

INFRASTRUCTURE PLANNING

**THE INFRASTRUCTURE PLANNING
(EXAMINATIONS PROCEDURE) RULES 2010**

THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER

TR030001

Written Representation submitted on behalf of the Harbour Master, Humber

(Rule 8 letter 31 May 2012 Annex C)

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Introduction

1. This written representation is submitted on behalf of Captain P.J. Cowing in his capacity as Harbour Master, Humber, representing Associated British Ports ("ABP") as the statutory harbour authority and, in relation to pilotage, the competent harbour authority for the river Humber. Captain Cowing ("the Harbour Master, Humber") is also responsible for ABP's discharge of its functions as a competent authority under the Habitats Regulations. These written representations are separate and distinct from any written representations that may be received by the Examining Authority from Associated British Ports in its capacity as a port operator within the Humber.
2. As described in his relevant representation (no. 46) submitted under Rule 3 of the Infrastructure Planning (Examination procedure) Rules 2010, the Harbour Master, Humber is concerned that the proposed Order will have adverse impacts on the safety of navigation, Humber conservancy, and associated environmental matters. He objects to the making of the Order unless these concerns (described in more detail in the body of this written representation) are properly and adequately addressed and appropriate amendments to the Order (including to the protective provisions in Part 2 of Schedule 9 to the Order) are secured.

Concerns regarding sedimentation, accretion and erosion

3. The Harbour Master, Humber has a general interest in the location and levels of sedimentation, accretion and erosion in his area of jurisdiction. Any modification of tidal flow or direction resulting from the proposed development has implications in this regard and ultimately for the handling of vessels. In particular, the safe navigation of vessels may be adversely affected and such changes in the river regime could create difficulties in getting vessels onto, and keeping them alongside, particular berths.
4. The reliability and robustness of the Hydrodynamic and Sedimentary Regime Report at section 8 of the Environmental Statement submitted with the draft Order is unsatisfactory, and the assessment of the effects of the applicant's proposals on sedimentation generally is clearly flawed. In particular, the conclusions of the HR Wallingford 2011 3D mud modelling report conveniently dispelled earlier predictions of significant accretion upstream of the Able Marine Energy Park ("AMEP") berth contained within earlier reports prepared by JBA Group. This improved situation was based on assumptions related to the final berth design iteration being some 80 metres inshore of the original design but there was no clear evidence of HR Wallingford having conducted a comprehensive modelled analysis based on this later design. Such an analysis is necessary in order to produce a definitive report on the predicted effects of the finalised design. Further, the environmental statement lacks a proper assessment of the predicted effects of the final design in combination with the proposed breach and managed realignment at Cherry Cobb Sands.
5. On 21 June 2012, the applicant provided the Harbour Master, Humber with an additional Hydrodynamic Analysis Report, comprising various assessments involving 210 pages of technical data. It appears from the material supplied that the necessary assessments have now been carried out, and (insofar as the Harbour Master, Humber is directly interested) the results appear on a first quick reading to be satisfactory. However, this preliminary view is subject to a detailed consideration of the technical data and assessment of its robustness which, given its extent and complexity, has not been possible before the deadline for this written representation.

Thus, the Harbour Master, Humber is unable to assist the Examining Authority at this stage as to whether the additional reports adequately address the undoubted deficiencies in the Environmental Statement. Until it is possible to reach a considered view, the issues of concern to the Harbour Master, Humber (also raised in a number of other parties' relevant representations) must remain outstanding. He therefore seeks an opportunity to bring his comments on the new material to the attention of the Examining Authority in due course.

Concerns relating to the AMEP berth approach channel

6. The channels in the river and their maintenance are within the area over which the Harbour Master, Humber has statutory responsibility for navigation and river conservancy. In this case, the approach channel which the applicant proposes to dredge to and maintain at -9.0metres Chart Datum partially overlaps the pre-existing approach channel to the upstream Humber Sea Terminal ("HST"). Although approach channels to individual terminals in the river are maintained by the owners or occupiers of those facilities, their management is of concern to the Harbour Master, Humber because of the potential impacts on, or hazard to, other river users for whom he has responsibility. Thus, the Harbour Master, Humber will need to be satisfied that there are adequate, formal arrangements in place to govern both navigation to/from/in the overlapping area and maintenance dredging. To date, the Harbour Master, Humber understands that these matters have not been resolved between the applicant and HST. Unless there is legally binding agreement between those parties that provides for a clear division of responsibilities and workable arrangements, the Order needs to make appropriate provision.

