily occupied is intended to be put. The parcels are shown as numbered on the land and rights plan and in the Book of Reference.

Quay	08001 (part), 09001 (part)
On-site manufacturing and storage	03003 (part), 03004 (part), 03005 - 03012, 03016 - 03023, 04002, 04003, 04005 - 04013, 04015 - 04024, 04026 - 04032, 05002 - 05022, 05029 - 05042, 08001 (part), 09001 (part)
Environmental mitigation	02002 - 02007, 03002-03004 (part), 05044, 06006
Residential properties to remain unoccupied	03012, 03024, 03025
Highway and sewage works	01001, 01002, 01003, 02001, 03001, 04001, 05001, 06001, 06002, 06003, 06004
Flood defence works	02009, 02010, 02011, 02012, 02013, 03026, 03027
Railway	02008, 03013, 03014, 03015, 04004, 04014, 04025, 05023, 05024, 05025, 05026, 05027, 05028, 07001
Capital dredging	08001 (part) and 09001 (part)
Compensation site	10001 - 10007, 11001 - 11004, 12001 - 12007, 13001 - 13004, 14001 - 14009

*The land is required to facilitate or is incidental to the development*

- 5.12 The on-site environmental mitigation, the intertidal Compensation Site and the acquisition of three residential properties are required to facilitate the development – without them the harm to the Natura 2000 Humber Estuary site and to the residents of those properties, respectively, would be unacceptable. The railway that crosses the site is to be acquired to allow the site to operate as a whole. The remainder of the track to the north of the site is also acquired so that the railway can be treated as a single unit and rights to use it can be agreed between Able and Humber Sea Terminal (the two parties that would benefit from using the railway).
- 5.13 All of the land subject to compulsory purchase and detailed in the Book of Reference on the north bank of the River Humber also falls into this category, as does the land on the south bank for environmental mitigation..

## Condition 2

*There is a compelling case in the public interest for compulsory acquisition*

- 5.14 There is a compelling case in the public interest for the land described in the application plans and Book of Reference not already owned by Able to be acquired.
- 5.15 This follows on from the need for the development set out at paragraphs 3.9 to 3.27 above. There is an urgent need in the public interest for renewable energy infrastructure; manufacturing and associated port facilities are needed to build and deliver such infrastructure; and this site is identified as the most appropriate location for a combined manufacturing and transportation hub. The size of the quay is the maximum that can be practicably built between its neighbours and the amount of onshore land is calculated to be no more than is needed to support the handling capacity of quay. Able's own land forms a considerable proportion of the onshore land, and the additional land that is needed has been minimised.
- 5.16 Two other sites are currently in prospect as coming forward, at nearby Hull and at Sheerness in Kent. Even together AMEP, Hull and Sheerness will not be able to deliver sufficient capacity for the offshore renewable energy sector and so they are all urgently needed, as are other sites.

### **Alternatives to compulsory acquisition**

*All reasonable alternatives to compulsory acquisition have been explored*

- 5.17 Able will continue to seek to acquire all the land by agreement, as supported by DCLG guidance, but must rely on compulsory purchase powers as a backstop to ensure (a) that it pays no more than the market value of the land, thus ensuring that its project is viable and (b) that the project will not be thwarted by a failure to acquire land.
- 5.18 The prospect of leasing the land from the current owners has been explored but it would not be feasible to operate it as a single site subject to different conditions under several leases.
- 5.19 Another alternative to compulsory acquisition of this land would be to acquire land elsewhere. As Able already owns a significant proportion of the land that will be used for this project, it would need to acquire more land at any other site, which would consequently have a greater interference with private interests.

### **Legitimate, necessary and proportionate**

*The proposed interest in the land is for a legitimate purpose and is necessary and proportionate*

- 5.20 The need for port development to support the renewable energy sector is recognised in the Ports National Policy Statement, and the development of a quay and onshore manufacturing facilities at this site are recognised by the government as a legitimate use of the land in its *Ports Prospectus*. Outright acquisition of the land is necessary for it to be a viable manufacturing hub.

- 5.21 As contemplated by the Planning Act 2008, it is a proportionate use of compulsory acquisition powers to acquire land for a nationally significant infrastructure project and associated development.

### **Use of the land to be acquired**

*How Able intends to use the land which it is proposing to acquire*

- 5.22 Able has clearly set out how it proposes to use that land that it seeks to acquire. The intertidal and sub-tidal land will be used for the construction of the quay, and the onshore land will be used for the manufacturing and assembly of wind turbine components and associated supply chain activities and for habitat compensation.
- 5.23 The Environmental Statement accompanying the application has divided the onshore land into separate zones for different occupiers. These represent the maximum environmental impacts that the development could have by dividing the onshore area into separate zones. These demonstrate how the land that Able proposes to acquire would be used.

### **Availability of funds for compensation**

*The requisite funds for the compulsory acquisition*

- 5.24 The Funding Statement accompanying this application sets out how the project would be funded. The cost of acquiring the three residential properties affected would be met from Able's own funds and would not be reliant on securing any additional sources of funding.

