

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

WRITTEN REPRESENTATIONS FROM HULL CITY COUNCIL

PROPOSED ABLE MARINE ENERGY PARK ON THE SOUTH BANK OF THE RIVER  
HUMBER AT IMMINGHAM, NORTH LINCOLNSHIRE

PLANNING INSPECTORATE REFERENCE NUMBER: TR030001

Date: 29/06/2012

## **1. INTRODUCTION**

This written representation is prepared to assist the Examining Authority in determining the proposed Marine Energy Park in a way that would enable the proper consideration of the wider objective of the area, in the view of Hull City Council. It is also intended to ensure that any decision that is reached takes account of and is consistent with developments that are anticipated to take place within Hull, particularly Green Port Hull.

## **2. SUMMARY OF ISSUES**

- 2.1. In Hull City Council's opinion the proposal must be determined with the following key issues having been taken into account:-
  - A. Wider economic and environmental impacts
  - B. Consistency with other permissions and consents
  - C. Impact upon the Humber Estuary nature conservation value
  - D. In-combination impacts
- 2.2. Hull City Council considers points 2.1. A-D are all relevant to the consideration of the Habitats Regulations Assessment and considers all matters could be appropriately dealt with at the sessions on the 11<sup>th</sup> and 12<sup>th</sup> September 2012.

### **3. WIDER ECONOMIC AND ENVIRONMENTAL IMPACTS**

3.1. Hull City Council supports the principle of the proposed development in that it would provide a significant economic and employment opportunity for the region. The development of key sites across the Humber is supported by the Humber Local Enterprise Partnership where this assists the development of the renewable sector. This support is evidenced through the LEPs bid for enterprise Zone status for sites in Hull, East Riding and North Lincolnshire, of which the Marine Energy Park falls within.

The principle of supporting the renewable energy sector is also supported by Hull City Council, as can be seen by the permissions it has granted (or is minded to grant) throughout the city. Hull City Council have also commented positively on a number of consultations for major off-shore wind energy proposals to be considered by the Planning Inspectorate.

### **4. CONSISTENCY WITH OTHER PERMISSIONS AND CONSENTS**

4.1. Hull City Council is seeking to secure renewable energy developments within the City that would offer employment, economic and environmental benefits to the city and the wider area.

4.2. In determining these applications, and also in securing a Local Development Order for the Queen Elizabeth and Alexandra Dock areas, Hull City Council have

had to ensure that the developments are consistent with each other and that the impact upon the marine environment is not so significant as to warrant refusal. This has necessitated many months of work with the Environment Agency, Natural England and Marine Management Organisation amongst others, to ensure that appropriate mitigation and compensation can be secured. This approach has been fundamental to the determination of the Green Port Hull project and the Port of Hull Local Development Order.

- 4.3. As part of the determination of the Green Port Hull project a Habitats Regulations Assessment, including an assessment of Alternative Solutions and Imperative Reasons of Overriding Public Interest, together with details of proposed compensatory habitats had to be considered. Intrinsic to this analysis was the cumulative and in-combination assessment with other projects. Only after this analysis can the full impact be assessed.
- 4.4. It is therefore critical that any project that is considered likely to have a significant effect on the integrity of the Humber Estuary undertakes a similarly rigorous approach to satisfy the Habitats Regulations. This should consider an assessment of alternative solutions (including alternative sites and revised forms of development) and it must satisfy the Habitats Regulations tests in relation to alternatives and Imperative Reasons of Overriding Public Interest. If these matters are addressed then measures must be put in place to secure the proper compensatory habitat provisions that would be necessary.

- 4.5. Hull City Council's experience in this matter is that the impact on the Humber Estuary must be considered not only in land/estuary loss/gain effect, but also in a temporal effect. In the case of Green Port Hull, conditions were considered appropriate to ensure that construction disturbance would be minimised during the winter roosting period. Condition 11,12, 13 and 17 (attached in Appendix A) demonstrate the level of control Hull City Council considered was necessary to ensure the impact of the marine piling did not have a adverse effect on the interest features of the Humber Estuary SAC/Ramsar site.
- 4.6. Critically, the Council also considered it necessary to restrict construction operations relating to Marine Piles occurring concurrently from different marine developments. As a result the S106 Agreement for Greenport Hull confirms that ABP will not undertake any marine piling work on the Humber Renewable Bulk Terminal whilst marine piling at Greenport Hull occurs. The Council however was unable to secure this link to the Able UK site as this fell beyond the Council's jurisdiction, as it was not within the ownership and control of Associated British Ports or within the administrative boundary of Hull City Council.
- 4.7. However, the City Council consider the most effective way to mitigate any harm caused by construction occurring simultaneously would be for the Planning Inspectorate to impose a condition within the Development Consent Order which prevents construction requiring marine piling at Able UK occurring in tandem with construction of marine piles at Greenport Hull.

