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PLANNING ACT 2008

THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER 2012

RESPONSES TO THE EXAMINING AUTHORITY'S FIRST QUESTIONS

PLANNING INSPECTORATE REFERENCE NUMBER: TR030001

PLANNING INSPECTORATE REFERENCE NUMBER FOR MMO: ABLE – 0016

MMO INTERNAL REFERENCE NUMBER: DC9172

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1. The Able Marine Energy Park

1.1. On 23 February 2012, the Marine Management Organisation (the "MMO") received notice under section 56 of the Planning Act 2008 (the "2008 Act") that the Infrastructure Planning Commission (the "IPC") had, on 12 January 2012, accepted an application made by Able Humber Ports Limited (the "Applicant") for an order granting development consent (the "DCO Application") (MMO ref: DC9172; IPC ref: TR030001).

1.2. Amongst other things, the DCO Application includes a draft development consent order (the "DCO") and an environmental statement (the "ES"). The draft DCO includes a draft Deemed Consent under the Marine and Coastal Access Act 2009 (the "2009 Act") (the "Deemed Marine Licence").

1.3. The DCO Application seeks authorisation for the Able Marine Energy Park (AMEP), which involves a quay of solid construction on the south bank of the river Humber together with an ecological compensation scheme comprising both temporary and permanent habitat creation on the north bank. Associated development includes dredging and land reclamation, onshore facilities for the manufacture, assembly and storage of marine energy installation components. Ancillary matters include compulsory purchase of land, harbour regulation and the diversion of two footpaths (the "Project").

1.4. The Project would comprise a range of terrestrial and marine developments and several work items have the potential to impact on the marine area.

2. Scope of these representations

2.1. This document comprises the MMO's answers in respect of the first written questions[1] as presented by the Examining Authority (ExA) in Annex D1 of the letter from the Panel of Examining Inspectors to the Interested Parties, dated 31 May 2012.

2.2. This is without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This is also without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for anything else.

2.3. The MMO provides comments on the following questions:

- 51 and questions contained within Annex D2
- 69
- 70

2.4. The MMO will continue to consider the DCO Application and reserves the right to add to, amend or withdraw, from time to time, part or all of these representations.

[1] Submitted in pursuance of rule 4 of the Infrastructure Planning (Examination Procedure) Rules 2010.

3. Question 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).

3.1. The MMO has been in discussions with the Applicant, Natural England and the Environment Agency with regards to updating Annex D2. A final position has not been reached at the time of the MMO submitting these representations. Written representations from Natural England and the Environment Agency will incorporate comments the MMO have on Annex D.

4. Question 51. Annex D2. Table 3 –f

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?

4.1. The MMO considers that a soft-start technique should be used to mitigate the impact of underwater piling noise on grey seal.

4.2. In addition, the MMO considers that a suite of mitigation measures are required to mitigate for the impact of piling on a number of species, including grey seal, lamprey, Atlantic salmon, European eel and Atlantic herring. The MMO has worked with the Environment Agency and Natural England to agree a suite of mitigation measures in relation to the impact of piling works measures required for the Project. These are set out in a letter sent to the Applicant by the Environment Agency on 19 June 2012 and attached at Annex 1.

5. Question 51. Annex D2. Table 6-c

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?

5.1. The MMO considers that a suite of mitigation measures are required to mitigate for the impact of piling on a number of species, including grey seal, lamprey, Atlantic salmon, European eel and Atlantic herring, as discussed at 4.1 and presented at Annex 1.

5.2. The MMO has not yet determined if additional mitigation is required for impacts other than piling. The Applicant has committed to provide a series of additional reports to address questions raised in the relevant representations, as detailed at Annex 2, and the MMO will need to assess this additional information before being in a position to provide further comments on this question.

6. Question 51. Annex D2. Table 6-c

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?

6.1. The MMO agrees that it may be possible to mitigate the impacts of dredging on migrating lamprey by way of conditions. However, any conditions should be contained in the Deemed Marine Licence and/or in the Ecological Monitoring and Mitigation Plan and not in the works schedule.

7. Question 69 (a)

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?

7.1. The Formal consultation on the draft East Inshore Marine Plan is scheduled for early 2013. Once consultation begins, the draft plan will become a relevant consideration in determining the DCO application. A final plan will be adopted by the end of 2013, as laid out in the natural environment white paper[2].

8. Question 69 (b)

(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?

8.1. The East Inshore Marine Plan is being drawn up in line with, amongst others, the Marine Policy Statement and the National Planning Policy Framework. In the absence of a draft or finalised plan, decisions must be made in accordance with these policy documents and it is recommended these documents are consulted.

9. Question 70 (a)

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?

[2] The natural environment white paper can be found at http://www.defra.gov.uk/environment/natural/whitepaper/ p33

9.1. In response to comments made by the MMO and others, the Applicant has undertaken to provide additional information in order to address questions and issues raised. The latest version of this list of additional reports is provided at Annex 2.

9.2. As these reports have either only recently been circulated or are still outstanding, the MMO is not in a position to provide detailed written advice to the ExA at this time on the contents of these reports. The MMO advised the Panel of this at the Preliminary Meeting held on 24 May 2012 and wrote to the Applicant on this point on 29 May 2012 (Annex 3).

9.3. The MMO has also requested that the applicant provide two additional reports; one detailing the work to be undertaken at North Killingholme Haven Pits and a second detailing where all marine works have been considered either in the Application documentation, or in additional reports. These are not included in the list in Annex 2 as provided by the Applicant, but the MMO expect this information to be provided.

9.4. Further comments can be found in our written representations.

10. Question 70 (b)

(b) what are the key provisions still to be agreed in relation to the draft Marine Licence?

10.1. The MMO has not reached any agreement with the Applicant with regard to the drafting of the deemed marine licence. As such, the comments made in Section 5 of the MMO's relevant representation dated 2 April 2012 remain outstanding.

10.2. Discussions with the Applicant on this matter remain ongoing and the MMO consider that it is possible for the issues raised to be resolved through drafting amendments to the DCO.

10.3. Further comments can be found in our written representations.

Marine Management Organisation **22 June 2012**