

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

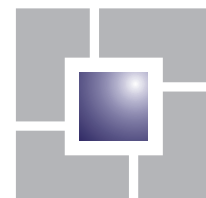
**APPLICATION FOR THE PROPOSED ABLE MARINE ENERGY PARK ON  
THE SOUTH BANK OF THE RIVER HUMBER AT IMMINGHAM, NORTH  
LINCOLNSHIRE**

**PLANNING INSPECTORATE REFERENCE NUMBER: TR030001**

**Objector Reference: 10015525**

Response to Further Documentation relating to Highway Matters

Simon Tucker BSc (Hons) MCIHT  
On matters of Road Transport, Access and Traffic Impact  
on behalf of ABP



david tucker associates  
transport planning consultants

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Response to Further Documentation relating to Highway  
Matters

Simon Tucker BSc (Hons) MCIHT  
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12th October 2012  
SJT/13204-07\_Further Response

***Prepared For:***

Associated British Ports

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## **1.0 Introduction**

1.1 This representation has been prepared on behalf of Associated British Ports (ABP) to explain ABPs ongoing issues and concerns having now received and reviewed the further submissions made by all parties including ABP and the relevant Highway Authorities. These submissions comprise:

- Highways Agency Position – Letter 3<sup>rd</sup> August 2012.
- Highways Agency SoCG.
- Second Round Questions – 17/08/2012.
- JMP Response to ABP Submission (Appendix WR22.2 Page 422 of applicant's Comments on the Written Representations).
- North East Lincolnshire SoCG.
- North Lincolnshire SoCG.
- Royal Mail Objection (BNP Paribas 12<sup>th</sup> September 2012)

1.2 This should be read in conjunction with my written submissions of 28/06/12 and 02/08/2012.

1.3 JMP have responded to the issues raised in my WR at Appendix WR22.2 (page 422 of applicant's Comments on the Written Representation).

1.4 However, JMP have provided no new evidence or technical explanation to support their assessment. The basis of the assessment remains flawed and the fundamental errors have not been corrected. In particular:

- Despite accepting that they have incorrectly modelled the key junctions, JMP have made no attempt to correct the error. The explanation for not revisiting the assessment is based on unjustified assumptions. As such, no material reliance can be placed on the JMP assessment which remains unsound.
- The revised JMP scheme for Rosper Road / Humber Road still does not address key safety concerns. In attempting to deal with the road safety audit (RSA) concerns, JMP have introduced a fundamentally unsafe element into the design.
- JMP have dismissed the need to allow for Immingham Port growth for the sole reason that it was not requested at the scoping stage. This is an unacceptable



approach. Any decision regarding whether or not to grant Development Consent for the development should take full account of all committed development, particularly given that development is in respect of an existing port of national significance whose growth is supported in planning policy.

- Finally, JMP have chosen not to address the traffic impact implications of a general cargo use of the port. Once again, no sound reason has been given for their decision. The application for the DCO expressly anticipates that the development will ultimately be used as a general cargo port. In these circumstances it is clearly incumbent on JMP to assess the likely traffic impact of such a facility. In the absence of any rebuttal to the concerns previously raised in respect of this issue, those concerns remain outstanding.

1.5 No attempt has been made by JMP to correct the errors from the original Transport Assessment (TA). For the reasons set out in my original WR, the proposed development will have a manifestly unacceptable impact on main transport access to the Port of Immingham.

1.6 It would also have a severe impact on the wider transport network to the extent that any consent would be contrary to Government Policy on transport issues.

1.7 ABP therefore maintain their objection to the application on highway grounds.

## **2.0 Highways Agency Position – Letter 3<sup>rd</sup> August 2012**

2.1 The Highways Agency (HA) representation raises two areas which require specific clarification; the Status of the Humber Road/Rosper Road junction and the interpretation of the Department for Transport Circular 02/2007 'Planning and the Strategic Road Network.

2.2 The HA have indicated that a number of disputes highlighted within my previous WR are a matter for resolution between Able Humber Ports Limited and Associated British Ports. This is surprising given the clear mathematical and analytical errors in the JMP assessment. Given the importance of the errors in question, I do not consider that it is appropriate that reliance be placed on the fact that the Highways Agency has not itself chosen to raise these issues.



2.3 The HA have re-confirmed that the Rosper Road / Humber Road junction does not form part of the Trunk Road network. This has previously been dealt with.