- 4.8. As the Environment Agency and Natural England were well aware at the time of decision Hull City Council could not ensure this occurred it recommended Condition 19 be imposed on the Greenport Hull development. If the Planning Inspectorate considers this condition sufficient to overcome the adverse effect on the Humber Estuary it is essential a similar condition is imposed on Able UK along with the other marine piling conditions.
- 4.9. At the time of writing this representation the Marine Management Organisation have not yet issued their necessary license for the Green Port Hull project but referred their decision of approval to the necessary marine licences to the Secretary of State for Communities and Local Government on the 26<sup>th</sup> June 2012 (a further update on progress on this matter and whether the Secretary of State decided to intervene with any of the Greenport Hull consents (granted either by the MMO or Hull City Council) will be provided when confirmation from the Secretary of State is received (expected to be sometime in July 2012).
- 4.10. In conclusion, it would be inconsistent for the Examining Authority to grant any Consent that undermined the approach taken by Hull City Council, the Environment Agency and Natural England which sought to mitigate the impact of the 'combined effect'. Only a similarly conditioned consent with the necessary legal agreements would ensure that the impact upon the natural environment remains acceptable and the Habitats Regulations are fully complied with to

ensure where possible harm to the estuary is mitigated, and where this is not possible an appropriate level of compensation is provided.

- 4.11. Hull City Council also note that a number of questions have been posed to the applicant, Environment Agency, Natural England, Marine Management Organisation and the RSPB regarding the Habitats Regulation Assessment. In addition Statements of Common Ground will be entered into with these organisations and Able UK leaving Hull City Council possibly in a position where agreements have been reached between these organisations prior to the formal hearing sessions. In order to ensure Hull City Council are not blindsided to these developments the Council requests to be kept informed of any developments on these matters.
- 4.12. Hull City Council notes within Appendix B of the Planning Inspectorate's letter of the 31<sup>st</sup> May 2012 a reference is made to Hull, North Lincolnshire and North East Lincolnshire Councils confirming whether or not they subscribe to the statement of common ground agreed between the Environment Agency, Natural England, Marine Management Organisation and the applicant.
- 4.13. Hull City Council welcomes this clarity. However the timetable sets the date of submission for the Statement of Common Ground as being the 24th August 2012. This means the Council may not have sight of the document until the 24<sup>th</sup> August 2012 making it difficult to subscribe or not to the Statement. It would be

beneficial if the Council was given a further week after submission to confirm our position or at least to be presented with a draft of the Statement by the 17<sup>th</sup> August allowing 7 days to confirm whether or not the Council subscribe to the document. As the Councils major interest in the examination relates to the Habitats Regulations it may be appropriate for the applicant to be directed to provide a clear window for the council to consider the Statement of Common ground.

Hull City Council also consider that through the determination of the development consent order if the examining Authority are minded to approve the DCO then it is imperative they undertake a full (not a shadow) Habitats Regulation Assessment including assessment of alternatives, undertaking of IROPI and securing adequate compensation. Only if all these matters are addressed should the DCO be referred to the Secretary of State for approval. This approach mirrors that undertaken by Hull City Council with regard to Greenport Hull.

## **5. IMPACT UPON THE HUMBER ESTUARY NATURE CONSERVATION VALUE**

- 5.1. As can be seen in the above section, when Hull City Council, and other bodies, dealt with the Green Port Hull project, uppermost in the detailed considerations was the potential impact upon the internationally designated Humber Estuary. The same principles should apply to this proposal.



- 5.2. Only if the Examining Authority is satisfied that the proposal thoroughly addresses the impact upon the Humber Estuary should a Consent be granted.