### **Justification for interference with Human Rights**

*Compulsory acquisition of land is legitimate and sufficiently justifies interfering with the human rights of those with an interest in the land affected*

- 5.25 The availability in the Planning Act 2008 of powers for acquiring land by compulsory purchase contemplates the interference with human rights when the public interest in a nationally significant infrastructure project outweighs the private interests that would be extinguished. The land currently consists of intertidal and sub-tidal land, railway land, agricultural land, and three residences, which although not themselves on land to be developed – indeed they will be left *in situ* – are being acquired due to their proximity to the development.
- 5.26 The need for facilities to construct and ship the offshore wind turbines that are declared by the government to be urgently needed is well established. The expression of urgent need is one of the strongest that the government has made in any policy document.
- 5.27 The land acquired will be compensated according to the national compensation code - indeed the Planning Act 2008 forbids any dilution in the entitlement to or amount of compensation in a development consent order. In that context, the interference with human rights that remains is that of rights to property and the quiet enjoyment of property.



- 5.28 Given the effect of the project on the Humber Estuary Natura 2000 site, Able is also submitting with its application a Habitats Regulations Assessment report, which concludes that the project is likely to have an adverse effect on the integrity of the Humber Estuary SPA/SAC. The HRA report demonstrates that the project should nevertheless be authorised for imperative reasons of overriding public interest. If that test is overcome for the purposes of the effect of the project on the Natura 2000 site, then it is equally persuasive in respect of the public interest in compulsorily acquiring the land.
- 5.29 On the other hand, given the limited current use of most of the land, together with the limited number of residential properties affected, Able believes that the interference with private rights is heavily outweighed by the public benefit of the proposed project.

## **6 Related Applications, Orders etc**

- 6.1 The development consent order that is the subject of the main application for AMEP will grant consent for the development and allow it to proceed. There will be some additional operational consents required from bodies such as the Environment Agency and Natural England, such as an environmental permit. Additional consents are listed in application document TR030001/APP/24.

## **7 Special Category Land and obstacles or prior consents needed before the AMEP can be implemented**

### ***Special Category Land***

- 7.1 It is proposed that Crown land will be included within the scope of compulsory purchase, but only to the extent that Able has obtained permission to do so under section 135 of the Planning Act 2008.
- 7.2 There is some land that is owned by a statutory undertaker, namely a triangle of onshore land and a lease of the foreshore, which are owned by Associated British Ports (ABP). In the event that ABP makes a representation about the application and maintains that representation, a certificate will be obtained, and if necessary Special Parliamentary Procedure undergone, under sections 127 and 128 of the Planning Act 2008.
- 7.3 Having conducted a thorough search, Able does not believe that there is any National Trust land, common land or open space land, or any other special category land subject to the power of compulsory purchase.

### ***Prior consents and potential obstacles***

- 7.4 Other than the additional consents and procedures outlined above, Able does not foresee any other prior consents or potential obstacles that would prevent the development from going ahead.

## **8 Human Rights Act 1998**

- 8.1 The Human Rights Act 1998 incorporated the European Convention on Human Rights (“Convention Rights”) into domestic law. Section 1 of the Human Rights Act 1998 (as amended) defines the Convention Rights as the rights and fundamental freedoms enshrined in *Articles 2 to 12 and 14* of the Convention<sup>9</sup>, *Articles 1 to 3* of the *First Protocol*<sup>10</sup> and *Article 1* of the *Thirteenth Protocol*<sup>11</sup>, as read with *Articles 16 and 18* of the Convention.
- 8.2 Those Articles of particular relevance as to whether the DCO should be made so as to include powers of compulsory acquisition as sought in the DCO application are:
- (i) Protocol 1, Article 1- right to the peaceful enjoyment of possessions, except in the public interest and subject to the relevant national and international laws;
  - (ii) Article 6- right to a fair and public hearing; and
  - (iii) Article 8- right to a private and family life.
- 8.3 As set out above, the Planning Act 2008 provides for the compulsory acquisition of land in order to construct and operate a nationally significant infrastructure project, provided that there is a compelling case in the public interest for the acquisition, and the land to be acquired is required for the development or to facilitate it or is incidental to it.
- 8.4 Provided that those statutory tests are met, and the procedure set out in the Act and associated regulations is followed, then the permitted derogations from the convention rights should apply and should be proportionate.

## **9 Conclusions**

- 9.1 The Able Marine Energy Park would secure the provision of infrastructure that the government declares to be urgently needed. This is one of the strongest expressions of need to be found anywhere in government policy.
- 9.2 On the other hand, the private interests that would be affected consist of three residential properties and agricultural land. The public interest in developing the site for a marine energy park is therefore considered heavily to outweigh the private rights that would be interfered with.

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<sup>9</sup> “the Convention” is defined by section 21 of the 1998 Act as the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4 November 1950 as it has effect for the time being in relation to the United Kingdom

<sup>10</sup> “the First Protocol” is defined by section 21 of the 1998 Act as the protocol to the Convention agreed at Paris on 20 March 1952

<sup>11</sup> “the Thirteenth Protocol” is defined by section 21 of the 1998 Act as the protocol to the Convention (concerning the abolition of the death penalty in all circumstances) agreed at Vilnius on 3 May 2002

- 9.3 In terms of quantity of land, the urgent need for quay space to ship wind turbines to the offshore sites in the North Sea means that there is a strong public interest in building the largest quay that can fit between the neighbouring quays on either side, which as a result of design considerations and pre-application consultation responses has been determined to be 1,200 m in addition to a specialist berth.
- 9.4 To provide the requisite manufacturing and storage space for such a quay requires at least the 222.7 ha of onshore land that is included in this application, together with the minimum amount of land that is considered by Natural England to be needed for environmental mitigation on the south bank and the Compensation Site on the north bank.
- 9.5 These are the reasons for the exercise of powers of compulsory purchase over the land set out in the Book of Reference and shown on the Land Plan.