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31 May 2012

**PLANNING ACT 2008 (PA 2008) AND THE INFRASTRUCTURE PLANNING  
(EXAMINATION PROCEDURE) RULES 2010**

**NOTICE OF PROCEDURAL DECISIONS MADE AT AND FOLLOWING THE  
PRELIMINARY MEETING REGARDING AN APPLICATION FOR THE PROPOSED  
ABLE MARINE ENERGY PARK ON THE SOUTH BANK OF THE RIVER HUMBER AT  
IMMINGHAM, NORTH LINCOLNSHIRE**

**PLANNING INSPECTORATE REFERENCE NUMBER: TR030001**

I am writing to inform you about the procedural decisions made by the Examining Authority at and following the Preliminary Meeting held on Thursday 24 May 2012 at Immingham Town Council Civic Centre, Pelham Road, Immingham. This letter provides you with the timetable and the initial questions that the Examining Authority is asking in the examination.

A note of the Preliminary Meeting is enclosed at Annex E. It will be published on our website, and made available for inspection at the venues listed in Annex A. An audio recording of the Preliminary Meeting will also be published on our website.

**1. Procedural decision and timetable**

The Examining Authority is grateful for the views expressed at the Preliminary Meeting, and has considered them all carefully.

The Examining Authority has now made a procedural decision about the way in which the application is to be examined. A copy of the procedural decision is enclosed with this letter at Annex B and the timetable set by the Examining Authority is at Annex C.

**2. Written questions**

The Examining Authority has decided to ask a number of initial questions and to receive further information about matters it considers relevant to the application. These questions are set out in Annex D1 and D2, and responses must be received **on or before Friday 29 June 2012**.

The Examining Authority may write to Interested Parties with further questions or with a request for more information as the examination progresses both at the timetabled dates and at any other time during the examination.

**The Examining Authority now invites all Interested Parties to submit written representations and evidence on any matters concerning the application, and representations already submitted, in accordance with the timetable set out in Annex C.**

Please send your representations to us using the email or postal address at the top of this letter quoting reference **TR030001** and your unique reference.

Representations can deal with any relevant matter. They are not restricted to the matters set out in the Examining Authority's initial assessment of principal issues which were discussed at the Preliminary Meeting, nor to the questions set out in Annex D1 and 2.

Please note, if you are submitting a written representation, you must identify those parts of the application or specific matters with which you agree and those parts with which you do not agree. You must state the reasons for your disagreement.

### **3. Guidance for the submission of written representations**

There is no prescribed form for written representations under primary or secondary legislation. In accordance with DCLG 'Planning Act 2008: guidance for the examination of applications for development consent for nationally significant infrastructure projects (February 2010)', participants should normally provide with their written statements, 'the data, methodology and assumptions used to support their submissions'. To assist in the timely processing of written representations to be submitted by the deadline of 29 June 2012 we request that Interested Parties send, where practicable, electronic copies of their submissions as email attachments, to the case team mailbox by 11:59 pm on 29 June 2012. Electronic attachments should be clearly labelled with subject title and not exceed 12mb for each email. It is helpful that written requests to attend hearings are forwarded separately. Should electronic submissions include a number of technical surveys of 300 pages or more, Interested Parties are advised to send to us, by post, an additional full paper copy of their submission.<sup>1</sup>

### **4. Availability and inspection of representations and documents**

Written representations, responses to relevant representations and to questions, local impact reports, comments or any other documents or information about the application, must be made available to all Interested Parties and to anyone who requests an opportunity to inspect and take copies of them.

In order to meet this obligation, we are notifying all Interested Parties that, at each stage of the examination set out in the timetable and as soon as is practicable, we shall make these available by publishing them on the Planning Inspectorate pages of the Planning Portal's website. We shall also provide an opportunity for inspection and copying. The notification of the deposit locations is at Annex A.

### **5. Changes to the timetable**

If the Examining Authority needs to change the timetable set out in Annex C for any reason, we will write to you and inform you of the changes. We will also do this if the date, time and place of any hearing is changed, except in the event of an adjournment.

### **6. Deadlines for receipt of documents and requests for hearings**

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<sup>1</sup> Subject to The Infrastructure Planning (Examination Procedure) Rules 2010 Rule10(6)(a), we request the applicant supply 6 paper copies of their written representation(s) for the Examining authority to use and make available for public inspection under Rule 21.

It is important to note that if written representations, responses to relevant representations and to written questions, further information or requests for hearings are not received by the dates specified in the timetable, the Examining Authority may disregard them.

## **7. Award of Costs**

I also draw your attention to the possibility of the award of costs against Interested Parties who behave unreasonably. You should be aware of the relevant Costs Policy that applies to National Infrastructure Projects. The policy is available on the Planning Inspectorate pages of the Planning Portal website.

## **8. Future notifications**

If you are an Interested Party you will continue to receive notifications from the Planning Inspectorate about the examination throughout the process. If you have received this letter because you attended the Preliminary Meeting but you are not an Interested Party you will **not** receive any further communication from us relating to this application. You can, however, visit the dedicated project page on the Planning Inspectorate pages on the Planning Portal website, to stay informed of the progress of the examination of this application.

Yours sincerely,

*Robert Upton*

**Robert Upton**  
**Lead Member of the Panel of Examining Inspectors**

## **Annex A**

### **Availability of relevant representations and application documents**

On the Planning Inspectorate pages of the Planning Portal's website at <http://infrastructure.planningportal.gov.uk/projects/yorkshire-and-the-humber/able-marine-energy-park/>

For inspection and copying at:

**Immingham Library**  
**Civic Centre**  
**Pelham Road**  
**Immingham**  
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## **ANNEX B**

### **Planning Act 2008 (PA 2008) and the Infrastructure Planning (Examination Procedure) Rules 2010**

#### **Procedural Decision regarding an application for the proposed Able Marine Energy Park on the south bank of the River Humber at Immingham, North Lincolnshire**

##### *Principal Issues*

The Panel received several requests during the Preliminary Meeting for additions to be made to the list of Principal Issues. These covered flood risk management, the impact of piling noise on migratory fisheries, 'soundness' and the possible impacts on both Killingholme Power Station and the Centrica site.

The Panel does not see a need to revise or expand the Principal Issues. The Panel clarified in the meeting its view that 'marine issues' is a broad heading which covers navigation, hydrology and other possible effects. There is no apparent reason why any of the points covered by these requests should not properly be raised by the interested parties or affected persons as part of their written representations or in response to questions that the Panel has already decided to ask.

##### *Deadlines for submissions*

Proposals were also made to extend the time for written representations, responses and comments to first round questions, comments on relevant representations or summaries of relevant representations over 1500 words. These were all helpful and constructive, sometimes creative, suggestions which the Panel has considered carefully. But the Panel's view is that the priority is to ensure that the critical first round of written questions, answers and comments, together with the written representations, comments on Local Impact Reports and Statements of Common Ground are completed by the end of July, so as to allow for a second round of questions and answers before the main programme of hearings. Adding any time to the process at the start makes the management of the process over the summer more difficult and reduces contingency time at the end.

##### *Specific Issue hearings*

Associated British Ports requested an additional Issue Specific hearing on the matter of 'soundness', or the status of the application as a Nationally Significant Infrastructure Project under the Planning Act 2008. The Panel has specific questions on this point addressed both to the applicant and to other parties; it does not see a need for a Specific Issue hearing on this topic at this stage.

Concern was expressed by several parties that the Specific Issue hearing on the draft Development Consent Order (DCO) came too soon in the examination process. This was discussed at some length. The Panel's intention, which was possibly not fully understood, is to have two Specific Issue hearings on the draft DCO – one at the beginning to understand fully how the applicant intends it to work and to hear from others what their possible concerns might be; and one at the end to consider, in the light of the examination thus far, what modifications if any might be necessary.

Concern was also expressed as to whether one day would be sufficient for a hearing on matters relating to the compensation site. The Panel stresses again the need to ensure that points which are relevant and important are brought out in written representations, responses to questions and comments on answers. All the evidence that interested parties or affected persons wish the Panel to consider should have been made available

to the examination by these means in advance of any hearing. On that basis the Panel believes that one day should be sufficient.

The Panel has however noted the concern that it might be difficult to deal satisfactorily with marine matters and land access and transport in one day. Accordingly the timetable now specifies Thursday 13 September as the date reserved for a Specific Issue hearing on marine matters, and the morning of Friday 14 September as the date reserved for a hearing on land access and transport.

#### *Statements of Common Ground*

The Panel notes the intention of the applicant to produce Statements of Common Ground (SCG) with a range of interested parties. The Panel welcomes all these, and believes it would be very helpful if the possible SCG now apparently being discussed between the applicant and the Harbour Master Humber were to eventuate.

The Panel has made specific reference to the desirability of a SCG dealing with Habitats Regulation Assessment issues. The Panel would like to see such a SCG with the applicant, Natural England, the Environment Agency and the Marine Management Organisation as primary contributors. If the Royal Society for the Protection of Birds, and possibly the Lincolnshire Wildlife Trust can be party to this, then that would also be valuable. It would be helpful to know within the same deadline (Friday 24 August) the extent to which the local authorities (in this context, Hull, North Lincolnshire and North East Lincolnshire Councils) subscribe to the SCG.

The Panel is also seeking through its questions joint statements from the applicant and the Marine Management Organisation on the progress of the drafting of the marine licence; and from the applicant and Natural England on the draft European Protected Species licence.

#### *Site visits*

The Panel confirms its intention to carry out two accompanied site visits, one to the compensation site and the application site and its surroundings on Wednesday 17 October and one on the water on Thursday 18 October. Again, all the specific locations that interested parties or affected persons wish the Panel to see, and the evidence that relates to them, should be made available to the examination through written representations in advance of these visits.

#### *Final timetable*

The Panel confirms its intention to carry out the examination in accordance with the revised timetable at Annex C.

## ANNEX C

### Timetable for Examination of the Application

The Examining Authority (ExA) is under a duty to **complete** the examination of the application by the end of the period of 6 months beginning with the day after the start day (s98 PA 2008).

Item	Matters	Due Dates
1	<b>Preliminary Meeting</b>	<b>Thursday 24 May 2012</b>
2	Issue of:  <input type="checkbox"/> Procedural timetable <sup>2</sup>  <input type="checkbox"/> Note of preliminary meeting held on 24 May 2012 <sup>3</sup>  <input type="checkbox"/> First written questions <sup>4</sup>	<b>Friday 1 June 2012</b>
3	Date by which Statutory Parties (SP) and Local Authorities (not being authorities in whose area the land is located) are encouraged to notify the Examining Authority of their wish to be considered as an Interested Party <sup>5</sup>	<b>Friday 15 June 2012</b>
4	Deadline for receipt by the ExA of:  <input type="checkbox"/> Comments on Relevant Representations <sup>6</sup> (RRs)  <input type="checkbox"/> Any summaries of RR's exceeding 1500 words <sup>7</sup>  <input type="checkbox"/> Written Representations (WRs) by all interested parties <sup>8</sup>  <input type="checkbox"/> Any summaries of WRs exceeding 1500 words <sup>9</sup>  <input type="checkbox"/> Local Impact Report (LIR) from any local authorities <sup>10 11</sup>  <input type="checkbox"/> Responses to ExA's first written questions <sup>12</sup>  <input type="checkbox"/> Notification by an Interested Party of their wish to be heard at (a) an Open Floor hearing and (b) a Compulsory Acquisition hearing <sup>13</sup>	<b>Friday 29 June 2012</b>

<sup>2</sup> Rule 8(1) and (2) The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR)

<sup>3</sup> Rule 7(2) EPR

<sup>4</sup> Rule 8(1)(b)(i) and (iii) EPR

<sup>5</sup> s102 PA 2008

<sup>6</sup> Rule 8(1)(c)(i) and (d)(i) and Rule 3(2)(b) EPR

<sup>7</sup> Rule 8(1)(i) EPR

<b>5</b>	Deadline for receipt by the ExA of:  <input type="checkbox"/> Notification of wish to make oral representations at the Issue Specific Hearing on the draft Development Consent Order including the draft Deemed Marine Licence	<b>Friday 29 June 2012</b>
<b>6</b>	Specific Issue Hearing on the draft Development Consent Order including the draft Deemed Marine Licence <sup>14</sup>	<b>Thursday 12 July 2012</b>
<b>7</b>	Deadline for receipt by the ExA of:  <input type="checkbox"/> Any written summary of the oral case put at the Specific Issue Hearing on the draft Development Consent Order including the draft Deemed Marine Licence held on Thursday 12 July 2012	<b>Monday 23 July 2012</b>
<b>8</b>	Deadline for receipt by the ExA of:  <input type="checkbox"/> Comments on WRs and responses to comments on RRs <sup>15</sup>  <input type="checkbox"/> Comments on LIRs <sup>16</sup>  <input type="checkbox"/> Comments on responses to ExA's first written questions <sup>17</sup>  <input type="checkbox"/> Submissions on the case for cross-examination at any Issue Specific or Compulsory Acquisition hearing  <input type="checkbox"/> Any Statements of Common Ground (other than on Habitats Regulations Assessment (HRA) matters) <sup>18</sup>	<b>Friday 27 July 2012</b>
<b>9</b>	Issue of:  <input type="checkbox"/> Second written questions <sup>19</sup>	<b>Tuesday 7 August 2012</b>
<b>10</b>	Deadline for receipt by the ExA of:  <input type="checkbox"/> Statements of Common Ground on HRA <sup>20</sup>  <input type="checkbox"/> Notification of wish to speak at an Open Floor Hearing	<b>Friday 24 August 2012</b>

<sup>8</sup> Rule 8(1)(a) and Rule 10(1) and (2) EPR

<sup>9</sup> Rule 8(1)(i) EPR

<sup>10</sup> Rule 8(1)(j) EPR

<sup>11</sup> Notification is also hereby given under s60(2) PA 2008 (as amended)