## **6. IN-COMBINATION IMPACTS**

- 6.1. As discussed above the Green Port Hull project had to address the matter of in-combination impacts. Reproduced in appendix A is a list of conditions that the City Council are seeking to impose on this development (in relation to sequencing etc). Through the use of conditions (and Legal agreements) the City Council (with the assistance of the Environment Agency and Natural England) will ensure that the marine environment is protected from the worst impacts of developments. In particular this relates to marine piling. As can be seen from the conditions, reference is made to the Able project. The situation is simply that marine piling will have an adverse impact upon birdlife and aquatic animals. It can only be carried out during certain times and seasons, critically when other marine piling is not taking place.
- 6.2. Such sequencing and timing conditions must be repeated on any consent for this project, otherwise it is difficult to see how any adverse effect to the Humber Estuary is minimised.

Appendix A

Draft Conditions to be imposed on Green Port Hull Harbour Revision Order

10) (1) No construction shall be commenced until an active monitoring scheme has been submitted to and approved in writing by the local planning authority, following consultation with the Environment Agency for the purpose of monitoring noise, water temperature and dissolved oxygen within the water environment. The scheme shall include the following details:–

(a) location of active monitoring buoy(s) and depth of sensors;

(b) full details of the frequency of measurement of temperature and dissolved oxygen in order to ascertain compliance with condition 13;

(c) 24 hours a day, 7 days a week monitoring of noise in order to ascertain compliance with condition 13;

(d) full details of when monitoring will commence and cease, which will include a 2 week period of pre- and post-construction monitoring in order to establish baseline conditions and the return to baseline conditions once construction activity has finished;

(e) A log of the number and approximate location of piling rigs which are in operation on any given day;

(f) full details of how measurements will be accessed by or communicated to the site contractor, the Hull City Council Environmental Health Team and the Environment Agency.

(2) Once approved the monitoring scheme shall be implemented in accordance with the timescales set out in the scheme.

(Reason: to reduce the risk to migratory fish species including Atlantic Salmon, Sea Trout, River and Sea Lamprey and Eel by ensuring that appropriate information is available to allow noise mitigation measures to be implemented and monitored and to avoid periods when water conditions will make fish more vulnerable to disturbance in accordance with condition 13)

11) No percussive piling of marine piles (for the purposes of this condition percussive piling means the driving of piles by percussive means but does not include the handling, placing and vibro-driving of piles and a marine pile means a pile which will, during construction, be in a free-water state) in connection with the development shall take place between 7th April and 1st June inclusive.

(Reason: to reduce the risk to migratory fish species including Atlantic Salmon, Sea Trout, River and Sea Lamprey and Eel)

12) Percussive piling of marine piles (for the purposes of this condition percussive piling means the driving of piles by percussive means but does not include the handling, placing and vibro-driving of piles and a marine pile means a pile which will, during construction, be in a free-water state) in connection with the development shall be restricted in the following way:

(a) from 2nd June to 22nd July inclusive in any one calendar year and without prejudice to condition 11, the maximum amount of percussive piling permitted within any four-week period between those dates shall be limited to:

- (i) 72 hours where a single rig is in operation; or
- (ii) 120 hours where two or more rigs are in operation; and

(b) from 23rd July to 10th September inclusive in any one calendar year, the maximum amount of percussive piling permitted each week shall be limited to:

- (i) 18 hours where a single rig is in operation; or
- (ii) 30 hours where two or more rigs are in operation;

(c) from 11th September to 31st October inclusive in any one calendar year, the maximum amount of percussive piling permitted within any four-week period between those dates shall be limited to:

- (i) 96 hours where a single rig is in operation; or
- (ii) 160 hours where two or more rigs are in operation;

(d) from 1st November to 6th April inclusive, the maximum amount of percussive piling permitted within any eight-week period between those dates shall be limited to:-

- (i) 336 hours where a single rig is in operation; or
- (ii) 560 hours where two or more rigs are in operation.