2.4 Although suggesting that the lack of a Stage 1 RSA was not of a 'critical concern' the HA have rejected the RSA that was submitted and requested a further RSA to be undertaken.

### **3.0 Highways Agency SoCG**

3.1 This confirms general agreement with the TA. I note that the document suggests that discussions are ongoing in relation to securing the mitigation measures. The HA have agreed that there will be minor adverse impacts due to the fact that ABLE are not fully mitigating their development traffic. ABP maintain the position that this impact will be severe at the Manby Road junction.

### **4.0 Second Round Questions – 17/08/2012**

4.1 There is nothing relevant to the matters considered by David Tucker Associates (DTA) within the second round of questions

### **5.0 JMP Response to ABP Submission (Appendix WR22.2 Page 422 of applicant's Comments on the Written Representations)**

#### **5.1 Methodology**

5.1.1 Para 2.2 of the JMP response confirms that the scope of the TA was discussed and agreed with both the HA and North Lincolnshire Council (NLC).

#### **5.2 Immingham Port Growth**

5.2.1 JMP argue that general background traffic growth should not be included because a significant amount of 'committed development' was included within the assessment. This approach is considered acceptable, and reasonable. DTA do not and have not queried this approach.

5.2.2 However as set out in Para 2.31 of the JMP response, JMP do not agree that growth of the Port of Immingham should be included as 'committed development' in the assessment. The basis for this statement is that 'it is not for the applicant to relieve



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existing congestion or to provide new capacity for the development of the Port of Immingham.'

5.2.3 I accept this point and ABP do not seek improvements from the Able proposals over and above the impact they create. However, the guidance does require a developer to mitigate its own impact. At present users of the Port of Immingham experience no delay or congestion at the junction of Rosper Road / Humber Road. By proposing to introduce signals at this point the development will, by definition, have a detrimental impact on the Port of Immingham by introducing delay from the signals.

5.2.4 In the event that the Able developments do not proceed, the Port will be able to grow without this junction being a constraint. It is therefore fundamental that, since Able are required to signalise the junction to mitigate their impact, the scheme they deliver should not materially alter the ability of the Port of Immingham to grow.

5.2.5 Furthermore, it is counter-intuitive that JMP agree to the inclusion of other committed development but object to the inclusion of growth from the Port of Immingham as a committed development.

5.2.6 Despite their apparent confidence that there is spare capacity on the network JMP have chosen not to undertake any technical analysis and have instead, dismissed growth in the Port of Immingham without an explanation other than it was not requested at the scoping stage. ABP maintain that this growth should have been included as committed development. The implications in traffic terms of this area set out below.

### 5.3 **Implications for A160 Scheme**

5.3.1 At Para 2.16 of the JMP WR, JMP have misinterpreted DTA's views on the A160. I do not suggest that the A160 is being promoted just to serve the Port of Immingham and can agree that it is intended to support overall growth of the south bank.

5.3.2 The JMP argument at Para 2.32 that adding all committed development and AMEP and port growth together would trigger the A160 scheme is precisely the conclusion reached in my WR (Para 4.8.5 – 4.8.6).

5.3.3 It is clear that the A160 scheme is being promoted to support the growth of the area



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and it is apparent from JMP's comments that both Able and ABP are agreed that the A160 works are required to facilitate full development of the area.

5.3.4 It therefore clearly follows that if further development is to be permitted in the area and the government wish to protect the access to the existing nationally significant Port of Immingham, any such development should ensure that it provides adequate mitigation to deal with its impacts.

5.3.5 At present, Able demonstrably do not do this.

#### 5.4 **JMP Position on Humber Road / Rosper Road Junction**

5.4.1 Following various submissions including the RSA, JMP have submitted a revised scheme for this junction. This revised scheme now addresses the error highlighted in Para 4.6.2 of my WR, and JMP have added an additional lane on the eastbound approach.

##### *Safety Implications of revised scheme*

5.4.2 The JMP report now includes a design office response to the RSA's. They have "accepted" all but one of the "problems". However, notwithstanding that they accept the problems, they have still not addressed concerns relating to a number of them. For example, relating to signalling of right turners and the merge length. Although the RSA recommended the removal of the right turn traffic island, and the design office agreed with this, as set out in 4.6.9 of my WR the provision of a right turn lane is a fundamental safety requirement.