<sup>12</sup> Rule 8(1)(b) EPR

<sup>13</sup> Rule 8(1)(f) and (g) EPR

<sup>14</sup> Rule 8(1)(h) EPR

<sup>15</sup> Rule 8(1)(c)(ii) and (d)(ii) and Rule 10(5) EPR

<sup>16</sup> Rule 8(1)(j) EPR

<sup>17</sup> Rule 8(c)(ii) and (d)(ii) EPR

<sup>18</sup> Rule 8(1)(e)

<sup>19</sup> Rule 8(1)(b)(i) and (iii) EPR



<b>11</b>	<p>Deadline for receipt by the ExA of:</p> <p><input type="checkbox"/> Notification of wish to make oral representations at the Specific Issue Hearing on compensation site matters, including HRA (11 September), HRA matters relating to the main development site (12 September), marine matters (13 September) and land access and transport (14 September)</p>	<b>Friday 31 August 2012</b>
<b>12</b>	<p>Deadline for receipt by the ExA of:</p> <p><input type="checkbox"/> Responses to ExA's second written questions<sup>21</sup></p>	<b>Tuesday 4 September 2012</b>
<b>13</b>	Date reserved for possible Open Floor Hearing in East Riding of Yorkshire area	<b>Wednesday 5 September 2012</b>
<b>14</b>	Date reserved for possible Open Floor Hearing in North Lincolnshire area	<b>Thursday 6 September 2012</b>
<b>15</b>	Specific Issue Hearing dealing with matters relating to the compensation site including HRA <sup>22</sup>	<b>Tuesday 11 September 2012</b>
<b>16</b>	Specific Issue Hearing dealing with HRA matters relating to the main development site	<b>Wednesday 12 September 2012</b>
<b>17</b>	Specific Issue Hearing dealing with marine matters	<b>Thursday 13 September 2012</b>
<b>18</b>	Specific Issue Hearing dealing with land access and transport	<b>Friday 14 September 2012 (AM)</b>
<b>19</b>	<p>Deadline for receipt by the ExA of:</p> <p><input type="checkbox"/> Any written summary of the oral case put at any Open Floor Hearing held in the East Riding of Yorkshire (5 September 2012) and North Lincolnshire (6 September 2012) areas</p>	<b>Monday 17 September 2012</b>
<b>20</b>	<p>Deadline for receipt by the ExA of:</p> <p><input type="checkbox"/> Any written summary of the oral case put at the Specific Issue Hearing held on the compensation site, including HRA matters (11 September 2012), HRA matters relating to the main</p>	<b>Monday 24 September 2012</b>

<sup>20</sup> Rule 8(1)(e) EPR

<sup>21</sup> Rule 8(1)(b) EPR

<sup>22</sup> Rule 8(1)(h) EPR

	development site (12 September 2012), marine matters (13 September 2012) and land access and transport (14 September 2012)	
<b>21</b>	<p>Deadline for receipt by the ExA of:</p> <p><input type="checkbox"/> Notification of wish to make oral representations at the Specific Issue Hearing dealing with HRA (compensation site) (9 October), Compulsory Acquisition (compensation site) (9 October), Compulsory Acquisition (main development site) (10 October), further Specific Issue Hearings dealing with HRA (main development site) (11 October) and the draft Development Consent Order and Local Impact Reports (16 October).</p>	<b>Friday 28 September 2012</b>
<b>22</b>	<p>Deadline for receipt by the ExA of:</p> <p><input type="checkbox"/> Comments on responses to ExA's second written questions<sup>23</sup></p>	<b>Tuesday 2 October 2012</b>
<b>23</b>	<p>Deadline for receipt by the ExA of:</p> <p><input type="checkbox"/> Any revised proposed requirements for inclusion within the draft Development Consent Order (including the deemed Marine Licence)</p>	<b>Tuesday 9 October 2012</b>
<b>24</b>	Dates reserved for further Specific Issue Hearings dealing with compensation site matters including HRA <sup>24</sup>	<b>Tuesday 9 October 2012 (AM)</b>
<b>25</b>	Dates reserved for Compulsory Acquisition Hearing (compensation site)	<b>Tuesday 9 October 2012 (PM)</b>
<b>26</b>	Date reserved for Compulsory Acquisition Hearing (main development site) <sup>25</sup>	<b>Wednesday 10 October 2012</b>
<b>27</b>	Dates reserved for further Specific Issue Hearings dealing with HRA (main development site)	<b>Thursday 11 October 2012</b>
<b>28</b>	Specific Issue Hearings dealing with the draft Development Consent Order and Local Impact Reports <sup>26</sup>	<b>Tuesday 16 October 2012</b>
<b>29</b>	Accompanied site visit to the compensation site, the application site and the surrounding area <sup>27</sup>	<b>Wednesday 17 October 2012</b>

<sup>23</sup> Rule 8(c)(ii) and (d)(ii) EPR

<sup>24</sup> Rule 8(1)(h) EPR

<sup>25</sup> It is envisaged that this hearing will deal with matters relating to any s.127 application

<sup>26</sup> Rule 8(1)(h) EPR

<sup>27</sup> Rule 16(2) EPR

30	Accompanied site visit of marine environment <sup>28</sup>	<b>Thursday 18 October 2012</b>
31	<p>Deadline for receipt by the ExA of:</p> <p><input type="checkbox"/> Any written summary of the oral case put at the further Specific Issue Hearings dealing with the compensation site including HRA (9 October), for further Specific issue Hearings dealing with Compulsory Acquisition (compensation site) (9 October), Compulsory Acquisition (main development site) (10 October), further Specific Issue Hearings dealing with HRA (main development site) (11 October) and Specific Issue Hearings dealing with the draft Development Consent Order and Local Impact Reports (16 October)</p>	<b>Friday 26 October 2012</b>
32	The Examining authority is under a duty to complete the Examining authority's examination of the application by the end of the period of 6 months beginning with the day after the close of the preliminary meeting <sup>29</sup>	<b>Final date by which examination must be completed Sunday 25 November 2012</b>

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<sup>28</sup> Rule 16(2) EPR

<sup>29</sup> s98 PA 2008

## ANNEX D 1

### Proposed Able Marine Energy Park on the south bank of the River Humber at Immingham, North Lincolnshire

#### Examining authority's first written questions – responses to be received by the Examining authority on or before Friday 29 June 2012

#### Questions primarily to the applicant (AMEP)

##### *Economic factors*

1. With specific reference to Section 4.3 of the National Policy Statement for Ports (NPSP), has the methodology suggested by the Department for Transport in either WebTAG or the *Project Appraisal Framework for Ports* been applied?

##### *Scope and scale of proposed development*

2. Does AMEP have any further grounds to support Hochtief's assessment that the proposed development qualifies as a Nationally Significant Infrastructure Project (NSIP) by virtue of theoretical design capacity alone?

3. What is the relationship, if any, between the proposed Marine Energy Park and the consented Logistics Park? Specifically –

(a) is direct access to the Logistics Park necessary to the operation of the Marine Energy Park?

(b) what would be the implications of failing to secure direct access?

(c) have any conditions been attached to the grant of planning permission for the Logistics Park which relate to the possible AMEP development?

##### *Associated development*

4. With specific reference to the Project Justification (Document 12) –

(a) what is the basis for the calculation of the land required for associated development, including manufacturing, storage and other back-up facilities?

(b) what would be the phasing of the development of this land, and at what point and when would the proposed quay meet the NSIP capacity threshold?

(c) given the assessment that the proposed development is likely to have a significant impact on the European sites, and require significant compulsory acquisition, why is it essential for the scheme to be this size? What consideration has been given to the possibility of a smaller development which would have a reduced impact and land-take?

##### *Alternative uses*

5. Section 1.3.5 of the Introduction to the Environmental Statement refers to the possibility of the site supporting other forms of renewable energy. In this context –

(a) is it the intention to accept any cargoes other than those relating to the manufacture of wind turbines on either a temporary (interim) or permanent basis?

(b) if so, what would these cargoes be and how does the project documentation take account of their possible impact?

(c) if not, is a further Requirement in Schedule 11 restricting operation to the functions described in Schedule 1 necessary and appropriate?

(d) what provisions in the Development Consent Order (DCO) might be appropriate and necessary to ensure no derogation from the Imperative Reasons of Over-riding Public Interest (IROPI) justification put forward in the proposal?

#### *Climate change mitigation*

**6.** With specific reference to Section 4.12.7 of the NPSP, to what extent is the current design intended to minimise emissions and achieve fuel efficiency in the operation of buildings and outdoor plant and machinery?

**7.** With specific reference to Sections 4.12.7 and 4.12.8 of the NPSP, to what extent will renewable energy sources be used in the operation of the port and the associated development?

#### *Climate change adaptation*

**8.** With specific reference to Section 4.13.9 *et seq* of the NPSP –

(a) have the latest UK Climate Change Projections been used both in the Environmental Statement and for design purposes?

(b) have these been applied over the estimated lifetime of the project?

(c) are there any critical features of the design of the proposed development which might be affected by changes beyond those projected in the latest UK Climate Change Projections?

#### *Habitats Regulation Assessment*

##### *(a) alternatives*

**9.** The alternative sites considered in Chapter 6 of the Environmental Statement appear to have been considered primarily in relation to the criteria in the National Policy Statement for Ports. Were any site-selection criteria used which related to possible impacts on European and Ramsar sites?

**10.** Section 2.2 of Annex 4 to the Environmental Statement refers briefly to alternative designs. Figure 2.1 shows one alternative to a quay design. Were other alternative designs considered which might have a lesser impact on the integrity of the site?

**11.** Were design alternatives discussed with Natural England or the Marine Management Organisation?

**12.** How did any alternative designs considered compare with the proposed quay design in terms of its effects on the integrity of the European sites, other environmental impacts, operational efficiency and capacity?

##### *(b) mitigation*

**13.** What possible mitigation strategies (i.e. comprehensive and co-ordinated mitigation programmes) were investigated before consideration of compensation measures? Were possible strategies discussed with Natural England or the Marine Management Organisation?

**14.** How were any possible mitigation strategies assessed in relation to –

(a) the impacts on the integrity of the European sites?

(b) other possible impacts or effects?

*(c) Imperative Reasons of Over-riding Public Interest*

**15.** The arguments in favour of Imperative Reasons of Over-riding Public Interest (IROPI) put forward in Section 8.6 of the Habitats Regulation Assessment Report relate primarily to the manufacturing process, which constitutes the Associated Development in the proposal. Are there precedents for arguments of IROPI applying to a development proposal other than for its ostensible primary purpose?

*Environmental Statement*

**16.** Please provide a schedule of all matters identified in the Environmental Statement as requiring mitigation, and identify the corresponding provisions in the draft DCO delivering that mitigation.

**17.** Invertebrate surveys have not been undertaken for the compensation site (Table 35.1 of the ES Volume 2). The data sources for aquatic ecology at the compensation site include 'Allen, J.H. (2006); *An assessment of temporal variation of benthic invertebrate communities in the Humber Estuary* Institute of Estuarine & Coastal Studies (IECS), University of Hull, UK'. Please provide a copy of the Allen (2006) document and provide evidence that this six year old report can be considered robust and appropriate for the assessment.

*Compensation sites*

**18.** What criteria and weightings have been used for identifying and assessing possible compensation sites? Specifically –

(a) what weight was placed on the need or desirability of finding a compensation site within the middle estuary, and what was the scientific evidence behind the selection of this objective?

(b) what weight was placed on the need to avoid, or the desirability of avoiding, a compensation site in a Built Conservation Planning Area, and why?

(c) on what basis were the Sunk Island sites selected for particular consideration? If sparseness of population was the only factor, how does this compare with population densities in the other sites subject to the high-level assessment?

(d) what weight was placed on the value of agricultural production at Cherry Cobb Sands?

(e) what weight was given to flood risk assessment for the various sites in the high-level assessment?

**19.** What account has been taken of the experience with other compensation sites in the Humber estuary, including Chowderness and Paull Holmes Strays, and the extent to which they are proven to have provided the precise compensation habitat sought in each case?

**20.** What factors will determine the choice of the site for the breach in the current sea wall at Cherry Cobb Sands?

**21.** If medium- and long-term monitoring shows that the required compensation habitat is not being delivered at Cherry Cobb Sands, what mechanisms are proposed to ensure that the required effects are achieved?

**22.** What is the current state of knowledge about contamination of the land at Cherry Cobb Sands, and what if any are the implications for its use as a suitable compensation site?

**23.** Is it proposed to retain ownership of the compensation site in perpetuity, or to transfer it to the Crown Estate? If so, when or under what test would the transfer be made, and how?

*Old Little Humber Farm*

**24.** Section 28.2.30 of the Environmental Statement says that the wet grassland compensation will be maintained here until monitoring reports show that the main compensation site (Cherry Cobb Sands) is providing effective compensation for the proposed development. Other than the intention to have an implementation plan approved by Natural England (Schedule 9, Part 1, of the draft DCO) how is performance of this to be secured?

*Civil aviation impacts*

**25.** In relation to the points raised in the relevant representation of the Civil Aviation Authority –

(a) will the construction methods to be used for wind turbines require them to exceed a height of 165m?

(b) will the turbines when constructed need to rotate for test purposes?

(c) what discussions have taken place or are taking place with local emergency services air support?

(d) what discussions have taken place or are taking place with Humberside Airport about the possible impacts of the proposed development?

*Marine matters*

**26.** The Harbour Master Humber states that recently constructed facilities on the Humber (such as Humber Sea Terminals) have a 100m limit of jurisdiction from the berth face. In this context –

(a) why does AMEP require its Harbour Limit to be 200m out from the face of the Quay and also extend beyond the seaward end of the quay?

(b) what would be the implications of reducing this limit to 100m?

**27.** The Harbour Master Humber objects to the inclusion in the limit of jurisdiction of the area at the southern inner extremity of the proposed berth (where the return wall meets the river bank). In this context –

(a) for what specific purposes is this area required?

(b) what powers are necessary and appropriate to those purposes?

(c) what would be the implications of excluding this area?

**28.** What work, if any, has been done to comply with the requirements of the Port Marine Safety Code?

**29.** Has AMEP consulted the Department for Transport regarding the security implications of the development? Specifically is AMEP satisfied that it will be able to fully comply with the ISPS Code?