(Reason: to reduce the risk to migratory fish species including Atlantic Salmon, Sea Trout, River and Sea Lamprey and Eel)

13) (1) No marine piling shall be commenced until a piling method statement has been submitted to and approved in writing by the local planning authority, following

consultation with the Environment Agency. The method statement shall include the following measures:-

- (a) pile pads shall be utilised at all times;
- (b) soft-start piling shall be utilised at the commencement of any piling and the statement must detail the exact soft-start protocol to be followed;
- (c) the maximum pile diameter shall be 1.8 metres unless otherwise approved by the local planning authority;
- (d) piling shall not take place during periods when the data from the active monitoring buoy provided in accordance with condition 10 shows temperature to be above 21.5 degrees Celsius and/or dissolved oxygen to be below 5 mg/l.

(2) The development shall thereafter proceed only in accordance with the approved piling method statement.

(Reason: to minimise the noise impact of piling on fisheries and to maximise the time fish have to vacate the affected area before sound pressures increase)

17) A cold weather construction restriction strategy shall be followed (unless otherwise beforehand with the Local Planning Authority in writing) during the percussive piling of marine piles during December (for the purposes of this condition percussive piling means the driving of piles by percussive means but does not include the handling, placing and vibro-driving of piles and a marine pile means a pile which will, during construction, be in a free-water state) in connection with this consent in accordance with a scheme to be submitted to and agreed with the Local Planning Authority before any percussive piling takes place. The strategy shall include the following elements/procedures:-

- a) No percussive piling (other than to finish driving any pile that is in the process of being driven at the point the cold weather restriction comes into force ) shall take place following 7 consecutive days of zero or sub zero temperatures (where the temperature does not exceed 0c for more than 6 hours in any day or any other pre-agreed formula to define short periods of thaw);
- b) 3 temperature monitoring points shall be agreed within the Humber Estuary such as Hull, Grimsby and Spurn;
- c) The restrictions will be reviewed as follows:
  - I. After 24 hours of above-freezing temperatures, the restrictions will be lifted on a "probationary basis", provided that the weather forecast (met office forecast for Hull Location:53.749, -0.347) indicates that freezing conditions will not return within 5 days.
  - II. After a further 5 clear days of above-freezing temperatures, the restrictions will be lifted entirely and the "clock reset to zero".

(Reason: to ensure there is no adverse effect on the interest features of the Humber Estuary SPA/Ramsar site).

18) Percussive piling of marine piles (for the purposes of this condition percussive piling means the driving of piles by percussive means but does not include the handling, placing and vibro-driving of piles and a marine pile means a pile which will, during construction, be in a free-water state) in connection with the development shall be restricted in the following way:

- there shall be at least a 180 second "soft start" period for percussive piling of marine piles . The exact form of "soft start" shall be agreed prior to the commencement of piling with the Local Planning Authority in consultation with Natural England.
- a 100m marine mammals observation zone, the centre-point being the location of the marine pile being driven percussively piled, shall be followed with the purpose of identifying any marine mammals within that zone and no piling shall take place whilst marine mammals are within the zone.

(Reason: to ensure there is no adverse effect on the interest features of the Humber Estuary SAC/Ramsar site).

19. Any percussive piling of marine piles (for the purposes of this condition percussive piling means the driving of piles by percussive means but does not include the handling, placing and vibro-driving of piles and a marine pile means a pile which will, during construction, be in a free-water state), which would occur at the same time as percussive piling of marine piles at the Able UK Marine Energy Park, shall be carried out in accordance with a noise reduction scheme, details of which shall be submitted to and approved in writing with the Local Planning Authority prior to any 'combined' percussive piling taking place and the scheme shall be followed in accordance with the approved details, unless otherwise agreed beforehand in writing with the Local Planning Authority

(Reason: to ensure there is no adverse effect on the interest features of the Humber Estuary SAC/Ramsar site).

20 No percussive piling of marine piles (for the purposes of this condition percussive piling means the driving of piles by percussive means but does not include the handling, placing and vibro-driving of piles and a marine pile means a pile which will, during construction, be in a free-water state), shall take place until the intertidal area to the west of the application site (between Harbour Way and Corinthian Way) is temporarily fenced off during the first winter of construction (December – March), to prevent pedestrian access to the intertidal area from the Promenade, in accordance with written details to be submitted to and approved by the Local Planning Authority before the fencing is erected.

(Reason: to ensure there is no adverse effect on the interest features of the Humber Estuary SAC/Ramsar site).