Compulsory acquisition and sub lease of riverbed

7. The Order would authorise the compulsory acquisition of ABP's leasehold interest in the river bed, which it holds in its capacity as conservancy authority for the Humber. Douglas & Green on the Law of Harbours Coasts and Pilotage¹ states at paragraph 3.16 that:

"Most harbour authorities do not own the bed of their harbour and, although such ownership has advantages, particularly in relation to the construction of works below high water mark, it is certainly not essential for the management of a harbour."

8. It is the standard practice of Associated British Ports ("ABP") to grant underleases to developers, thus rendering compulsory acquisition unnecessary for the implementation of their schemes. Each such underlease contains a fairly standard range of terms and conditions which ensure that ABP, as harbour authority, can effectively discharge its conservancy functions for the benefit of all users of the harbour. The applicant has agreed in principle to taking such an underlease of the river bed from ABP and the Harbour Master, Humber is content that an underlease in this usual form will protect his interests. He therefore seeks a commitment from the applicant that the undertaker will enter into such an underlease and, in advance of detailed terms being agreed, an agreement in principle to this replacing the proposed compulsory purchase of the river bed.

Able's limits of jurisdiction as a harbour authority

9. The Order would establish the applicant as a new statutory harbour authority. As presently drafted, the new authority's area of jurisdiction would extend 200 metres

¹ 1997 edition

riverward from the new berth. The Harbour Master, Humber objects to the area of jurisdiction extending further than 100m, which is both more typical and more desirable. A 100m limit allows for accommodation of a sizable vessel with operating space beyond it but does not intrude into areas of public or general navigation where other users of the river, for whom the Harbour Master, Humber is responsible, may be affected.

10. The applicant has recently provided the Harbour Master, Humber with a revised plan of the proposed boundary of jurisdiction of the harbour authority (reference AME 09278 Revision B) showing a 100m limit of jurisdiction. The Harbour Master, Humber seeks the substitution of this plan for the existing plan at Schedule 10 to the draft Order. This would also resolve the objection of the Harbour Master, Humber to the inclusion in the limits of jurisdiction of the area of the southern extremity of the proposed berth where the return wall meets the river bank, shown on the existing plan, but removed from within the boundary shown on 09278 Revision B.

Dredging and disposal of arisings

11. It is important that the capital dredge is carried out within safe operating parameters approved by the Harbour Master, Humber so that the dredging does not interfere with his conservancy functions (including arrangements for the movement of other river traffic which will have precedence). To achieve this the definition of tidal works in paragraph 7(2) of Part 2 to Schedule 9 of the draft Order needs to include capital dredging and a definition of plans is required which includes drawings, method statements and programmes. This will have the effect of applying the prior approval provisions in paragraph 8 of Part 2 to Schedule 9 to the capital dredging. Specific amendments are in Annexes 1 and 2.
12. Maintenance dredging is a vital operation and it is essential for the operation of the river that the applicant makes appropriate arrangements for the dredging and disposal of dredged material. The Order as presently drafted provides that dredging and the disposal of arisings will be carried out in accordance with works schedules agreed with the Marine Management Organisation ("MMO"). The Environmental Statement suggests the annual dredging requirement for maintenance dredging may be up to 2.5 million wet tonnes. The Harbour Master, Humber is concerned that there is insufficient capacity in the deposit grounds listed in Part 5 of Schedule 8 to the draft Order to take all the disposals likely to be created and he seeks an assurance from the applicant that he will be consulted before any works schedules are submitted to the MMO.

Paragraph 20 of the Protective Provisions – Sedimentation, etc: remedial action

13. Part 2 of Schedule 9 to the draft DCO contains provision, inter alia, for the applicant to be required to remedy any detrimental effects of accretion/erosion resulting from the tidal works within the harbour area for which the Harbour Master, Humber is responsible. However, this protection does not extend to the breach and managed realignment at Cherry Cobb related to the application. That also poses an accretion/erosion risk and the Order should not be made without a further protective provision relating to this area. Specific amendments are in Annexes 1 and 2.

Paragraph 22 of the Protective Provisions – Statutory functions

14. In order to ensure that the Humber Master, Humber's functions in the interface between his area of responsibility and the applicant's area of jurisdiction are not

adversely affected or compromised by the applicant's operations under its own Port Marine Safety Code, paragraph 22 of the protective provisions in Part 2 of Schedule 9 to the draft Order must make it clear that the functions of the Harbour Master have primacy. Specific amendments are in Annexes 1 and 2.