**30.** In respect of vessels using the specialist berths at the seaward end of the quay –

(a) at what state(s) of the tide does AMEP envisage the vessels berthing and unberthing?

(b) will tug(s) be used if berthing/unberthing is to take place at anything other than slack water?

**31.** During the capital dredge how is the dredging to be managed in respect of the operations of other river users?

**32.** What impacts have been assessed for the Humber Work Boats facility in terms of siltation and current? What discussions have taken place or are taking place with Humber Work Boats about possible mitigation of these impacts?

**33.** What is the assessed siltation impact on terminals further afield, in particular, Immingham Outer Harbour?

**34.** What are the assessed cumulative and in combination impacts on the river regime in relation specifically to Hull Riverside Bulk Terminal, Hull Green Port, Sunk Dredged Channel Deepening and the Grimsby Ro-Ro Berth?

**35.** During the capital dredge who will be responsible for monitoring any build up of silt at the adjoining berths and the intakes/outfalls used by E.ON and Centrica?

**36.** In the long term how will the predicted build up of silt inside the nearby berths and at the intakes/outfalls of the E.ON and Centrica sites be managed?

**37.** Given that the approach channel to Humber Sea Terminals and the proposed approach channel for AMEP overlap and will be dredged to different depths, what guarantees are there that neither channel will interfere with the other in terms of siltation/scour?

**38.** With regard to the channel at Stone Creek –

(a) what is the current maintenance regime, if any?

(b) what monitoring regime is proposed?

(c) is a programme of maintenance dredging proposed from the outset?

(d) how is dredging to be ensured if the siltation levels warrant it?

**39.** In disposing of the non-erodible material at HU082 how is this activity to be monitored to ensure that it is discharged in such a way so as to not alter the current regime of the Sunk Channel or to cause mounds on the sea bed?

**40.** Does AMEP intend to dispose of the erodible material at HU080 on the ebb or flood tides or at all states of the tidal cycle?

**41.** What is the design life of the quay? What would be the decommissioning implications?

*Good design*

**42.** Noting Annex 4.4 to the Environmental Statement Volume 1, with particular reference to Section 10.4 of the NPSP –

(a) how was the design process conducted and how has the proposed design evolved?



(b) how does the chosen design take into account functionality (including fitness for purpose and sustainability) and aesthetics?

#### *Completeness of design*

**43.** In File 4, Planning Application Drawings, the (Building) Masterplan and the Landscape Masterplan are both described as 'Indicative' and the drawings are both specified as 'Preliminary'. Requirement 4 in Schedule 11 states that the authorised development shall be carried out in accordance with the design drawings unless otherwise approved in writing by the relevant planning authority. In this context –

(a) to what extent do the drawings in the application represent a fully-evolved final design?

(b) what particular matters might the applicant need or wish to change should development consent be granted?

(c) what safeguards within the DCO would be appropriate to ensure that final detailed design remains compatible and consistent with the details of the scheme as submitted for approval? Specifically, what safeguards would ensure that the final detailed design could not have any new or greater impact than assessed through the Habitats Regulation Assessment and the Environmental Statement?

#### *Railway construction and operation*

**44.** Is it the intention to operate the railway line within the application site solely as a single siding?

**45.** Is it the intention to reinstate the railway line along the section which is dismantled towards the Logistics Park, and if so where are the impacts of this assessed?

**46.** What would be the implications for the construction and operation of the proposed development if the compulsory acquisition of the Network Rail land was not approved?

**47.** Is it proposed that the railway track should be maintained at existing levels, or does the proposed development require that it should be raised to match new ground levels of working areas?

#### *Transport and travel*

**48.** In Annex 15.1, Transport Assessment –

(a) Table 6.4, which deals with route allocation for journeys to work, shows a trip allocation of 50% to 'York, Wakefield, Doncaster and area to the west of the study area'. Is this based entirely on population distribution? Have any sensitivity tests been carried out which would model the effect of more recruitment being more local?

(b) Table 6.6, which deals with HGV delivery assumptions, shows a break-down by modes of sea, rail and road. What is the basis for the assumptions made? Have any sensitivity tests been carried out which would show the effects if significantly more HGV deliveries were by road?

(c) what if any assumptions about growth in port traffic at Immingham and C.Ro have been built into the modelling?

(d) paragraph 6.27 refers to the possibility of two extra train paths per 24 hours on the Killingholme Branch. Would the rail traffic anticipated in Table 6.6 use all that extra capacity?

#### *Lighthouses at South Killingholme*

**49.** What discussions have taken place or are taking place with English Heritage and/or North Lincolnshire Council about a management plan to protect the three Grade II listed lighthouses at South Killingholme (Killingholme High LB No. 165871, Killingholme North Low LB No. 165872 and Killingholme South Low LB No. 165873)?

*Other Consents*

**50.** Please supply a schedule setting out any other consents applied for, or required but still to be applied for, in connection with the proposed development, together with, for each consent, the name of the consenting body, the date the application was made and a note of the progress made so far towards a decision.

**Questions primarily for the applicant, Environment Agency, Natural England and Marine Management Organisation**

*Habitats Regulation Assessment*

**51.** In conjunction with Natural England, Environment Agency, Marine Management Organisation and others as appropriate, please complete, correct and update the attached screening matrix and appropriate assessment matrix (Annex D2).

**Questions primarily for the applicant and North Lincolnshire Council**

**52.** Does the introduction of the National Planning Policy Framework have any implications for the scheme?

**53.** The application site falls within the Humber Enterprise Zone. What implications if any might that have for the discharge of requirements?

**Questions primarily for DEFRA**

**54.** How significant would be the impact of the loss of 39.5 hectares of arable land at Cherry Cobb Sands in terms of food production nationally and locally?

**Questions primarily for the Harbour Master Humber**

**55.** Is the Harbour Master Humber now satisfied that the applicant has demonstrated that vessels using C.RO or the Oil and Pipeline Agency facility will not be impeded in any way?

**56.** Is the Harbour Master Humber now satisfied that vessels will be able to use safely the specialist berths at the seaward end of the proposed facility without hazarding the Oil and Pipeline Agency berths or the ships berthed there?

**Questions primarily for C.RO (formerly Humber Sea Terminals)**

**57.** What are the co-ordinates of C.RO's dredged approach channel?

**58.** What are the largest ships either using or capable of using C.RO, at what berths and at what state of tide?

**59.** What wind direction other than south-west does C.RO consider predominant at its facility?

**Questions primarily for Associated British Ports (ABP)**

**60.** With specific reference to Section 2 of ABP's Relevant Representation –

(a) is there evidence to challenge or refute the evidence offered in Document 12 in the AMEP application, Project Justification, that using standard industry methodology the notional rated Port Capacity of the proposed quay and associated storage area would be 6.54 million tonnes per annum, thereby exceeding the threshold of 5 million tonnes set out in s.24(3)(c) of PA 2008?

(b) on what basis does ABP contend the Secretary of State could conclude that the manufacture of large wind turbines does not constitute Associated Development as specified in s.115 of PA2008 and as exemplified in CLG Guidance on Associated Development, for example as an associated working site?

(c) does ABP consider the proposed restriction in s.3(b) of Schedule 1 of the draft Development Consent Order to 'the provision of onshore facilities for the manufacture, assembly and storage of components and parts for offshore marine energy and related items' to be an appropriate and adequate restriction? If not, why not, and what alternative provision would ABP wish to see?

**61.** With specific reference to Section 7, does ABP still maintain that there is serious inconsistency in the description of the proposed berth works in the Environmental Statement? If so, what precisely are these inconsistencies, and what are the issues that have still to be assessed?

### **Questions primarily for Network Rail**

**62.** Would Network Rail explain further why it contests the validity or applicability of s.47(1) of the draft Development Consent Order to the effect that the proposed modification would constitute a minor modification for the purposes of Part 4 of the Railways Act (RA2005), given that –

(a) s.34(2) of RA2005 gives the power to determine that a closure is minor modification to the Secretary of State for Transport who would make the Order; and (or alternatively)

(b) s.35 of RA2005 relates to the impacts on passengers and stations?

**63.** With specific reference to Section 12.3 of its Relevant Representation, what Protective Provisions would Network Rail consider appropriate if the proposed development were to be approved, with or without the acquisition of Network Rail land through the development site?

**64.** With specific reference to Sections 7 and 8 of its Relevant Representation, would Network Rail clarify whether it would still now object to the acquisition of its land even if C.RO (formally Humber Sea Terminal) were to give consent?

**65.** The Route Utilisation Strategy for Freight, published in March 2007, identifies the Killingholme Loop as a project for Control Period 4 (2009 to 2014). Is this still Network Rail's intention, or has the place of the Killingholme Loop project in the overall programme changed or slipped?

**66.** Has Network Rail undertaken preliminary or detailed planning for the Killingholme Loop project? Is Network Rail in a position to say whether this scheme would require all or primarily the existing alignment towards Goxhill, or a partial new alignment that might affect the proposed development?

### **Questions primarily for the Environment Agency**

**67.** In the context specifically of the applicant's Habitats Regulation Assessment Report -

- (a) What constitutes the current suite of plans or strategies for the management of the natural environment in the Humber Estuary?
- (b) What is the relationship between the component plans or strategies of this suite?
- (c) if there is a hierarchy within the suite, what is it?
- (d) to what extent do the component plans draw on the same scientific data bases, and how current are these data bases?
- (e) what is the monitoring regime to maintain them?
- (f) to what extent do the applicant's proposals conform to all of this suite of plans or strategies?

**68.** The Environment Agency's Relevant Representation states that –

As a result of this commitment the Cherry Cobb Sands site is identified in our Humber Strategy (our long term plan for managing flood defences along the Humber estuary into the future) as a planned habitat creation site, to compensate for these losses, identified at Keyingham. Whilst we recognise that the Strategy comes with a delivery risk, by identifying sites where we do not currently own the land, this project has the potential to hinder the Environment Agency's ability to deliver habitat compensation requirements.

What are the implications for the Coastal Habitat Management Plan (CHaMP) Would the Agency confirm whether it supports the use of Cherry Cobb Sands as an appropriate compensation site for the proposed development?

**Questions primarily for the Marine Management Organisation (MMO)**

**69.** The proposed development falls within the area of the East Inshore Marine Plan, with a draft plan scheduled to be issued for consultation in winter 2012/13. In that context –

- (a) is that timetable still valid, and when is it hoped to adopt a final plan?
- (b) are there specific issues which have been identified so far in the preparation of the draft plan which might be relevant and important considerations for this application?

**Questions primarily for the applicant and the Marine Management Organisation (MMO)**

**70.** Can the applicant and the MMO provide an agreed updated report on the status of the issues set out in the MMO's Relevant Representation? Specifically –

- (a) what are the key outstanding issues, if any, in terms of data still to be provided or agreed?
- (b) what are the key provisions still to be agreed in relation to the draft Marine Licence?

**Questions primarily for the Highways Agency**

**71.** Does the announcement on 8 May that development work will proceed on the A160/180 improvements to enable the scheme to be considered for approval in the early years of the next spending review (post 2015) have any implications for the application?

**72.** The Highways Agency's Relevant Representation states that –

While without the A160 upgrade scheme the impacts of the development cannot be mitigated such that the road operates at a level no worse than if the development were not to take place, we are satisfied that the proposed mitigation is the best that can be achieved within the existing highway.

Does the Highways Agency agree with the applicant's assessment of the proposed mitigation measures in Annex 15.1 that –

(a) in the case of the Rosper Road/Humber Road junction the proposed mitigation measures would result in the junction operating at a similar level to the 'base + committed developments' scenario?

(b) in the case of the A160/A1173/Arcady Road the proposed mitigation measures would also result in the junction operating at a similar level to the 'base + committed developments' scenario?

(c) in the case of the A1173/North Moss Lane/Kiln Lane the proposed mitigation measures would result in the junction operating within capacity?

### **Questions primarily for North Lincolnshire, North East Lincolnshire and Lincolnshire County Councils and the Highways Agency**

**73.** Do the Councils consider the Framework Travel Plan in Annex 15.2 of the Environmental Statement to be an adequate foundation for agreeing the final plan; and if not what deficiencies need to be corrected?

**74.** Do any of the Councils envisage a need for s.106 obligations attaching to a consent, and if so –

(a) what would these cover, and why are they necessary?

(b) what is the current state of negotiations with the applicant?

### **Questions primarily for North Lincolnshire Council**

**75.** Are there any existing permissions or current applications for permission under the Town and Country Planning Act for the application site?

**76.** Do the proposals in this application conform with the objectives and policies in the Council's Local Development Framework?

**77.** In the Draft Final Appropriate Assessment carried out by Atkins for the Council's Core Strategy, the consultants noted that –

The main environmental issue raised within the Appropriate Assessment of the Core Strategy, was the potential impact of development of the South Humber Bank ports on high tide bird-roost sites along the Humber Estuary. These sites are vital for the birds for which the Humber Estuary is designated. It is recommended within the Appropriate Assessment that a policy for a strategic approach to habitat creation is contained within the Core Strategy, to reduce the risk of a significant impact resulting from cumulative effects of the impacts of small individual projects.

Has the Council acted upon this recommendation, and has it identified sites within the Council's area which it considers suitable for habitat creation?

### **Questions primarily for Natural England**

**78.** What authorities, whether judicial in origin or based on statements of policy contained in published documents, has Natural England used in its assessment of the project's effects on the integrity and coherence of the European sites? In particular are there authorities that Natural England draws on in its understanding of the terms "integrity" and "coherence"?

**79.** Has Natural England reviewed the vulnerability of the European sites since first designation?

**80.** What has Natural England concluded about the cumulative and in combination impacts of the AMEP scheme in relation to other consented or proposed projects and plans affecting the European and Ramsar sites?

**81.** Does the statement in paragraphs 65 and 66 of the *March 2012 Habitats Review*, "Applying a consistent approach to conservation objectives", that "Natural England, working with JNCC, will publish by the end of June 2012 its new approach to increasing the information available on conservation objectives including the features on the sites" have any implications for the current proposal?

