

Dear Mr Harris

Please find attached requests for cross-examination in respect of Able Marine Energy Park, reference TR030001.

regards

Lauren

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**Lauren Bennett Solicitor, Government & Infrastructure**

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## ABLE MARINE ENERGY PARK, REFERENCE TR030001

### REQUESTS FOR CROSS-EXAMINATION BY THE APPLICANT

#### Introduction

1. In accordance with the Panel's directions made following the preliminary hearing on 24 May 2012, the applicant wishes to reserve the right to cross-examine the following parties on the following issues and therefore makes an application to do so:

- a. ABP (Commercial) on
  - i. hydrodynamic and sedimentary regime issues, and
  - ii. development plans for the Port of Immingham;
- b. ABP (Humber harbourmaster) on
  - i. navigation in the Humber, and
  - ii. dredging and disposal consents;
- c. Network Rail on acquisition of railway land.

#### Detailed submission

2. If negotiations prove fruitful with any of these parties then the applicant may no longer wish to cross-examine them by the time of the relevant hearings, although this is most likely to occur with Network Rail. Similarly, if the position changes in respect of any other parties to the hearing, the applicant will notify the Panel as soon as possible of any further applications for cross-examination.

#### ABP (Commercial)

3. Having examined the relevant and written representations of ABP (Commercial), the applicant has identified inconsistencies in ABP's evidence relating to the hydrodynamic and sedimentary regime. In order for the examining Authority to be properly seized of the evidential soundness of ABP's case and for the applicant to be fairly able to understand and respond to the objections made by ABP it is necessary for these matters to be tested through oral cross-examination. There appears to be basic errors in the written representations made by ABP (Commercial), for example, paragraph 62 of Mr Whitehead's evidence that forms part of ABP's written representations appears to contain a quotation from the Environmental Statement (ES) that does not in fact appear in the ES.

4. Furthermore, oral testing of ABP's plans for the Port of Immingham is necessary, in particular, the 'HIT head shunt' project and the need for the triangle of land that the applicant proposes to acquire. It is to be noted that ABP's written representations reveal inconsistencies in the need for such land. Further details in this respect can be found in the applicant's comments on ABP's responses to the examining Authority's first round of questions.

5. The most suitable hearings during which cross-examination could take place would appear to be:

- a. the specific issue hearing on 13 September dealing with marine matters, for the hydrodynamic and sedimentary regime issue, and
- b. the compulsory purchase hearing on 10 October dealing with the south bank, for the future of the Port of Immingham issue.

### **ABP (Humber harbourmaster)**

6. The applicant requests that it be able to cross-examine the Humber harbourmaster on issues of navigation in the Humber. In order for the examining Authority to be properly seized of the evidential soundness of ABP's case and for the applicant to be fairly able to understand and respond to the objections made by ABP it is necessary for there to be an oral examination in respect of the harbourmaster's role and how much can and should be left to the applicant to agree with other Humber users.

7. The applicant also wishes to understand and test the extent (and indeed the basis) of the harbourmaster's need to consider dredging and disposal issues when these will already have been authorised via the deemed marine licence (DML), and the extent of the matters the harbourmaster would and must take into account any consent that he gave in addition to the DML. It is particularly important to examine by cross examination the harbourmaster's consistency of approach (or lack of consistency) in his treatment of other Humber users' dredging and deposit needs.

8. The most appropriate hearing for both of these issues would appear to be the specific issue hearing on 13 September dealing with marine matters.

### **Network Rail**

9. It is hoped that these matters will be resolved before the substantive Panel hearings but if not, in order for the examining Authority to be properly seized of the evidential soundness of Network Rail's case and for the applicant to be fairly able to understand and respond to the objections made by Network Rail on the issue of the acquisition of the railway that is proposed in the application. Amongst other things, this will assist the examining Authority, the applicant and interested parties properly to understand whether what is proposed is appropriate or can be achieved by any other lesser means, given for example that ABP owns the section of the railway that runs through the Port of Immingham and that Network Rail is planning to lease part of the railway within the order land to ABP. It is necessary to cross examine Network Rail upon its consistency of approach (or lack of consistency).

10. The most appropriate hearing for this would appear to be the compulsory acquisition hearing on 10 October.