Safe operating procedures for access to, and egress from, the applicant's specialist berth

15. The applicant's specialist berth at the seaward end of the proposed facility is only capable of safe entry and egress by vessels at the slack water period (with the first or last of the flood tide running) close to high water and, subject to draft of vessel, low water. This is effectively a 1 hour window of accessibility 4 times per 24 hours. Any ebb tide would bring an unacceptable level of risk both to vessels using the applicant's berth and those using the Oil and Pipelines Agency's South Killingholme Jetty. To ensure the applicant's observance of safe operating procedures for safe access to and egress from the specialist berth, the protective provisions in Part 2 to Schedule 9 to the draft Order must provide that no vessels shall enter or leave the applicant's specialist berth until a written set of safe operating procedures and arrival/sailing parameters has been submitted to and approved by the Harbour Master, Humber. Specific amendments are in Annexes 1 and 2.

Other amendments to the draft Order

16. The Harbour Master, Humber has identified a number of further amendments required to ensure that his functions are not adversely affected by the draft Order. Commentary is in Annex 1 and a paper of amendments is in Annex 2.



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Summary of Written Representation of Harbour Master, Humber

(Rule 8 letter 31 May 2012 Annex C)

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Introduction

1. This summary of his written representation is submitted on behalf of Captain P.J. Cowing in his capacity as Harbour Master, Humber ("HMH"), representing Associated British Ports ("ABP") as statutory harbour authority and competent harbour authority for the river Humber.
2. The HMH is concerned that the proposed Order will have adverse impacts on the safety of navigation, Humber conservancy, and associated environmental matters. He objects to the making of the Order unless his concerns are addressed and appropriate amendments to the Order secured.

Sedimentation

3. The HMH is interested in the location and levels of sedimentation, accretion and erosion within his jurisdiction. Modification of tidal flow or direction resulting from the proposed development has implications in this regard, including for the handling of vessels. The safe navigation and berthing of vessels may be adversely affected.
4. The reliability of the Hydrodynamic and Sedimentary Regime Report in the ES is unsatisfactory, and the assessment of effects of the applicant's proposals on sedimentation is flawed. The conclusions of the HR Wallingford 2011 3D mud modelling report is based on assumptions related to final berth design but there is no comprehensive modelled analysis based on the actual later design. Such analysis is necessary to produce a definitive report. The ES lacks a proper assessment of predicted effects of the final design in combination with the proposed breach and managed realignment at Cherry Cobb Sands.
5. The applicant has provided the HMH with an additional Hydrodynamic Analysis Report. It appears that the necessary assessments have been completed, and the results appear satisfactory on a preliminary reading. This view is subject to detailed consideration of the extensive technical data which has not been possible before 29 June. The HMH is currently unable to conclude whether the additional report addresses the deficiencies in the ES. Until it is possible to reach a considered view, the issues of concern to the Harbour Master, Humber remain outstanding. He seeks an opportunity to comment on the new material in due course.

Berth approach channel

6. The channels in the river and their maintenance are within the area over which the HMH has statutory responsibility for navigation and river conservancy. The approach channel which the applicant proposes to dredge and maintain partially overlaps the pre-existing approach channel to the Humber Sea Terminal ("HST"). Although approach channels to individual terminals in the river are maintained by the owners/occupiers of those facilities, their management is of interest to the HMH because of potential impacts on, or hazard to, other river users for whom he has responsibility. The HMH must be satisfied that there are adequate arrangements to govern navigation to/from/in the overlapping area and maintenance dredging. Unless there is legally binding agreement between the applicant and HST providing for division of responsibilities and workable arrangements, the Order must make appropriate provision.

Compulsory acquisition and sub lease of riverbed

7. The Order would authorise the compulsory acquisition of ABP's leasehold interest in the riverbed, held in its capacity as conservancy authority. Douglas & Green on the Law of Harbours Coasts and Pilotage¹ states at paragraph 3.16 that:

"Most harbour authorities do not own the bed of their harbour and, although such ownership has advantages, particularly in relation to the construction of works below high water mark, it is certainly not essential for the management of a harbour."

8. It is ABP's standard practice to grant underleases to developers, rendering compulsory acquisition unnecessary for the implementation of their schemes. Each underlease contains a range of terms and conditions which ensure that ABP can discharge its conservancy functions for the benefit of all users of the harbour. The applicant has agreed in principle to taking such an underlease of the river bed from ABP. The HMH is content that an underlease in this usual form will protect his interests. He seeks a commitment from the applicant that the undertaker will enter into an underlease and, in advance of detailed terms being agreed, an agreement in principle to this replacing the proposed compulsory purchase of the riverbed.