**82.** The applicant's Habitats Regulation Assessment Report makes multiple references to conservation objectives. In section 5.2.6 these are defined as follows -

The conservation objectives for the European sites are, subject to natural change, to maintain the habitats and species described above in favourable condition (or restore it to favourable condition if features are judged to be unfavourable) Natural England (December 2009) (*Conservation Objectives and Definitions of Favourable Condition for Designated Features of Interest - Humber Estuary SSSI*. Draft Version 2. NE.)

In this context –

(a) what is the legal status of the 2009 document, cited as still having 'draft' status, and is it the correct current authority for Humber conservation objectives?

(b) is this document consistent with the sector guidance on port and harbour works set out in the European Commission's Document: *Guidelines on the Implementation of the Birds and Habitats Directives in Estuaries and Coastal Zones* (January 2011) and the Commission Staff Working Document: *Integrating biodiversity and nature protection into port development* (March 2011)?

(c) is the 'no loss' objective an absolute criterion applied to all proposed development in the area, or is it subject to a minimum threshold, either overall or in relation to specific habitats? If so, how are any thresholds set?

**83.** The *Conservation Objectives and Definitions of Favourable Condition for Designated Features of Interest - Humber Estuary SSSI*. Draft Version 2 also show a total of 1644 ha of coastal saltmarsh and 9382 ha of mudflats and sandflats. AMEP's proposals claim to add 12.3 ha of saltmarsh and cause permanent loss of 40 ha of intertidal mudflat and 13.5 ha of sub-tidal mudflat. In this context –

(a) how significant are these changes in the context of the integrity of the European sites?

(b) do the proposed compensation measures maintain the coherence of the Natura 2000 network?

**84.** In Natural England's assessment –

- (a) within the qualifying species, how many birds are likely to be displaced by disturbance or development as a percentage of each species?
- (b) how important is the proposed development site in the context of the SPA as a whole?
- (c) is there sufficient proposed mitigation of the effects of the development (including noise and lighting) on the Havens and the residual areas of foreshore?

**85.** How well are the dynamic qualities of the Humber Estuary understood through monitoring and modelling, and what account has Natural England taken of them?

**86.** What does monitoring show to have been the extent of natural change in the size and characteristics of the European and Ramsar sites since designation?

**87.** Are there any modelling results showing how further natural change might affect the sites in the future? Specifically, over a ten year period what percentage variation in the formation or loss of saltmarsh and mudflats and sandflats might be expected?

**88.** In particular, is there data (monitored or modelled) on the rate of transition from inter-tidal mud flat to salt marsh, and are there particular conditions under which this change takes place?

**89.** The baseline data used for assessing the possible rate of saltmarsh and mudflat creation at Cherry Cobb Sands is apparently no newer than 2008. What weight can be placed upon it?

**90.** Is the 2:1 ratio for the creation of mudflat habitat to habitat loss (paragraph 1.16.2 of Natural England's Relevant Representation) a standard criterion or one that has been judged appropriate for this site? On what basis is it calculated? Specifically, does it include an allowance for the likelihood of some mudflat turning into saltmarsh?

**91.** What has been learned from other compensation sites in the Humber Estuary, specifically Chowderness and Paull Holmes Strays? To what extent are they proven to have provided the precise compensation habitat sought in each case?

**92.** Paragraph 1.2.1 of the Environmental Statement's Annex 30.1 states that Natural England has stipulated that the compensation site should be located within the Humber middle estuary. In that context –

(a) is that statement correct?

(b) if so, what was the basis for making this stipulation?

(c) in the case of the Immingham Outer Harbour Ro-Ro development, two inter-tidal compensation sites of circa 50 ha were provided outside the middle estuary. Were the criteria for assessing the suitability of these sites the same as for AMEP? If not, how and why did they differ?

**93.** Does Natural England consider that future monitoring requirements should be the subject of either requirements in the DCO or s.106 obligations?

### **Questions primarily for the applicant and Natural England**

**94.** Have Natural England and the applicant reached agreement on the issues set out in paragraph 1.20 of Natural England's Relevant Representation? If not, what is the state of

the applicant's progress on each of the matters set out in Appendices 1 to 4 of that representation?

**95.** What is the current state of discussion and agreement on the draft European Protected Species licence?

**Questions primarily for Natural England and the Royal Society for the Protection of Birds**

**96.** Key species identified as likely to be affected by the proposed development are the black-tailed godwit, redshank and curlew. Have any natural changes in the populations or distributions of these species been observed since the designation of the European sites? If so, what if any reasons can be ascribed to these changes?

**Questions primarily for National Grid**

**97.** Further to the relevant representation submitted by National Grid on 2 April 2012 –

(a) is National Grid in discussion with the applicant about the concerns raised in the representation?

(b) have possible amendments to the draft DCO been agreed which would answer National Grid's concerns?

(c) if not, what precise provisions would National Grid wish to have considered?

**Question primarily for the applicant and Statutory Undertakers**

**98.** Please provide an update on any discussions relating to s.127 of the PA 2008.



## Annex D 2

### Proposed Able Marine Energy Park on the south bank of the River Humber at Immingham, North Lincolnshire

#### Initial draft of Statement to inform Habitats Regulations Assessment

#### Summary of information supplied by applicant

<b>The proposed development:</b>	Able Marine Energy Park
<b>Project number:</b>	TR030001
<b>The Developer:</b>	Able UK

#### Executive Summary

**This report and the matrices within it are a summary of the information supplied by the applicant to assist the Planning Inspectorate in producing their recommendations to the Secretary of State. It will be revised and re-issued towards the end of the examination process. It only goes as far as the consideration of adverse effects on the integrity of European sites and does not deal with alternative solutions, imperative reasons of overriding public interest and compensatory measures.**

The Able Marine Energy Park requires the construction of a quay of solid construction on the south bank of the River Humber. Associated development includes dredging and land reclamation, and onshore facilities for the manufacture, assembly and storage of marine energy installation components.

The Humber Estuary is designated as an Special Protection Area (SPA) for the internationally important populations of waterbirds which use the estuary and adjoining areas for feeding, roosting and on passage. The Estuary is a Special Area of Conservation (SAC) for estuarine habitats including salt marsh, mudflats and sub-tidal habitat and for grey seal, river lamprey and sea lamprey. It is also a Ramsar site for the habitats within and associated with the estuary, the grey seal population, the waterbird assemblages and the migration route it provides to lamprey moving between coastal waters and their spawning grounds.

The proposed development will have a number of impacts, including the direct loss of mudflats and sub-tidal habitats as a result of dredging and construction of the quay. Disturbance caused by lighting, noise, human activity and vibration is also likely to displace many of the birds that currently use the development site or adjacent areas.

Likely significant effects have been identified for many of the bird species that currently use the Killingholme Marshes foreshore or Killingholme fields because of direct habitat loss or displacement through disturbance. Noise and disturbance associated with piling could affect the migratory lamprey populations. North Killingholme Haven Pits will not be affected by direct habitat loss and disturbance is unlikely. It is thought unlikely that there will be any in combination effects with other plans or projects.

The assessment carried out by the applicant concluded that adverse effects on integrity cannot be excluded for the SPA bird populations using the foreshore, although mitigation can be provided for the loss of Killingholme fields. The integrity of the SAC and Ramsar sites will also be adversely affected by the loss of habitat (although it is anticipated that

additional areas of salt marsh will develop). Adverse effects on migrating lamprey though have been excluded.

**Screening Stage- Likely Significant Effects**

**Summary of likely impacts**

Table 1

<b>Impacts in submission information</b>	<b>Presented in screening tables as</b>
<ul style="list-style-type: none"> <li>• Ground vibration caused by piling</li> <li>• Noise generated by construction activities including piling</li> <li>• Vibration generated by piling</li> <li>• Lighting/noise associated with construction activities</li> <li>• Human activity associated with construction</li> <li>• Movements of ships, vehicles</li> </ul>	<ul style="list-style-type: none"> <li>• Disturbance/displacement</li> </ul>
<ul style="list-style-type: none"> <li>• Changes to water temperature</li> </ul>	<ul style="list-style-type: none"> <li>• Effects on benthic food sources</li> </ul>
<ul style="list-style-type: none"> <li>• Dredging</li> <li>• Construction of quay/manufacturing area</li> </ul>	<ul style="list-style-type: none"> <li>• Loss of habitat/supporting habitat</li> </ul>

## Likely Significant Effects summary for Able Marine Energy Park

### List of European sites considered in the screening exercise:

Humber Estuary Special Protection Area  
Humber Estuary Special Area of Conservation  
Humber Estuary Ramsar Site

Table 2

<b>Humber Estuary Special Protection Area</b>									
<b>Distance to NSIP: 0km</b>									
<b>European Site Features</b>	<b>Likely Effects of NSIP</b>								
	<i>Reduction in benthic food supply</i>			<i>Loss of supporting habitat</i>			<i>Disturbance/displacement thro' increased noise or lighting</i>		
	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>
Avocet* (wintering)	<b>xh</b>	<b>xh</b>	ND	<b>xc</b>	<b>xc</b>	ND	<b>xc</b>	<b>k</b>	ND
Bittern* (wintering)	<b>xa</b>	<b>xa</b>	ND	<b>xa</b>	<b>xa</b>	ND	<b>xa</b>	<b>xa</b>	ND
Hen harrier* (wintering)	<b>xa</b>	<b>xa</b>	ND	<b>xa</b>	<b>xa</b>	ND	<b>xa</b>	<b>xa</b>	ND
Bar-tailed godwit* (wintering)	<b>xh</b>	<b>xh</b>	ND	√j	√j	ND	<b>xc</b>	<b>k</b>	ND
Ruff* (passage)	<b>xd</b>	<b>xd</b>	ND	<b>xd</b>	<b>xd</b>	ND	<b>xd</b>	<b>k</b>	ND
Bittern* (breeding)	<b>xa</b>	<b>xa</b>	ND	<b>xa</b>	<b>xa</b>	ND	<b>xa</b>	<b>xa</b>	ND
Marsh harrier* (breeding)	N/A	N/A	ND	<b>xf</b>	<b>xf</b>	ND	<b>xf</b>	<b>k</b>	ND
Avocet* (breeding)	<b>xh</b>	<b>xh</b>	ND	<b>xc</b>	<b>xc</b>	ND	<b>xc</b>	<b>k</b>	ND
Little tern (breeding)*	<b>xa</b>	<b>xa</b>	ND	<b>xa</b>	<b>xa</b>	ND	<b>xa</b>	<b>xa</b>	ND
Shelduck (wintering) <sup>§</sup>	<b>xh</b>	<b>xh</b>	ND	√j	√j	ND	√b	<b>k</b>	ND
Knot (wintering) <sup>§</sup>	<b>xh</b>	<b>xh</b>	ND	<b>xi</b>	<b>xi</b>	ND	<b>xi</b>	<b>k</b>	ND

Dunlin (wintering) <sup>§</sup>	xh	xh	ND	✓j	✓j	ND	✓b	k	ND
Black-tailed godwit (wintering) <sup>§</sup>	xh	xh	ND	✓j	✓j	ND	xc	k	ND
Redshank (wintering) <sup>§</sup>	xh	xh	ND	✓j	✓j	ND	✓b	k	ND
Knot (passage) <sup>§</sup>	xh	xh	ND	xi	xi	ND	xi	k	ND
Dunlin (passage) <sup>§</sup>	xh	xh	ND	✓j	✓j	ND	✓b	k	ND
Black-tailed godwit (passage) <sup>§</sup>	xh	xh	ND	✓j	✓j	ND	xc	k	ND
Redshank (passage) <sup>§</sup>	xh	xh	ND	✓j	✓j	ND	✓b	k	ND
Assemblage qualification – the site qualifies under article 4.2 of the Birds Directive because it regularly supports 153, 394 individuals waterbirds in the non-breeding season+	xh	xh	ND	✓g,j	✓g,j	ND	✓e	k	ND

\* The SPA qualifies under article 4.1 of the Birds Directive as it is regularly used by 1% or more of the Great Britain populations of these Annex 1 species.

§ The SPA qualifies under article 4.2 of the Birds Directive as it is regularly used by 1% or more of the biogeographical populations of these regularly occurring migratory species.

+ Species recorded include dark-bellied brent goose, shelduck, wigeon, teal, mallard, pochard, scaup, goldeneye, bittern, oystercatcher, avocet, ringed plover, golden plover, grey plover, lapwing, knot, sanderling, dunlin, ruff, black-tailed godwit, bar-tailed godwit, whimbrel, curlew, redshank, greenshank and turnstone.

### Key to table

✓ = Likely significant effect

x = No likely significant effect

? = Likely significant effect cannot be excluded

ND = Not discussed in HRA

N/A = Not applicable

C = Construction

O = Operation

D = Decommissioning

### Justification for conclusions

- a** Species not recorded in either the WeBS data for the site over the last five years or from the 'Through the Tide Count' surveys 2010-11 (See paragraph 11.5.44 of ES Chapter 11, HRA report table 5.10);
- b** More than 1% of the population of the Humber Estuary uses the Killingholme Marshes Foreshore and will be displaced (HRA table 5.7);
- c** Species uses the North Haven Killingholme Pits – no habitat will be lost and there will be no disturbance from construction activities. No visual disturbance will occur during construction as North Killingholme Haven Pits are largely shielded by the existing bund which extends around the south of the Haven Pits, combined with the screen planting on top. In addition large scale construction works will be more than 200m away from the Haven Pits (ES Chapter 11). Noise levels from piling are predicted to be no higher than current base levels (ES Chapter 11, paragraphs 11.6.34-11.6.54). There will be no residual light impacts after mitigation (ES Chapter 19, paragraphs 19.3.1 - 19.8.3);
- d** Only one bird recorded at Killingholme Marshes & one at North Killingholme Haven Pits – although this is more than 1% of the population for the Humber Estuary this is clearly not an important area for ruff within the estuary.
- e** 2.7% of the overall wetland assemblage will be displaced by the development (HRA report 5.4.19). However some of the assemblage species are present at less than 1% of the Humber Estuary population, including dark-bellied brent goose, golden plover, grey plover, knot, oystercatcher, turnstone. Others such as scaup, goldeneye and greenshank have not been recorded at all at Killingholme Marshes foreshore or North Killingholme Haven Pits (HRA report table 5.10);
- f** More than 1% of the Humber Estuary population has been recorded on the Killingholme Marshes but the species is not dependent on the area lost and no disturbance of breeding birds is predicted at North Killingholme Haven Pits (HRA report, table 5.9);
- g** Two of the main onshore areas used by curlew at Killingholme Fields lie within the AMEP site (HRA report paragraph 5.4.21). Intertidal mudflats at Killingholme Marshes foreshore will also be lost;
- h** The predicted effects of the change in the thermal plume in the vicinity of the outfall from the power station are insignificant so no likely significant effects on marine fauna or habitats are predicted (HRA report paragraph 5.4.24);
- i** Occurs at less than 1% of the Humber Estuary population (HRA report table 5.10);
- j** Loss of intertidal mudflats at Killingholme Marshes foreshore (HRA report paragraph 5.5.4);
- k** Operational impacts assumed to be less than construction impacts so construction impacts only assessed as representing worse case scenario (HRA report).

Table 3

<b>Humber Estuary Special Area of Conservation</b>
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Distance to NSIP: 0 km									
European site features	Likely effects of NSIP								
	<i>Loss of migratory routes/access to breeding sites</i>			<i>Loss of habitat/supporting habitat</i>			<i>Disturbance thro' increased noise or lighting, movement</i>		
	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>
Atlantic salt meadows	N/A	N/A	ND	✓a	✓a	ND	N/A	N/A	ND
Coastal lagoons (priority habitat)	N/A	N/A	ND	✗d	✗d	ND	N/A	N/A	ND
Dunes with <i>Hippophae rhamnoides</i>	N/A	N/A	ND	✗e	✗e	ND	N/A	N/A	ND
Embryonic shifting dunes	N/A	N/A	ND	✗e	✗e	ND	N/A	N/A	ND
Estuaries	N/A	N/A	ND	✓b	✓b	ND	N/A	N/A	ND
Mudflats & sandflats not covered by seawater at low tide	N/A	N/A	ND	✓b	✓b	ND	N/A	N/A	ND
Fixed dunes with herbaceous vegetation ('grey dunes' - priority habitat)	N/A	N/A	ND	✗e	✗e	ND	N/A	N/A	ND
Salicornia & other annuals colonising mud & sand	N/A	N/A	ND	✓b	✓b	ND	N/A	N/A	ND
Sandbanks which are slightly covered by sea water all the time	N/A	N/A	ND	✗c	✗c	ND	N/A	N/A	ND
Shifting dunes along the shore line with <i>Ammophila arenaria</i> ('white dunes')	N/A	N/A	ND	✗e	✗e	ND	N/A	N/A	ND
Grey seal	✗f	✗f	ND	✗f	✗f	ND	✗f	✗f	ND
River lamprey	?g	h	ND	?g	?g	ND	N/A	N/A	ND
Sea lamprey	?g	h	ND	?g	?g	ND	N/A	N/A	ND

### Key to table

✓ = Likely significant effect

✗ = No likely significant effect

? = Likely significant effect cannot be excluded

N/A = Not applicable

N/D = Not discussed within the HRA or Environmental Statement

C = Construction

O = Operation

D = Decommissioning

### Justification for conclusions:

- a** Should be a positive likely significant effect as modelling predicts that 12.3 ha of saltmarsh will be created through accretion (HRA report, page D2);
- b** Net loss of mudflat of 33.97 ha (direct loss of 31.5 ha, indirect loss of 10.35 ha but also a direct gain of 7.88 ha of mudflat) and a loss of 13.5 ha of sub-tidal habitat (HRA report, page D2);
- c** Sandbanks are not immediately affected by project and indirect morphodynamic change as a result the project is not likely to affect the extent of the sandbanks (HRA report, page D2);
- d** No impacts on either area or water quality (HRA report, page D2);
- e** No reduction in area or in quality (HRA report, page D2);
- f** No effect on pup production because Donna Nook is beyond airborne and waterborne noise disturbance limit. Underwater noise will create temporary disturbance but this should not permanently prevent pups from entering estuary, or affect its food supply. Most seals will prefer to hunt for food at sea and so will not approach the AMEP site closely enough to risk auditory damage (HRA report, page D9);
- g** There will be some loss of sub-tidal habitat which could affect sea lamprey ammocoetes and possibly an effect on adult migratory movement from underwater noise. Effects on water quality and flow will only be temporary and localised. Suspended solids in the estuary already exceed 25 mg/l annually (the target from the draft conservation objectives 2009) so this is not viewed as a realistic limit measure in the area of interest. (HRA report, paragraphs 5.4.30, page D2, ES chapter 10, paragraphs 10.6.9-10.6.31, 10.6.81-10.6.95);
- h** Operational impacts assumed to be less than construction impacts so construction impacts only assessed as representing worse case scenario (HRA report).

Table 4

<b>Humber Estuary Ramsar site</b>
<b>Distance to NSIP: 0 km</b>

European site features	Likely effects of NSIP											
	Reduction in benthic food supply			Loss of migratory routes/access to breeding sites			Loss of habitat/supporting habitat			Disturbance thro' increased noise or lighting, movement		
	C	O	D	C	O	D	C	O	D	C	O	D
Criterion 1 - the site is a representative example of a near-natural estuary with the following component habitats: dune systems and humid dune slacks, estuarine waters, intertidal mud and sand flats, saltmarshes, and coastal brackish/saline lagoons.	N/A	N/A	N/D	N/A	N/A	N/D	✓a	✓ a	N/D	N/A	N/A	N/D
Criterion 3 - supports a breeding colony of grey seals <i>Halichoerus grypus</i> at Donna Nook.	N/A	N/A	N/D	xb	xb	N/D	xb	xb	N/D	xb	xb	N/D
Criterion 5 - In the non-breeding season, the area regularly supports 153,934 individual waterbirds	xc	xc	N/D	N/A	N/A	N/D	✓d	✓d	N/D	✓e	g	N/D
Criterion 6 - regularly supports 1% of the individuals in the populations of the species or subspecies*	xc	xc	N/D	N/A	N/A	N/D	✓d	✓d	N/D	✓e	g	N/D
Ramsar criterion 8 - acts as an important migration route for both river lamprey and sea lamprey between coastal waters and their spawning areas.	N/A	N/A	N/D	?f	?f	N/D	?f	?f	N/D	✓e	g	N/D

\* Species present include shelduck, golden plover, knot, dunlin, black-tailed godwit, redshank (all wintering), golden plover, knot, dunlin, black-tailed godwit and redshank (passage)

### Key to table

✓ = Likely significant effect  
 x = No likely significant effect  
 ? = Likely significant effect cannot be excluded

C = Construction  
 O = Operation  
 D = Decommissioning

ND = Not discussed in HRA  
 N/A = Not applicable

### Justification for conclusions:



**a** Sandbanks will not be affected by the project & 12.3 ha of saltmarsh will be created through accretion, but there will be a net loss of mudflat of 33.97 ha (HRA report, D2);

**b** No effect on pup production because Donna Nook is beyond airborne and waterborne noise disturbance limit. Underwater noise will create temporary disturbance but this should not permanently prevent pups from entering estuary, or affect its food supply. Most seals will prefer to hunt for food at sea and so will not approach the AMEP site closely enough to risk auditory damage (HRA report, page D9);

**c** The predicted effects of the change in the thermal plume in the vicinity of the outfall from the power station are insignificant so no likely significant effects on marine fauna or habitats are predicted (HRA report paragraph 5.4.24);

**d** Two of the main onshore areas used by curlew at Killingholme Fields lie within the AMEP site (HRA report paragraph 5.4.21). Intertidal mudflats at Killingholme Marshes foreshore will also be lost;

**e** Species uses the North Haven Killingholme Pits & could be affected by noise arising from piling activities for new quay (HRA report table 5.8). 2.7% of the population of the wetland assemblage will be displaced by the development (HRA report table 5.10);

**f** There will be some loss of sub-tidal habitat which could affect sea lamprey ammocoetes and possibly an effect on adult migratory movement from underwater noise. Effects on water quality and flow will only be temporary and localised. Suspended solids in the estuary already exceed 25 mg/l annually (the target from the draft conservation objectives 2009) so this is not viewed as a realistic limit measure in the area of interest. (HRA report, paragraphs 5.4.30, page D2, ES chapter 10, paragraphs 10.6.9-10.6.31, 10.6.81-10.6.95);

**g** Operational impacts assumed to be less than construction impacts so construction impacts only assessed as representing worse case scenario (HRA report).

#### **Project effects likely to be significant in combination with other plans or projects:**

- The loss of part Killingholme Marshes foreshore and Killingholme fields will affect the bird species using those areas. However compensation measures have been agreed with Natural England which will provide new habitat to replace that which is lost from direct effects, indirect effects and functional loss of habitat. As such in combination effects are not predicted (HRA report paragraph 6.7.3); **NB: Compensation measures should not be taken into account when making decisions about likely significant effect. In this case, likely significant effects have been identified alone which means that the impacts on the European sites will automatically be the subject of appropriate assessment.**
- The only wetland bird species which are likely to be subject to in combination effects are those at North Killingholme Haven Pits. The AMEP development borders the Haven Pits on the southern and western sides, with the Humber Estuary to the east. The proposed developments such as the IGCC Power Station, the Ursa Glass Wool Factory and the bio-ethanol plant will not

have any direct effects on the Haven Pits and none are located close enough to result in any significant disturbance effects, and in combination effects are not predicted. Other development in the northern area is being undertaken by Able and is the subject of a mitigation package which has been agreed with Natural England.

- It is possible that the Neptune RE Tidal Stream Generator may have a likely significant effect on lamprey, however, it is envisaged that if this were the case then further assessment will be required and mitigation or compensation measures agreed with NE. Hence in-combination effects are not foreseen. It is also our understanding that Associated British Ports (ABP) have agreed measures with NE to avoid adverse effects to migratory lamprey associated with the Green Port development in Hull, however, no details are available at this time. Assuming such measures have been agreed, then adverse effects on lamprey in combination with AMEP are not predicted.

**Conclusion:**

*To follow*

## **APPROPRIATE ASSESSMENT**

### **1. INTRODUCTION**

**Appropriate Assessment: summary of effects on European site integrity.**

The purpose of this AA is to determine whether or not the plan or project will adversely affect the **integrity** of the Humber Estuary SAC, SPA and Ramsar, **in view of the site conservation objectives**.

## SUMMARY OF ASSESSMENT RESULTS

**Table 5. Appropriate Assessment: summary of effects on European site integrity.**

Humber Estuary Special Protection Area						
Distance from NSIP: 0km						
European site features	Effects on site integrity					
	<i>Loss of supporting habitat</i>			<i>Disturbance/displacement thro' increased noise or lighting</i>		
	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>
Bar-tailed godwit* (wintering)	✓f	✓f	ND	✓f	j	ND
Shelduck (wintering) <sup>§</sup>	✓a	✓a	ND	✓a	j	ND
Dunlin (wintering) <sup>§</sup>	✓d	✓d	ND	✓d	j	ND
Black-tailed godwit (wintering) <sup>§</sup>	✓e	✓e	ND	✓e	j	ND
Redshank (wintering) <sup>§</sup>	✓h	✓h	ND	✓h	j	ND
Dunlin (passage) <sup>§</sup>	✓d	✓d	ND	✓d	j	ND
Black-tailed godwit (passage) <sup>§</sup>	✓e	✓e	ND	✓e	j	ND
Redshank (passage) <sup>§</sup>	✓h	✓h	ND	✓h	j	ND
Assemblage qualification – the site qualifies under article 4.2 of the Birds Directive because it regularly supports 153, 394 individuals waterbirds in the non-breeding season+	✓a,b,c,e,f,g,h,i	✓a,b,c,e,f,g,h,i	ND	✓a,b,c,e,f,g,h,i	j	ND

**Key to table**

✓ = Adverse effect on integrity cannot be excluded

✗ = Adverse effect on integrity can be excluded

C = Construction

O = Operation

D = Decommissioning

ND = Not discussed in HRA

N/A = Not applicable

### Justification for conclusions:

#### **NB For map showing Count Sectors please see ES Chapter 11, Figure 11.4**

**a** Shelducks use the Killingholme Marshes foreshore (mainly Count Sectors C, D & E). Sector C and most of Sector D will be lost to accommodate the building of the new quay. A disturbance distance of 275m has been assumed, based on a literature review. Although shelducks may show a degree of habituation, on a precautionary basis, up to two thirds of the birds using Count Sector E of the Killingholme Marshes Foreshore could be affected. The combined effect of direct habitat loss and disturbance will lead to displacement of numbers that are regularly in excess of 1% of the Humber Estuary population. It remains uncertain whether any displaced birds could be accommodated elsewhere in the estuary, so it has been assumed that there would be a reduction in the Humber Estuary population. It is not possible to mitigate these effects (HRA report, paragraphs 6.3.9-6.3.14 & Section 6.4);

**b** Ringed plover use Count Sectors D and E of the Killingholme Marshes foreshore. The majority of Count Sector D will be lost and Sector E will be affected by disturbance during construction. Numbers of ringed plover in excess of 1% of the Humber Estuary population may still be present on the undisturbed area of Sector E but even allowing for this important numbers of the Humber Estuary population will be lost as a result of the development. The population of ringed plover in the UK is declining so further loss will result in an adverse effect upon a European site which cannot be mitigated (HRA report, paragraphs 6.3.9-6.3.14 & Section 6.4);

**c** The greatest number of lapwing were recorded by the 'Through the Tide' Count in Sector E and it is possible that some of these birds will remain undisturbed. However the WeBs data suggests that the loss of important numbers of lapwing cannot be excluded. This effect cannot be mitigated for this loss within the European site, although the managed re-alignment project at Paull Holme Strays has been successful at providing intertidal roost for this species (HRA report, paragraphs 6.3.19 - 6.3.25 & Section 6.4);