Limits of jurisdiction

9. The Order would establish the applicant as a statutory harbour authority. As submitted, the new authority's area of jurisdiction would extend 200 metres riverward from the new berth. The HMH objects to the area of jurisdiction extending further than 100m, which is typical and more desirable. A 100m limit allows for accommodation of sizable vessels with operating space beyond it but does not intrude into areas of general navigation where other river users, for whom the HMH is responsible, may be affected.
10. The applicant has given the HMH a revised plan of the proposed boundary of jurisdiction (reference AME 09278 Revision B) showing a 100m limit. The HMH seeks the substitution of this plan for the existing plan at Schedule 10 to the draft Order. This would also resolve the HMH's objection to the inclusion in the limits of jurisdiction of the southern extremity of the proposed berth where the return wall meets the river bank, shown on the existing plan, but removed from within the boundary on 09278 Revision B.

Dredging/disposal of arisings

11. The capital dredge must be carried out within safe operating parameters approved by the HMH so that it does not interfere with his conservancy functions (including arrangements for movement of other river traffic which will have precedence). To achieve this, the definition of tidal works in paragraph 7(2) of Part 2 to Schedule 9 of the draft Order should include capital dredging and a definition of plans is required which includes drawings, method statements and programmes. This will apply the prior approval provisions in paragraph 8 of Part 2 to Schedule 9 to the capital dredging. See annexes to written representation.
12. It is essential for the operation of the river that the applicant makes appropriate arrangements for dredging and disposal of dredged material. The draft Order provides that dredging and the disposal of arisings will be carried out in accordance with works schedules agreed with the Marine Management Organisation ("MMO").

¹ 1997 edition

The ES suggests the annual maintenance dredging requirement may be up to 25,000,000 wet tonnes. The HMH is concerned that there is insufficient capacity in the deposit grounds listed in Part 5 of Schedule 8 to the draft Order to take all the disposals. He seeks an assurance from the applicant that he will be consulted before works schedules are submitted to the MMO.

Protective Provisions – Paragraph 20

13. Part 2 of Schedule 9 to the draft Order contains provisions for the applicant to remedy detrimental effects of accretion/erosion resulting from tidal works within the harbour area for which the HMH is responsible. This protection does not extend to the breach and managed realignment at Cherry Cobb, which also poses an accretion/erosion risk. The Order should not be made without protection relating to this area. See annexes to written representation.

Protective Provisions – Paragraph 22

14. To ensure that the HMH's functions in the interface between his area of responsibility and the applicant's area of jurisdiction are not adversely affected or compromised by the applicant's operations under its own Port Marine Safety Code, paragraph 22 of Part 2 of Schedule 9 to the draft Order must stipulate that the functions of the HMH have primacy. See annexes 1 and 2 to written representation.

Safe operating procedures for access to, and egress from, the specialist berth

15. The applicant's specialist berth at the seaward end of the proposed facility is only capable of safe entry and egress by vessels at the slack water period (with the first or last of the flood tide running) close to high water and, subject to draft of vessel, low water. This is effectively a 1 hour window of accessibility 4 times per 24 hours. Any ebb tide would bring an unacceptable level of risk to vessels using the applicant's berth and those using the Oil and Pipelines Agency's South Killingholme Jetty. To ensure the applicant's observance of safe operating procedures for safe access to and egress from the specialist berth, the provisions in Part 2 to Schedule 9 to the draft Order must provide that no vessels shall enter or leave the applicant's specialist berth until a written set of safe operating procedures and arrival/sailing parameters has been approved by the HMH. See annexes 1 and 2 to written representation.

Other amendments to Order

16. The HMH has identified amendments required to ensure that his functions are not adversely affected. See commentary in Annex 1 and amendments in Annex 2 of written representation.