**d** Dunlin use the intertidal habitat at Killingholme Marshes foreshore throughout the passage and winter periods. Both the 'Through the Tides' Count and the WeBS core count record numbers of dunlin equal to or greater than 1% of the Humber Estuary population. The counts recorded dunlin mainly using Count Sectors C, D & E but also in A and B. All of C and most of B & D will be lost. E and the remainder of B are likely to be affected by disturbance. Even if some birds are retained in Sectors A & E, numbers in excess of 1% of the Humber Estuary population will be lost. Dunlin numbers show a long-term decline in both the UK and the Humber Estuary,

though this may be due in part to increased numbers wintering in the Waddensee. The loss of 1% or more of the Humber population would have an adverse effect which cannot be mitigated within the European site. (HRA report, paragraphs 6.3.25-6.3.29 & Section 6.4);

**e** Killingholme Marshes foreshore is used by important numbers of foraging black-tailed godwits, with mean peaks of at least 1% of the Humber Estuary population from the WeBS data and over 66% for the 'Through the Tide' Count. These peaks occur in autumn when the birds are going through their post breeding moult before moving to other sites within the Humber and the Wash. Smaller peaks occur during the spring passage. In autumn birds are mainly in Count Sectors C and D. From late winter birds are more likely to be in Sector E. Even larger numbers roost at North Killingholme Haven Pits which is the preferred roost site for this species on the Humber. No significant effects are predicted on the birds roosting at this site, but proximity between roost sites and feeding sites may be important for black-tailed godwits and it is possible that the loss of foraging opportunities at Killingholme Marsh foreshore may affect their use of this preferred roost. WeBS counts show that the population of this species has increased rapidly since the early to mid 1990s. Despite this trend, the number of roosts which are likely to be lost from the Haven Pits is such that the Humber Estuary population would be significantly reduced (HRA report paragraphs 6.3.30 - 6.3.39 & Section 6.4);

**f** The 'Through the Tide' count recorded bar-tailed godwits at Killingholme Marshes foreshore, suggesting that the area is an important area for this species during the late winter/spring passage but also at other times of year. The godwits were recorded mainly in Count Sectors C, D and E. Sectors C and D will be lost and much of Sector E will also be lost as foraging area due to disturbance. It is not possible to mitigate these effects within the European site. Population and distribution trends for bar-tailed godwits are unclear both within the Humber Estuary and more widely within Europe (HRA report 6.3.40 - 6.3.44 & Section 6.4);

**g** The Humber Estuary is the fifth most important UK wintering site for curlew. The WeBS data and the 'Through the Tide' Count both record numbers of curlews using the Killingholme Marshes foreshore in excess of 1% of the Humber population. The birds mainly use Count Sector D with lower numbers in Count Sectors C and E and little use of B and A. Sector C will be lost and two-thirds of Sector E will be unavailable because of disturbance. An alternative foraging area for curlew will be created. This habitat will be created prior to any significant area of existing terrestrial habitat being lost. Curlew populations on the Humber increased in the 15 year period from 1991/2-2006/7, however large declines occurred over the same period at Killingholme Marshes. The UK population have been declining since 2000 with a decline in the UK breeding population and a shift to wintering in the Netherlands. The provision of alternative habitat will mitigate the loss of the inland fields but the loss of the intertidal mudflat at Killingholme Marshes foreshore could lead to the loss of 3% of the Humber Estuary population. This will lead to an adverse effect which cannot be mitigated within the European site (HRA report 6.3.45 - 6.3.52 & Section 6.4);

**h** Numbers of redshank recorded on Killingholme Marshes foreshore are in excess of 1% of the Humber Estuary population (WeBS data) and reached peak numbers of approximately 10% of the population ('Through the Tide' Count). They were recorded throughout the Count Sectors but favoured Sectors C and D which will both be lost to AMEP. WeBS data indicates peak numbers occurring in the winter. The 'Through the Tide' Count showed a peak during the autumn passage period but also recorded numbers in excess of 1% of the Humber Estuary population persisting through the winter and into March. Most feeding sites of redshank on the Humber Estuary are in close proximity to high water roosting areas; the roost at North Killingholme Haven Pits holds between 200 and 250 birds. It is possible that on high tides some of the population using the foreshore may move to roost at the Haven Pits,

but there is no data to confirm this linkage. The redshank population on the Humber has remained relatively stable as a whole. The loss of the Killingholme Marshes foreshore could lead to the loss of a substantial part of the redshank population on the Humber Estuary and this effect cannot be mitigated. Birds using the Haven Pits are not likely to be disturbed during construction, but if the use of this roost is linked to their use of the foreshore then this could also lead to a reduction in the numbers using the Haven Pits (HRA report paragraphs 6.3.53 - 6.3.59 & Section 6.4);

**i** AMEP will result in the displacement of between 0.2 and 2.5% of the Humber Estuary bird assemblage (population size is based on the 5 year mean peak between 2004/5-2008/9) because the permanent habitat loss and disturbance during construction of the Killingholme Marshes foreshore. The North Killingholme Haven Pits will not experience any habitat loss or disturbance but those species which roost near their foraging grounds may be discouraged from using the Haven Pits as a roost site (HRA report paragraphs 6.6.30-6.3.62 & Section 6.4);

**j** Operational impacts assumed to be less than construction impacts so construction impacts only assessed as representing worse case scenario (HRA report).

**Table 6. Appropriate Assessment: summary of effects on European site integrity**

<b>Humber Estuary Special Area of Conservation</b>						
<b>Distance to NSIP: 0 km</b>						
<b>European site features</b>	<b>Effects on site integrity</b>					
	<i>Loss of migratory routes/access to breeding sites</i>			<i>Loss of habitat/supporting habitat</i>		
	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>
Atlantic salt meadows	N/A	N/A	ND	✓c	✓c	ND
Estuaries	N/A	N/A	ND	✓b	✓b	ND
Salicornia & other annuals colonising mud & sand	N/A	N/A	ND	a	a	ND
Mudflats & sandflats not covered by seawater at low tide	N/A	N/A	ND	✓b	✓b	ND
River lamprey	xd	xd	ND	xe	xe	ND
Sea lamprey	xd	xd	ND	xe	xe	ND

**Key to table**

✓ = Adverse effect on integrity cannot be excluded

x = Adverse effect on integrity can be excluded

C = Construction

O = Operation

D = Decommissioning

ND = Not discussed in HRA

N/A = Not applicable

**Justification for conclusions:**

**a** The screening assessment in Annex D appears to combine the 'Salicornia and other annuals colonising mud and sand' with the 'Atlantic salt meadows' habitat type as having a significant positive effect but is not referred to in the shadow appropriate assessment (HRA report, Chapter 6);

**b** The new quay will result in the overall loss of 31.5 ha of intertidal mudflat and 13. ha of sub-tidal habitat, and this effect cannot be mitigated (HRA report paragraphs 6.2.1- 6.2.3);

**c** Approximately 12 ha of salt marsh will be created on intertidal areas around the new quay (HRA report D2);

**d** On the basis of the Subacoustech study on Atlantic salmon it has been concluded that there will be corridor through the estuary through which migratory species, including lamprey can pass, even when piling is being carried out (HRA report paragraphs 6.5.1- 6.5.10, .ES Annex 10.2);

**e** The abundance of lamprey impinged at the South Humber Power Station at the edge of the main channel suggests this area as a possible preferential route for migration. It is considered unlikely that the shallow sub-tidal areas near AMEP will be used for feeding but individuals may rest there during the day (migration is mainly nocturnal). However as the loss of sub-tidal habitat is less than 0.1 % of the sub-tidal estuarine habitat within the estuary so there should be no adverse effects (HRA report paragraphs 6.5.11, .ES Annex 10.2).

**Table 7. Appropriate Assessment: summary of effects on European site integrity**

<b>Humber Estuary Ramsar Site</b>									
<b>Distance to NSIP: 0 km</b>									
<b>European site features</b>	<b>Effects on site integrity</b>								
	<i>Loss of migratory routes/access to breeding sites</i>			<i>Loss of habitat/supporting habitat</i>			<i>Disturbance thro' increased noise or lighting, movement</i>		
	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>
Criterion 1 - the site is a representative example of a near-natural estuary with the following component habitats: dune systems and humid dune slacks, estuarine waters, intertidal mud and sand flats, saltmarshes, and coastal brackish/saline lagoons.	N/A	N/A	N/D	✓a	✓a	N/D	N/A	N/A	N/D
Criterion 5 - in the non-breeding season, the area regularly supports 153,934 individual waterbirds.	N/A	N/A	N/D	✓b	✓b	N/D	✓b	✓b	N/D
Criterion 6 - regularly supports 1% of the individuals in the populations of the species or subspecies*.	N/A	N/A	N/D	✓b	✓b	N/D	✓b	✓b	N/D
Ramsar criterion 8 - acts as an important migration route for both river lamprey and sea lamprey between coastal waters and their spawning areas.	xc	xc	N/D	xc	xc	N/D	N/A	N/A	N/D



**Key to table**

✓ = Adverse effect on integrity cannot be excluded

✗ = Adverse effect on integrity can be excluded

C= Construction

O = Operation

D = Decommissioning

ND = Not discussed in HRA

N/A = Not applicable

**Justification for conclusions:**

**a** The new quay will result in the overall loss of 31.5 ha of intertidal mudflat and 13.ha of sub-tidal habitat, and this effect cannot be mitigated (HRA report paragraphs 6.2.1- 6.2.3);

**b** See footnotes a to i for Table 5;

**c** See footnotes d and e for Table 6.

**Conclusion:**

*To follow*

## Questions on Shadow HRA supporting information

Footnote reference	Suggested query recipient(s)	Suggested area for questioning
<b>General questions</b>		
<p>For Natural England:</p> <ul style="list-style-type: none"> <li>Do you agree with the statement that carrying out a 'Through the Tide' count in 2010/11, combined with the available WeB counts and other surveys referred to in the HRA and ES, provides sufficient data to assess the likely impacts of the proposed development on the bird populations using the estuary? (See paragraph 11.5.63, ES Chapter 11). If not what additional data is required?</li> </ul> <p>For Natural England (NE) &amp; applicant</p> <ul style="list-style-type: none"> <li>Both construction &amp; operation will generate substantial traffic movements with the potential to generate localised air pollution. Has the impact of traffic generated air pollution on the European Sites been considered?</li> </ul> <p>For applicant</p> <ul style="list-style-type: none"> <li>Please confirm whether or not the area of sub-tidal habitat being lost to create the berthing pocket is included in the 13.5 ha loss of sub-tidal habitat referred to in the Habitats Regulations Assessment report.</li> </ul>		
<b>Likely Significant Effect</b>		
Table 2-a	Applicant/Natural England	Occasional records for bittern have been recorded for North Killingholme Haven Pits (ES Chapter 11, paragraph 11.5.15), although they have been excluded from the HRA because they have not been recorded in either the WeBS data for the site over the last five years or from the 'Through the Tide Count' surveys 2010-11. Given the rarity and shyness of bittern, does this provide adequate justification for the exclusion of the species from the HRA?
Table 2-c	Applicant	The noise from piling activities is predicted to be no higher than existing LA <sub>MAX</sub> levels (ES Chapter 11, paragraphs 11.6.34-11.6.54). However the noise levels resulting from the piling will be in addition to the existing baseline levels. Please can you explain how the calculation of the predicted levels takes this into account.
Table 2-c	Applicant	Lighting levels: Please could you provide light contour maps indicating what the light levels will be (in lux) at different points on the European sites and adjacent areas at present, during construction and during operation.

Table 2-d	NE	Ruff has been excluded from the HRA because so few birds were recorded either on the foreshore or at North Killinghome Haven Pits. The HRA concluded that, although the numbers recorded represented 1.6% of the population within the Humber Estuary, the area was clearly not important for ruff. Do you agree with this assessment?
Table 3 -f	Applicant	Natural England has advised that a 'soft-start' technique should be used to mitigate the impact of underwater piling noise on grey seal. Please advise if you are proposing to do this and give brief details.
Table 3 -f	MMO	Natural England has advised that a 'soft-start' technique should be used to mitigate the impact of underwater piling noise on grey seal. Are you satisfied that this would provide adequate mitigation?
Table 3 -g	NE	Is there any realistic prospect of the estuary achieving an annual mean for suspended solids of <25 mg/l (target within Conservation Objectives)? If there is, would the effect of the project prevent the achievement of Favourable Conservation Status with respect to sea and river lamprey?
<b>Likely significant effects – in combination</b>		
Paragraph on 'in combination effects'	Applicant	Relying on the mitigation measures associated with other projects to avoid in combination effects will not be adequate to comply with the requirements of the Habitats Regulations. Please advise on the likely significant effects generated by in combination effects between: <ul style="list-style-type: none"> <li>• AMEP and the Neptune RE Tidal Stream Generator</li> <li>• AMEP and the Green Port development in Hull</li> </ul>
Paragraph on 'in combination effects'	Applicant	Please advise if there are likely to be any other significant effects generated by Able MEP in combination with other plans or projects, if compensation measures are not taken into account. Please explain which plans and projects have been considered and how conclusions about likely significant effects have been reached.
<b>Appropriate assessment</b>		
Table 5	NE	The shadow appropriate assessment has reviewed the data on disturbance distances and has selected a distance of 275m (see HRA report, paragraph 6.3.8). It is assumed that any birds within 340 m of the development may experience disturbance. Do you agree with the selection of this distance? If not, what approach would you advise?
Table 5	Applicant	The shadow appropriate assessment assumes a disturbance distance of 275m (HRA report paragraph 6.3.8). Please could you confirm

		whether this is 275m from the boundary of the development or 275m from the noise source?
Table 5-e	Applicant	HRA report paragraph 6.3.38 refers to the number of birds that are likely to be lost from North Killingholme Haven Pits, although previous paragraphs have said there will be no significant effects on the Haven Pits. Should this actually refer to Killingholme Marshes foreshore rather than the Haven Pits?
Table 6-a	Applicant	The screening assessment in Annex D appears to combine the ' <i>Salicornia</i> and other annuals colonising mud and sand' with the 'Atlantic salt meadows' habitat type as having a significant positive effect but is not referred to in the shadow appropriate assessment (HRA report, Chapter 6). Please could you explain why this is – if you are combining the two habitat types please explain why.
Table 6-c	Applicant	Has the impact of maintenance dredging (including disposal of material) on migrating lampreys been considered?
Table 6-c	EA/NE/MMO	What conditions would you advise should be attached to the DCO to avoid or reduce impacts on lamprey? If there are residual impacts after mitigation what compensatory measures could be adopted?
Table 6-c	MMO	The draft DCO states that both capital and maintenance dredging will be carried out according to a schedule of works to be agreed with the MMO. In your view, would it be possible to attach conditions to the works schedule which would mitigate the impacts on migrating lampreys?
Table 6	Applicant	Likely in combination effects on lamprey: Please could you explain what your understanding is of current environmental baselines with respect to noise and vibration, water abstraction, habitat disturbance and permanent habitat loss, the likely <b>combined</b> contribution of Able MEP and other plans or projects which have the potential to exacerbate the effects of Able MEP that fall in the following categories: a) All projects started but not yet completed; b) All projects with consent but not yet started; c) All projects subject to ongoing review e.g. annual licences; d) All applications lodged but not yet determined; e) All refusals subject to appeal procedures not yet completed; f) All known projects that do not need consent; g) All proposals in adopted plans h) All proposals in draft plans formally published for consultation