Annex 1 to the written representation of

HARBOUR MASTER, HUMBER

Detailed comments on draft Order as applied for

Article 2 (Interpretation)

1. The definition of "area of seaward construction activity" refers to the Order limits as shown on the land plan. The references should be to the works plan (see definition of "the Order limits") **[Amendment 1]**.
2. In the definition of "area of jurisdiction", references to the limits of the harbour are to be construed as referring to the red line limits shown on the plan forming Schedule 10 to the Order. However, "harbour" is defined as including "the dredged channel" constructed under the Order. This give rise to two issues. First, the two definitions are inconsistent. Second, the reference to the dredged channel is anyway wrong. The authorised development listed in Schedule 1 does not include a specific dredged channel. The general right to dredge in article 21 includes a right to dredge, etc., among other things existing channels and the river bed near to the harbour. This might result in the undertaker dredging a new channel, but there is no specific channel in prospect. The inconsistency could not be covered by substituting "any" because that would result in the area of the harbour being indeterminate on the face of the Order, incapable of ready or certain determination and potentially changing from time to time. For both these reasons the reference to the dredged channel should be omitted. **[Amendment 2]**
3. The "Harbour Authority" is defined as meaning the Company, i.e. Able UK Limited. It does not go on to say that the Harbour Authority also includes Able's successors. However, article 12 of the Order provides for transfer and sub-letting. As a result this definition does not work. A reference to successors should be added. **[Amendment 3]** This amendment raises the issue of how the public is to identify the Harbour Authority at any given time. See comments on article 12.
4. "the harbour master" is defined by reference to the overlap between the ABP Humber limit and Able's area of jurisdiction. It seems desirable to refer to the statutory authority for the purposes of which the Harbour Master, Humber is appointed. **[Amendment 4]**
5. "the Order limits" are defined as limits "shown as such" on the works plan. It seems probable that the intended Order limits are the same as the limits of the development area shown on the works plan as a dashed blue line. However, none of the lines on the works plan is described as an Order limit. This needs to be corrected.
6. "relevant planning authority" is defined as meaning the local authority for the area in which the relevant land is situated. This seems to be a typographical error, the intention being to refer to the district planning authority. **[Amendment 6]**
7. "the land plan" and "the works plan" are both expressed and defined in the singular. As there are several sheets of land plans and works plans, even if the defined term is singular the definition should be plural. **[Amendments 5 and 7]**

Article 4 (Modification of enactments)

8. The disapplication of sections 25 and 26 of the River Humber Humber Conservancy Act 1852 (penalising the deposit of hard material or discharge of mud in the river Humber) is acceptable only on the basis that equivalent protection for the Harbour Master, Humber's functions is given by paragraph 10 of Part 2 of Schedule 9. The disapplication of section

9 of the Humber Conservancy Act 1899 and section 6(2) of the Humber Conservancy Act 1905 (both relating to the construction of works in the river) calls for adjustment in the protective provisions to ensure that the Harbour Master's approval is required. Please see comments on Part 2 of Schedule 9.

Article 5 (Development consent etc. granted by the Order)

9. It appears that the insertion of paragraph (a) is a typographical error and that this article is intended straight through from "granted" to the end.

Article 12 (Consent to transfer benefit of Order)

10. Article 12(1) enables the undertaker to transfer or grant a lease of the benefit of the Order and the associated harbour undertaking. The definition of "the undertaker" in article 2(1) captures both an owner (i.e. the Company or any transferee under article 12(1)(a)) and a lessee under article 12(1)(b). If it is indeed the intention that lessees should have power to make grants under article 12(1)(b), it must be the case that a lessee cannot transfer or grant a greater interest than his own and this needs to be made clear. **[Amendment 8]**
11. A transfer or lease would require the Secretary of State's consent, but the Order does not provide for the existence of a transferee or lessee to be made known to anybody else. It is essential that the Harbour Master, Humber should be aware of operators of facilities in the Humber particularly where, as here, the operator has the benefit of statutory powers. Appropriate provision for notice to the Harbour Master, Humber should be added to the protective provisions in Part 2 of Schedule 9. **[Amendment 9]**

Article 20 (Authority to survey and investigate the land)

12. Article 20 is not an uncommon provision in itself, but these intrusive powers ought only to be exercisable in an identifiable area. This standard limitation is reflected in the model provisions.¹ The Order departs from this principle. Article 20(1) provides that the powers can be exercised within the Order limits and also on any land "which may be affected by" the authorised development. This is unacceptably uncertain and the reference to affected land should be omitted. **[Amendment 10]**
13. For the purpose of article 20, land includes the riverbed. The Harbour Master, Humber must have the ability to control the manner in which the undertaker exercises these powers in the river for which the Harbour Master, Humber is responsible. This will not invariably come within the scope of paragraph 22 of Schedule 9. Further provision is required. **[Amendment 11]**

Article 21 (Right to dredge)

14. This general dredging power is not limited to the area of jurisdiction. Dredging can take place for the purposes of affording access to the new harbour and includes dredging the channels. It is to be expected that the undertaker will undertake dredging outside its quay and berthing pocket and well within the river.
15. Article 21(3) would oblige Able to consult ABP before carrying out dredging. However, it is necessary for the Harbour Master, Humber to be able to control dredging operations in the river for which he is responsible and consultation by itself does not achieve that. As presently drafted the plan approval provisions in Part 2 of Schedule 9, paragraphs 8 and 9, require the undertaker to obtain the Harbour Master, Humber's approval of plans of tidal works including capital dredging, but plans by themselves are not sufficient and

¹ See the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, Schedule 1 (General Model Provisions) article 16.

protection is also need in respect of maintenance dredging. Amendments are required. **[Amendments 12 and 13]**

Article 25 (Lights on tidal works etc. during construction)

16. This article requires the placing of lights while certain types of work are being carried out. The list does not include "alteration". This is consistent with the model provision. However, with a facility the size of the proposed new quay safety of navigation may require works to be lit even where they are alterations that fall short of the other things listed. **[Amendment 14]**
17. Article 25 requires compliance with directions from the Secretary of State or ABP but does not impose a sanction for non-compliance. A level 4 penalty is normal.² The Harbour Master, Humber seeks a similar amendment. **[Amendment 15]**

Articles 21(3), 26 and 27 – Humber Conservancy Board

18. The references to the Humber Conservancy Board are wrong, the Board having been dissolved when the Humber Harbour was reorganised and the Board's functions were transferred to ABP's predecessors³. This needs to be corrected. **[Amendments 16(a) – (c)]**

Article 27 (Permanent lights on tidal works)

19. It is not clear why article 27 refers to lights required by Trinity House. This appears to be unnecessary. **[Amendment 17]**

Article 29 (Compulsory acquisition of land)

20. Following the applicant's in principle agreement that it only requires an underlease of the river bed, which ABP is prepared to grant, compulsory purchase powers in respect of this land should be removed. The simplest way of achieving this is by amending the text of the Order. **[Amendments 18(a) – (c)]**

Article 39 (Temporary use of land for carrying out the authorised development)

21. Article 39 provides for the undertaker to take possession of land including ABP's river bed (plot no. 02013) for the purpose of what is described in Schedule 6 as "Quay construction – access". This area of foreshore is part of the river for which the Harbour Master, Humber is responsible and protection for his functions is necessary in respect of temporary use land under article 39. The work for which the temporary use is required will be subject to plan approval in accordance with Schedule 9, paragraph 8. So long as the proposed definition "authorised works" is included in paragraph 6 **[Amendment 12]**, other activities undertaken under article 39 will also be subject to plan approval.

Article 40 (Temporary use of land for maintaining the authorised development)

22. As with the article 39 powers these powers of article 40 could be exercised in respect of the river bed. The same level of Harbour Master, Humber approval is therefore required. The amendments referred to above in relation to article 39 are needed in respect of article 40, too.

² See e.g. the Humber Sea Terminal (Phase III) Harbour Revision Order 2006, article 13(2).

³ The Humber Harbour Reorganisation Scheme 1966 articles 3 and 6.

Article 43 (Deemed marine licence) and Schedule 8

23. Paragraphs 6, 16, 19, 22 and 25 of the deemed marine licence require the applicant to obtain the agreement of the Marine Management Organisation to various works schedules relating to the deposit of material and dredging. These are all part of the construction methodology. As with plans to be submitted to the Secretary of State, these works schedules should be submitted to the Harbour Master, Humber before being sent to the MMO. This minimises the risk of conflict between the Harbour Master, Humber and the MMO. Paragraph 8 of Schedule 9 should therefore extend to works schedules to be agreed with the MMO. **[Included in amendment 19]**

Schedule 1 (Authorised Development)

24. It is essential that the description of the authorised development should be sufficiently clear that somebody other than the undertaker can see from the description what is proposed to be constructed or can ascertain his by reference to other documents which are applied to the brief descriptions. The verbal descriptions of the works in Schedule 1 to the draft Order are altogether inadequate for this purpose. The works plans show limits of deviation and limits of the development but neither the definition of "authorised development" nor the Schedule 1 descriptions makes any reference to the works plans. This should be remedied. Also missing from the Order (except in relation to the deemed marine licence) is any mention of the limits of deviation, despite these being shown on the works plans. Those defects should be remedied. **[Amendments 20(a) and (b)]**

Schedule 11 (Requirements)