## ANNEX E

## **Proposed Able Marine Energy Park on the south bank of the River Humber at Immingham, North Lincolnshire**

### **Planning Act 2008 (PA 2008) and the Infrastructure Planning (Examination Procedure) Rules 2010**

#### **Note of the Preliminary Meeting**

**Date: Thursday 24 May 2012**

**Venue: Immingham Town Council Civic Centre, Pelham Road, Immingham, DN40 1QF**

***Please note:** This meeting note is not a full transcript of the Preliminary Meeting but a summary of the key points discussed and advice given. A complete audio recording of the event is available on the Planning Inspectorate pages of the Planning Portal website.*

#### **CONTENTS**

- 1.0 Welcome and Introductions
- 2.0 Agenda Item 1 – Principles of the Examination Process
- 3.0 Agenda Item 2 – Initial Assessment of Principal Issues
- 4.0 Agenda Item 3 – Appropriate Assessment Methodology
- 5.0 Agenda Item 4 – Draft Timetable for the Examination
- 6.0 Closing Remarks

#### **LIST OF PARTICIPANTS**

Robert Upton	Lead Member of the Panel
Simon Gibbs	Member of the Panel
Peter Widd	Member of the Panel
Mike Harris	The Planning Inspectorate
Jolyon Wootton	The Planning Inspectorate
Richard Price	The Planning Inspectorate
Richard Cram	Able Humber Ports
Peter Stephenson	Able Humber Ports
David Shepherd	Able Humber Ports
Angus Walker	Bircham Dyson Bell representing Able Humber Ports
Capt. Phil Cowing	Harbour Master, Humber
Jane Wakeman	Winckworth Sherwood representing Harbour Master, Humber
Simon Crane	Anglian Water
Jennifer Dean	Anglian Water
Andrew Garner	Associated British Ports
Mike Stacey	Associated British Ports
Tom Jeynes	Associated British Ports
Jemma-Ann Lonsdale	Associated British Ports
Brian Greenwood	Osborne Clarke representing Associated British Ports
Steve Bright	Bethany Jayne Ltd & Truck Links Ltd

Deborah Bright	Observer
Paul Forshaw	BNP Paribas Real Estate representing Centrica PLC
Helen Lindley	ConocoPhillips Ltd
Benjamin Dove-Seymour	DLA Piper, representing C.GEN Killingholme Ltd/C.RO Ports Killingholme Ltd
Iris D'Hollander	C.GEN Killingholme Ltd
Hugh Gates	C.RO Ports Killingholme Ltd
Eleanore Merrills	E.ON UK PLC
Philip Maude	Squire Sanders representing E.ON UK PLC
Matthew Brown	E.ON UK PLC
Annette Hewitson	The Environment Agency
David Hickling	Hickling-Gray Associates representing Mr Stephen Kirkwood
Alex Codd	Hull City Council
Elizabeth Biott	Lincolnshire Wildlife Trust
Anna Gerring	Marine Management Organisation
Richard Honey	Natural England
Andrew Hearle	Natural England
Emma Hawthorne	Natural England
William Hill	North Lincolnshire Council
Marcus Walker	North Lincolnshire Council
Phil Wallace	North Lincolnshire Council
Michelle Flemming	Oil and Pipeline Agency
David Forsdick	Royal Society for the Protection of Birds
Rosie Sutherland	Royal Society for the Protection of Birds
Mark Williams	Royal Society for the Protection of Birds
Dawn Lott	DSV (Observer)
Dave Smith	DSV (Observer)

## 1.0 Welcome and Introductions

- 1.1 Robert Upton (**RU**) welcomed attendees to the Preliminary Meeting, advised people on matters of housekeeping and provided thanks to Immingham Town Council for hosting the meeting and to those in attendance.
- 1.2 He introduced Simon Gibbs and Peter Widd as the other two members of the Panel appointed by the Secretary of State for Communities and Local Government to conduct the examination and make a recommendation on the application.
- 1.3 He also introduced members of the case team including Mike Harris (Case Manager), Richard Price (Assistant Case Officer) and Jolyon Wootton (Case Officer).
- 1.4 **RU** outlined the purpose of the meeting, namely to consider procedural issues relating to the way in which the application would be examined and the timetable for doing so. There would be no discussion of matters relating to the merits of the proposal. The examination would commence the day after the close of the Preliminary Meeting and that a note of the meeting and a Rule 8 letter, confirming any modifications to the examination timetable, would be issued by 1 June 2012. No procedural decisions would be announced during the meeting.
- 1.5 **RU** said that the agenda included three substantive items, namely the Principles of the Examination Process, the methodology to enable the Secretary of State for Transport as decision-maker to meet the requirements of the Habitats Regulations

Assessment, including appropriate assessment, and the Draft Timetable for the Examination, including deadlines for submissions and dates for hearings and accompanied site visits.

## **2.0 Principles of the Examination Process**

- 2.1 **RU** provided an outline of the essential features of the examination process established by the Planning Act 2008 (PA 2008) for the consideration of proposed Nationally Significant Infrastructure Projects.
- 2.2 He confirmed that the purpose of the examination is to enable the Panel to make a recommendation to the Secretary of State for Transport as to whether the proposal should receive consent in the form of a Development Consent Order under PA 2008.
- 2.3 He noted that the process is inquisitorial and led by the Panel who establish what is important and relevant to the decision which the Secretary of State will need to take. The Panel would be looking for evidence of what is important and relevant and testing the evidence put forward to see how robust it is.
- 2.4 **RU** emphasised the importance of Section 90(1) of PA 2008, which states that an examination is to take the form of written representations. The Rule 8 letter would include the first round of written questions, drawing upon the Relevant Representations made by Interested Parties and Statutory Bodies, the Panel's own preliminary examination of the application documents and other documents of which the Panel has been made aware. The questions broadly reflected the Panel's initial assessment of the principal issues.
- 2.5 **RU** said that if a question covers the same ground as a point which an Interested Party would otherwise have made in their written representation it would assist if the question were still answered in the form in which it was asked. The same point could still be included within a written representation but that there should be consistency of response and be cross-references where appropriate.
- 2.6 The Rule 8 letter would set a deadline for the receipt of responses to the questions and any comments on Relevant Representations. Once received they would be published on the project page on The Planning Inspectorate's pages on the Planning Portal website. Following this there would be time for any other Interested Party to offer comments on the responses to questions and the Relevant Representations. Following this first round there would be a further second round of questions and answers and comments. This second round might probe deeper into unanswered points or address new points which had emerged.
- 2.7 **RU** said that there would be a significant number of questions during the first round and that they would be wide ranging, some addressed to fundamental issues and others to detailed points. He indicated that some parties may feel that the answers to these are already contained within existing application documentation and where this is the case it should be highlighted. It is essential however that the Panel seek to understand all of the issues which might be relevant and important and that all these issues should be surfaced, shared and properly tested. Every question would be addressed to a specific Interested Party or Affected Person, but any other party could also respond to it.
- 2.8 In addition to the iterations of questions, answer and comments the Panel might at any time seek further information or written comments under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules.

- 2.9 **RU** noted that there is provision for certain types of hearing. Generally they would be scheduled to come later in the process. It was important to understand that hearings should be seen as building on the foundations of the written representations, questions and comments. As such, it is essential that Interested Parties engage fully throughout the written process rather than wait for a particular hearing.
- 2.10 **RU** explained the three different types of hearing that could be held and confirmed that the draft timetable contained within the issued Rule 6 letter identifies the dates by which Interested Parties must inform The Planning Inspectorate of their intention to call for a hearing or to be heard at a hearing. The hearing types are:
- Open Floor hearings which must be held if requested by any Interested Party (s.93);
  - Compulsory Acquisition hearings which must be held if requested by any Affected Person (s.92); and,
  - Specific Issue hearings which are held if the Panel decides that they are necessary to ensure the adequate examination of the issue in question, or to ensure that an interested party has a fair chance to state their case (s.91).
- 2.11 **RU** stated that cross-examination was at the discretion of the Panel and that it is intended that a date for submissions as to the need for this at a Specific Issue or Compulsory Acquisition Hearing should be included in the examination timetable. He noted that the Panel might decide that cross-examination is desirable even where no submissions are made.
- 2.12 The report to the Secretary of State would have as its core the recommendation as to whether or not the draft Development Consent Order, either in its current form or as amended during the examination, should be approved. It would contain recommendations on what land should be subject to compulsory acquisition if the Secretary of State approved the Development Consent Order. It would also contain a report on the s.127 procedures relating to land that might be compulsorily acquired from statutory landowners, if those landowners have not withdrawn their objections to the acquisition; he noted that separate authorisation to carry this out had now been given to him by the Secretary of State for Transport. The recommendation would also contain a report on matters relating to the Habitats Regulations Assessment.
- 2.13 For practical purposes, all matters relating to the draft Development Consent Order, including the draft Marine Licence, the Habitats Regulations Assessment and the s.127 issues would thus be integral parts of this examination.
- 2.14 No questions were raised by attendees on the principles of the examination process.

### **3.0 Initial Assessment of Principal Issues**

- 3.1 **RU** indicated that the Panel's initial assessment of the principal issues was circulated as Annex C of the Rule 6 letter. The list was not intended to be comprehensive or exclusive and some headings were quite broad. In addition, there was no hierarchy of issues identified. He asked whether any party would like to raise additional issues which they felt might or should affect the structure of the examination.



- 3.2 Annette Hewitson (**AH**) of the Environment Agency requested that flood risk management and the impact of piling noise on migratory fisheries should be included.
- 3.3 **RU** noted this and confirmed that there is no special legal status afforded to principal issues and that additional issues might arise during the examination; written representations might be used for this.
- 3.4 Brian Greenwood (**BG**) for Associated British Ports ABP suggested that the topic of soundness of the assessment of the project should be considered. Following a request for clarification on “soundness” by **RU**, **BG** confirmed that it related to the draft Development Consent Order and the interpretation of the project as a Nationally Significant Infrastructure Project. He requested that this issue be the subject of a separate Specific Issue Hearing and confirmed that written evidence would be submitted. He also confirmed that points would relate to how the project has been assessed in respect of Environmental Impact Assessment along with need, scope and scale.
- 3.5 Philip Maude (**PM**) for E.ON UK PLC, operators of the Killingholme Power Station, requested that the impact of the proposed development on the assets and operation on the power station should be considered. Paul Forshaw (**PF**) of Centrica supported this request as regards Centrica’s facility.
- 3.6 Jane Wakeman (**JW**) representing the Harbour Master, Humber, queried whether (1) the application is a Nationally Significant Infrastructure Project, (2) the extent and effects on tidal flow of siltation, accretion, erosion and dredging and (3) the powers within the draft Development Consent Order to construct and operate a port; and whether this was consistent with the scheme as assessed in the Environmental Statement. She requested that all these points should be included within the Panel’s assessment of principal issues.
- 3.7 **RU** explained that the initial assessment does not exclude any issues but is an early indication of likely significant matters. If a party wished to include issues within their written representations then they should do so and the Panel will then consider whether they are relevant and important. He confirmed that the heading Marine Impacts was intended to be drawn broadly.
- 3.8 Angus Walker (**AW**) for Able Humber Ports Ltd noted he was content with the assessment of issues. He requested that the issues raised should not be included as principal issues but rather as relevant matters within written representations. He requested that once written representations are submitted this should be the end of issue identification.
- 3.9 **RU** noted that he would expect a written representation to build upon the points raised in relevant representations and that it is desirable that all issues are identified as early as possible in the examination. But it was entirely possible that issues might emerge throughout the examination, and if relevant and important they would need to be considered.
- 3.10 **RU** confirmed that he had noted the points raised but would not respond directly on points made about Specific Issue hearings. He reiterated that the importance of a matter does not relate directly to a hearing and that the written process is key. He noted that some questions within the first round would touch on issues raised.

#### **4.0 Appropriate Assessment Methodology**

- 4.1 **RU** confirmed that the application requires consideration under the Habitats Regulations and that specifically the examination needs to ensure that sufficient

information is available to the Secretary of State for Transport as decision-maker for her to be able to conduct an appropriate assessment of the effects of the scheme.