25. The Harbour Master, Humber's concerns are similar to those in relation to Schedule 1, that the Order should enable him to ascertain what is to be constructed. The Order will (if the above amendments are made) authorise works shown in what are very basic works plans rather than detailed design drawings. This is not a criticism of the works plans but it does mean that the Order will only operate as an outline draft planning permission leaving details to be approved.
26. The effect of Schedule 11, paragraphs 3 and 4 is that detailed design changes and the stages of the development are to be approved by the relevant planning authority (which – see above- should be amended to refer to the district planning authority). The detailed design drawings might well contain material that is relevant to the Harbour Master, Humber's functions and which would not appear in the plans captured by Schedule 9, paragraph 8 as presently drafted. The position is further muddled by the stipulation in Requirement 4 (Schedule 11) that the authorised works are to be constructed in accordance with the design drawings. It will, therefore, be necessary to amend the protective provisions so as to ensure that the plans the Harbour Master, Humber sees and approves reflect the design drawings as they stand at present and include any proposed changes before they are submitted for approval to the relevant planning authority. **[Amendment 19]**

Schedule 10 (Limits of harbour)

27. As previously mentioned the plan at Schedule 10 should be replaced. **[Amendment 23]**

Schedule 9, Part 2, paragraph 22 – Statutory functions

28. As explained in paragraph 14 of the Written Representation, the Order needs to make clear that the provision giving primacy to the Conservancy Authority's statutory functions includes its functions in relation to the Port Marine Safety Code. **[Amendment 21]**

Access to and egress from the applicant's special berth

29. For the reasons explained in paragraph 15 of the Written Representation, it is essential for the Able Harbour Authority to commit to approved safe operating procedures and the Order should provide for this. **[Amendment 22]**

Annex 2 to the written representation of

HARBOUR MASTER, HUMBER

Proposed amendments to Order as applied for

[References to text in passages from and to quoted words include all words so quoted]

1. Article 2(1), in the definition of "area of seaward construction activity"; leave out "land" and insert "works".
2. Article 2(1), in the definition of "harbour"—
 - (a) leave out from "the dredged" to all other" and insert "all"
 - (b) after "connected with them" insert "within the limits of the harbour".
3. Article 2(1), in the definition of "the Harbour Authority", at end insert "and includes—
 - (a) any transferee of the benefit of the provisions of this Order under article 12(1)(a); and
 - (b) any lessee under a grant made under article 12(1)(b), but only for the period agreed between the undertaker and the lessee under the grant and only to the extent of the rights granted by it;"
4. Article 2(1), in the definition of the harbour master" after "AB Ports" insert "for the purposes of the Humber Conservancy Acts 1852 to 1951 and the Humber Harbour Reorganisation Scheme 1966".
5. Article 2(1), in the definition of "the land plan", leave out the second "plan" and insert "plans".
6. Article 2(1), in the definition of "relevant planning authority", leave out "local" and insert "district planning".
7. Article 2(1), in the definition of "the works plan", leave out the second "plan" and insert "plans".
8. Article 12, after paragraph 1 insert—
 - "(2) The powers of paragraph (1)(a) may only be exercised by the Company or a transferee.
 - (3) A lessee ("the granting lessee") may not make a grant under paragraph (1)(b)—
 - (a) for a longer period than the period of the grant to the granting lessee; or
 - (b) conferring any benefit or right that is not conferred by the grant to the granting lessee."and re-number the remaining paragraphs of article 12.
9. Schedule 9, Part 2, after paragraph 24 insert—
 - "25. Within 14 days after the date of any transfer or grant under article 12 the undertaker who made the transfer or grant shall serve notice on the Harbour Master,

Humber containing the name and address of the transferee or lessee, the territorial extent of the transfer or grant and, in the case of a grant, the period for which it is granted and the extent of benefits and rights granted.”

and re-number the remaining paragraphs of Schedule 9.

10. Article 20(1), leave out “or which may be affected by the authorised development”.

11. Schedule 9, Part 2, after paragraph 21 insert–

“Entry for survey, etc.

22(1) Before exercising the powers of article 20 to enter any land situated below the level of high water the undertaker shall provide the Harbour Master with written particulars of–

- (a) the location of the land (including a plan);
- (b) the nature of the things proposed to be done in that land in exercise of that article;
- (c) the duration and frequency of the undertaker’s intended presence on the land;
- (d) any vehicles or equipment proposed to be brought on the land;

and such other details as the Harbour Master may reasonably request.

(2) The undertaker may not enter any land the subject of written particulars provided under sub-paragraph (1) except in accordance with such conditions as the Harbour Master may impose, including conditions as to the time of entry and the way in which activities are to be carried out.”

and re-number the remaining paragraphs of Schedule 9.