- 4.2 He confirmed that the procedure which it was intended to follow adheres to the same principles as, for example that adopted by the Department for Energy and Climate Change under s.36 of the Electricity Act (1989) but would differ slightly in practice.
- 4.3 Written questions would be used to address specific issues which the Panel believed need to be explored, starting in the first round. In addition a screening matrix and an appropriate assessment matrix would also be issued as part of the first round of written questions. This would represent the Panel's understanding of the current state of all relevant habitats information and source documentation. The Panel would ask the applicant and others to confirm, correct and update these matrices as appropriate, and in the process confirm the agreement of the Statutory Nature Conservation Bodies to the information set out in each section of the matrices. These matrices will then be available with all other first round responses for comment from any other Interested Party.
- 4.4 The Panel would seek to ensure that the matrices were updated and developed throughout the examination, through second round questions, possible Rule 17 questions, and the possible hearings that had been provisionally scheduled.
- 4.5 The Panel would include a shadow appropriate assessment in its report to the Secretary of State but did not intend to circulate a draft of that specific document. Making an appropriate assessment is a process rather than a document and Interested Parties needing or wishing to engage in this process should do so through the Panel's questions and the updating of the screening matrix and any Specific Issue Hearings.
- 4.6 **RU** asked whether there were questions about the intended process.
- 4.7 Alex Codd (**AC**) of Hull City Council provided an update on the process followed by that Council in considering recent proposals for the Green Port Hull. He confirmed that the Council has referred the application to the Secretary of State for Communities and Local Government having undertaken an appropriate assessment. He expressed concerns regarding potential inconsistencies relating to the involvement of different Secretaries of State. He also noted that the position on Green Port Hull would change during this examination and he would provide information as appropriate.
- 4.8 **RU** sought clarification from **AC** as to whether the decision making process now with the Secretary of State was the 21 days specified in the Circular 6/2005 process. **AC** confirmed this to be the case and that a decision was anticipated in early June. **RU** agreed that there was a need for consistency of approach but that this must flow from the Habitats Regulations governing the process. Where there were specific concerns these should be covered in written representations.
- 4.9 David Forsdick (**DF**) for the Royal Society for the Protection of Birds stated that a point would be raised under the timetabling agenda item relating to concerns about the timing of new information being provided.

## **5.0 Draft Timetable for the Examination**

- 5.1 **RU** referred to the draft timetable included within Annex D to the Rule 6 letter. Prior to covering specific points he highlighted the following:

- The date by which the examination must be completed was Sunday 25 November. While the Panel might hope to close a little earlier than this date it is not thought prudent to estimate this at this time. All Interested Parties should therefore be aware that any time after the last deadline or event set out in the Rule 8 letter the Panel may decide under s.99 that the examination is closed and advise parties of this.
- Additions/corrections to the proposed timetable:
  - Serial 5. The proposed deadline for speaking at the proposed Specific Issue Hearing on the draft DCO should be Friday 29 June;
  - Serial 8 should have a further item, 'Submissions on the case for cross-examination at any Specific Issue or Compulsory Acquisition Hearing';
  - Serial 10 should have a further item, 'Notification of wish to speak at an Open Floor Hearing' – this was additional to the provision in Serial 4, and was intended to identify any additional speakers for the purposes of managing the agenda.
- The Panel sought thoughts or ideas for Statements of Common Ground (SCG). **RU** confirmed that a SCG did not mean that the Panel will not examine those points further; and that the real value of a SCG was generally in identifying the points that were still at issue between parties, the 'uncommon ground'. He confirmed that the Panel would like to see one or more SCGs on the Habitats Regulations issues and a date for this was proposed later (Serial 10 – 24 August) in the process than for other SCGs (Serial 8 – 27 July) so that this SCG should be informed by the full first round iteration of questions, answers and comments (including the updating of the screening matrix) and at least the issue of second round questions.
- There were two proposed Specific Issue hearings dealing with the draft Development Consent Order. The intention was that the early hearing should aid understanding of how the Order is intended to work and the second should consider any potential amendments in light of the information provided to the examination.

5.2 **RU** invited general comments on the timetable prior to considering it in greater detail.

5.3 **AW** expressed thanks to the Panel for avoiding significant deadlines and hearings during the Olympic and summer holiday period.

5.4 David Hickling (**DH**) representing Stephen Kirkwood queried the suggested lack of provision for a site visit to the proposed compensation site.

5.5 **RU** confirmed that the proposed accompanied site inspection would include a visit to the proposed compensation site and that this would be clarified in the examination timetable provided in Annex D1 of the Rule 8 letter. He noted that such a visit was in part about access, but also so that features can be pointed out by parties. It is not however an additional hearing.

5.6 **AW** expressed concern about the risks of evidence being provided during site visits. **RU** noted the point and highlighted the need to find the middle ground between seeing sites and understanding them in the context of the evidence.

5.7 **RU** invited comments on specific lines of the timetable but stated that no decisions would be confirmed during the meeting.

- 5.8 Richard Honey (**RH**) expressed Natural England's (NE) opinion that a number of issues identified in their Relevant Representation had not yet been resolved. He invited the Panel to include NE's requests for further information in their first round of written questions. He emphasised that in NE's opinion a meaningful examination could not proceed without these issues being addressed by a specified date.
- 5.9 **RU** confirmed that the Panel's first written questions would include matters arising from the Relevant Representations.
- 5.10 **JW** representing the Harbour Master, Humber requested the Panel to prompt the provision of further information regarding hydrodynamics and sedimentary regime reports through their first round of written questions or by request under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010.
- 5.11 **AW** affirmed the developer's intention to respond to all of the Panel's written questions by the proposed deadline set in Serial 4 of the timetable, emphasising that there would be no need to duplicate these at a later date.
- 5.12 Benjamin Dove-Seymour (**BDS**) for C.GEN Killingholme Ltd/C.RO Ports Killingholme Ltd expressed support for **JW's** representation with regard to his client's concerns about the adequacy of hydrodynamic modelling and other information. He urged the Panel to include the requests for further information raised in Relevant Representations and not to rely on verbal assurances from **AW**.
- 5.13 **RU** said that the Panel was anxious to be provided with as much robust information and evidence as possible and to probe the extent of agreement or disagreement about its validity.
- 5.14 **JW** referred for the deadline for submissions of summaries of written representations, recommending that (1) it would be sensible for the deadline for comments on written representations to be after the deadline for summaries and (2) it would be more efficient and cost-effective for the deadline for comments on Relevant Representations to be deferred to the written representations comments deadline at Serial 8. **JW** recommended that this would be useful in allowing Interested Parties to comment on the 'entirety of representations' at a single deadline.
- 5.15 **RU** noted that Relevant Representations had been available for some time and that any amendment to the timetable in the context would not be of benefit to Interested Parties. He suggested that at this stage the focus of the examination should move to the content of written representations.
- 5.16 **BG** for Associated British Ports requested that the deadline for written representations was extended by two weeks to allow for all required information to be drawn together, suggesting that progress in this context would be hindered by not having sight of the Local Impact Report.
- 5.17 **RU** emphasised that this deadline was key to moving the examination forward, emphasising the knock-on effects of any substantial alteration on the rest of the timetable. He assured **BG** however that the Panel would consider his request.
- 5.18 **RH** for **NE** referred to the developer's intention to provide the Environment Agency with additional modelling and analysis which would not be available until late June. He expressed concern that as this would include important issues, for example the site design and performance at Cherry Cobb Sands, the current proposed written representations deadline would preclude **NE** from responding in full to the information provided and its submission may therefore be of limited use

to the Panel. He stated that although there would be scope for **NE** to work with the developer outside of the examination timetable, he would request that the Panel consider the appropriateness of a change to the timetable given **NE** would be unable to respond in full until the deadline at Serial 8.

- 5.19 **DH** representing Mr Stephen Kirkwood echoed **NE**'s concerns over the proposed timetable; but he expressed serious concern over **RH**'s reference to working with the developer outside of the examination timetable.
- 5.20 **RH** emphasised that while it was inevitable discussions would take place between the developer and DEFRA's agencies, no deals would be made 'behind closed doors'.
- 5.21 Anna Gerring (**AG**) for the Marine Management Organisation spoke in support of **RH**'s representation, expressing the same categories of concern as **NE** regarding the need for additional reports.
- 5.22 **AW** expressed gratitude for the points made, emphasising that while the developer believes the application to be complete they would be happy to provide further information in response to the issues arising from Relevant Representations. He stated that the developer would be prepared to provide this information a week before the proposed deadline at Serial 4, and suggested a possible extension to the general deadline for written representations by one week. He stated however that the developer would resist any additional delays to the proposed timetable as the application had been in the public domain since January 2012.
- 5.23 **RU** invited additional views on this recommendation.
- 5.24 **BG** expressed support for the developer's early submission of information.
- 5.25 **BDS** also expressed support dependent on the nature of the information provided and the ability for Interested Parties to respond in full by the deadline at Serial 8.
- 5.26 **RH** responded that an extension of one week would not assist **NE**'s timely digestion of the information provided.
- 5.27 **RU** acknowledged all contributions before emphasising the importance of two full rounds of written iterations to be incorporated into the examination.
- 5.28 **BG** for **ABP** identified that an extension of one week to the deadline at Serial 4 would leave only one week before the proposed date for the first Specific Issue Hearing at Serial 5. He recommended that the date proposed for the first Specific Issue Hearing was moved to the end of July, and queried the potential for this to take place over two days. He proposed that should the Panel resist **ABP**'s recommendation for the Specific Issue Hearing at Serial 6 to take place over two days, a separate Specific Issue Hearing on the scope of the project should be timetabled.
- 5.29 **AW** emphasised the applicant's wish for the timetabled hearing dates to remain unaltered.
- 5.30 **JW** explored the potential for the Specific Issue hearing at Serial 6 to occur after Serial 8 to enable the Panel to be in receipt of comments provided at Serial 8 before the hearing. She further questioned the adequacy of a one day hearing to cover DCO matters.
- 5.31 **RU** emphasised that the examination would be built around written representations and explained that the purpose of the first Specific Issue Hearing

relevant to the DCO would be concerned with exploring its purpose and functionality. Any amendment to the deadline in Serial 8 would be dependent on the decisions that the Panel had been asked to consider.

- 5.32 **AW** summarised the Statements of Common Ground (SCG) that the applicant was expecting to deliver, namely with:
- The Environment Agency, Marine Management Organisation and Natural England (Joint SCG) (non-HRA matters);
  - The Environment Agency, Marine Management Organisation and Natural England (Joint SCG) (HRA matters);
  - East Riding of Yorkshire Council, North Lincolnshire Council and North East Lincolnshire Council (Joint SCG);
  - The Highways Agency; and
  - English Heritage.
- 5.33 **AW** added that the applicant was also considering the potential for two additional SCGs with the Harbour Master, Humber, and the RSPB.
- 5.34 **RU** queried whether the applicant was content with the deadline in Serial 10 for the submission of the SCG on HRA matters.
- 5.35 **AW** confirmed that the developer was content with this deadline.
- 5.36 The **RSPB** queried whether the deadline at Serial 8 would be the deadline for any further environmental information, emphasising that a 'drip-feed' of this information after this deadline would be of hindrance to Interested Parties.
- 5.37 **DH** representing Mr Stephen Kirkwood expressed concern that SCGs were written and agreed 'by invite only'. **DH** requested that the Panel consider all evidence contrary to the content of any SCGs. He added that his client would be happy to engage in discussions regarding SCGs if invited, but was not actively seeking to do so.
- 5.38 **RU** emphasised that SCGs were a record of agreement between the signatories, and would not preclude the matters in them from being further examined by the Panel.
- 5.39 **RU** stated that the potential Open Floor hearing under Serial 13 would probably take place in the Holderness area of East Riding of Yorkshire, and that any Open Floor hearing under Serial 14 would probably take place at Immingham Civic Centre. Other hearings were likely to be at the Humber Royal Hotel.
- 5.40 William Hill (**WH**) of North Lincolnshire Council expressed concern over the date for the proposed Open Floor hearing at Serial 14, citing personal reasons. He stated that while he would wish to attend, whether or not he would speak would be dependent on the issues raised.
- 5.41 **RU** queried whether a reversal in the Open Floor hearing dates provided at Serials 13 and 14 would benefit **WH**.
- 5.42 **WH** stated that this date would be equally difficult for him to attend.
- 5.43 **RU** noted that the hearings would be recorded and published on the Planning Inspectorate pages of the Planning Portal website.

- 5.44 **AW** queried whether or not the Panel would accept 'new' information presented to them at any hearings, implying that this would not be helpful to the examination process. He invited the Panel to state in the forthcoming Rule 8 letter that they are not expecting new information to be submitted at any hearings, and that if parties insist on providing such information that it is submitted in advance.
- 5.45 **RU** confirmed that the deadline for written submissions would be set out in the timetable detailed in the Rule 8 letter.
- 5.46 **BDS** queried whether or not the Specific Issue Hearing proposed at Serial 17 would cover the hydrodynamic regime.
- 5.47 **RU** responded that it is intended for the issues covered at the hearing on Marine Navigation to be broad.
- 5.48 **BG** queried whether the specific issue hearings at Serials 15, 16 and 17 could be dealt with in one day.
- 5.49 **AW** queried whether or not the proposed Compulsory Acquisition hearings at Serials 25 and 26 would be the forum for representations relating to applications under s.127 of the Planning Act 2008.
- 5.50 **RU** said that details of the s.127 procedure to be followed would be provided in due course.
- 5.51 **BDS** queried whether or not matters relating to the acquisition of the railway would be dealt with at the hearing scheduled at Serials 24 and 25.
- 5.52 **RU** confirmed that it was the Panel's intention that this would be the case.
- 5.53 **BG** for **ABP** queried whether or not one day would be sufficient for the Compulsory Acquisition hearing relating to the proposed compensation site at Serial 26.
- 5.54 **RU** said that the panel would ensure that the Compulsory Acquisition hearings would be rigorous, even-handed and adequate.
- 5.55 **RU** stated that the Panel had undertaken an unaccompanied site inspection from public land which had included the proposed compensation site.
- 5.56 **WH** queried whether any agreed financial contribution from the developer to local authorities should be provided to the Panel before the end of the examination.
- 5.57 **RU** said that, in general terms, and without reference to this specific case, any 'community chest' contributions would fall outside the scope of an examination. If however the contributions took the form of a s.106 agreement, in that they were necessary to the development, then that would need to be part of the examination.

## **6.0 Closing Remarks**

- 6.1 **BG** queried whether the Panel had any specific requirements on the format of documents to be submitted. **RU** noted that this would be confirmed within the Rule 8 letter.
- 6.2 **RSPB** stated that it would assist the understanding of submissions if any references to academic papers and research are included within submissions. **RU** confirmed that the first round of questions would raise this issue.
- 6.3 **RU** thanked participants further and closed the meeting at 12.10pm.