12. Schedule 9, Part 2, paragraph 6, in the appropriate places insert the following definitions:–

““authorised work” means any work, operation or activity that the undertaker is authorised by this Order to construct or carry out;”

“plans” includes sections, elevations, drawings, specifications, programmes, method statements and hydraulic information;”

13. Schedule 9, Part 2, paragraph 7, leave out “but shall not include any maintenance dredging”.

14. Article 25, after “reconstruction,” insert “alteration,”.

15. Article 25, at beginning insert “(1) and at end insert–

“(2) If the Company fails to comply with any requirement of a direction given under this article it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.”

16. (a) Article 21(3), leave out “Humber Conservancy Board” and insert “the conservancy authority”.

- (b) Article 25, leave out "Humber Conservancy Board" and insert "the conservancy authority".
- (c) Article 27--
 - (i) at beginning insert "(1)";
 - (ii) leave out "Humber Conservancy Board" in the three places where it occurs and in all three places insert "the conservancy authority"; and
 - (iii) at end insert--
 - (2) In articles 21, 35 and this article "the conservancy authority" means AB Ports in its capacity as conservancy authority for the river Humber."
- 17. Article 27, leave out from "and Trinity House" to "Board".
- 18. (a) Article 29, at end insert--
 - "(5) This article does not authorise the compulsory acquisition of any interest in Order land below the level of high water which is land in which AB Ports has an interest."
- (b) Article 30, at end insert--
 - "(10) This article does not apply to any land within the Order limits and below the level of high water which is land in which AB Ports has an interest."
- (c) Article 33, at end insert--
 - "(5) This article does not apply to any land below the level of high water which is land in which AB Ports has an interest."
- 19. Schedule 9, Part 2, in paragraph 8(1)--
 - (a) after sub-paragraph (b) insert--
 - "(c) submitting any works schedules to the Marine Management Organisation in accordance with paragraphs 6, 16, 19, 22 and 25 of Schedule 8;"
 - (b) after sub-paragraph (b) insert--
 - (d) submitting any written scheme or proposed alteration in the design drawings to the relevant planning authority in accordance with paragraph 3 or 4 of Schedule 11;
 - (c) after "shall" insert "as the case may require"
 - (d) after the first "Conservancy Authority" insert "(i)"
 - (e) after "or operation" insert--
 - (ii) the design drawings relevant to those plans and sections;
 - (iii) the works schedules referred to in sub-paragraph (c); and
 - (iv) the written scheme or proposed alteration referred to in sub-paragraph

(d);”

(f) after sub-paragraph (2) insert—

“(3) No works schedule referred to in sub-paragraph (1)([c]) shall be submitted to the Marine Management Organisation for agreement until the work schedule has been approved by the Conservancy Authority.

(4) No written scheme or proposed alteration referred to in sub-paragraph (1)([c]) shall be submitted to the relevant planning authority for approval until the scheme or alteration has been approved by the Conservancy Authority.”

(g) Re-number sub-paragraphs.

20. (a) Article 5, at beginning insert “(1)” and at end insert—

“(2) Subject to article [6] (limits of deviation), the authorised development comprising the works and associated development described in Schedule 1 shall be constructed in the lines and situations shown on the works plans and the levels shown on the sections.”

(b) After article 5, insert new article—

“Limits of Deviation

[6] In carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plan to the extent of the limits of deviation shown on the plans; and
- (b) deviate vertically from the levels of the authorised development shown on the sections—
 - (i) to any extent not exceeding 1 metre upwards; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.”

and re-number the remaining articles of the Order.

21. Schedule 9, Part 2, paragraph 22, at end insert—

“(6) The Able Dockmaster shall consult the Harbour Master in relation to the initiation, operation and any change in the Port Marine Safety Code as having effect in relation to the harbour, and the Able Harbour Authority shall comply with any requirement of the Humber Harbour Master for the adjustment of that Port Marine Safety Code as affecting the river Humber and the functions of the Conservancy Authority or the Humber Harbour Master.”

22. Schedule 9, Part 2, after paragraph 22 insert—

“Operating procedures

23. Before commencing harbour operations the Able Harbour Authority shall submit to the Humber Harbour Master for approval a written statement of proposed safe operating procedures for access to and egress from the harbour and shall operate the harbour only in accordance with such procedure as approved, including any approved alteration made from time to time.”

23. Schedule 10, plan to be replaced.