5.4.3 The merge length proposed remains substandard (Para 4.6.9.5 of my WR). The design office rejects Problem 9 (layout causing delay/frustration and potential subsequent dangerous behaviour) on the basis that it is not feasible to change the layout. The response to Problem 3 (concerns about HGV tracking through junction) suggests that swept path analysis has been undertaken. However, this has not been provided and it is not possible to assess whether their response to Problem 3 and 9 is acceptable.

5.4.4 The layout remains unsatisfactory in safety terms.

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*Traffic implications of Revised Scheme - JMP Errors in Traffic Modelling*

- 5.4.5 JMP confirm at Para 2.17 of the WR that no attempt was made to input the correct HGV proportions into the junction models. Furthermore, they have chosen not to correct this error and their justification for not doing so is flawed.
- 5.4.6 JMP claim to have used a 'robust assessment' in their traffic analysis for a number of reasons, none of which are acceptable or justifiable.
- 5.4.7 For example, JMP have indicated that they have included a 'significant' amount of traffic generated from the Heron Renewable Energy Plant. They argue that this will be a relatively short term impacts and therefore the overall assessment is robust in including them in all future scenarios. However in my own assessment (Appendix H of WR), I had in any event excluded the Heron Flows from the Rosper Road junction testing because it was assumed to be an error. Even without including Heron traffic flows, the concerns on capacity at the junction remain:
- 5.4.8 JMP's attempt (Table 2 of JMP WR) to test the impact of PCU's is over simplistic and their reasons for not re-running the assessment properly are not clear. DTA have re run the LinSig based on the JMP revised scheme (and JMP forecast flows as total vehicles and converted to PCU's but excluding Heron traffic). This shows that correcting the PCU values reduces the stated capacity of the junction by 20% and to a point where there is practically no spare capacity in the PM peak.
- 5.4.9 Further correcting the model to provide a separately controlled right turn phase as required by DMRB TD50/04, reduces the capacity to a point in all traffic scenarios where the junction is not operating within capacity.
- 5.4.10 This is without having regard to Heron construction traffic. The suggestion that this traffic might not be generated at the same time as traffic generated by the Able development is not supported by any evidence. The Heron construction period is some 40 months and this is a significant and substantial period of time. Major disruption to the Port of Immingham traffic for this length of time is unacceptable.
- 5.4.11 No evidence, analysis or reasoning has been provided regarding the other bulleted points at Para 2.17 of the JMP WR. While I accept that some people may use different



modes of transport or routes to access the site, no attempt has been made to quantify these numbers. In the absence of analysis to support such reasoning, it is not appropriate to accept it given the magnitude of the potential impacts on Port of Immingham (see 4.2.3 and 4.2.4 above).

5.4.12 Para 2.41 – 2.44 of the JMP WR highlights the significant concerns of ABP. JMP have been provided with a clear and detailed breakdown of DTA's assessment of flows at Appendix G and section 4.5 of my previous WR. That analysis is based on clear empirical data and despite this, JMP dismisses it as being 'unrealistic' without any justification.

5.4.13 In conclusion therefore, the attempt by JMP to address these key concerns is flawed and has not provided any new or substantive detail to the debate. On this basis I consider it wholly appropriate that ABP maintain its objection to the scheme.

## 5.5 **Manby Road Roundabout**

5.5.1 JMP have chosen not to address this point but have given no reason for their decision. My concerns remain outstanding.

## 5.6 **General Cargo Port**

5.6.1 In respect of this issue also, JMP have chosen not to address the point that has been raised. Once again, no sound reason has been given for their decision. The application for the DCO expressly anticipates that the development will ultimately be used as a general cargo port. In these circumstances it is clearly incumbent on JMP to assess the likely traffic impact of such a facility. In the absence of any rebuttal to the concerns previously raised in respect of this issue, those concerns remain outstanding.

## 6.0 **North East Lincolnshire SoCG**

6.1 This confirms general agreement with the TA. It is still not clear however, how the various mitigation measures are going to be secured.

## 7.0 **North Lincolnshire SoCG**

7.1 Para 6.12.6 and 6.12.7 confirm that the layout of the Rosper Road junction has been agreed. This is noted but for the reasons set out above, ABP do not accept that the



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developer has demonstrated that the network will be 'no worse off' (see Para 6.12.5).

7.2 Notwithstanding this, the agreement (27/07/12) predates the design office response to the Stage 1 RSA (01/08/12) and therefore it is not clear which highway scheme the Council have agreed to. It is essential that ABP have sight of the details of the proposed method of securing the highway works so that they can understand the implications.

7.3 It is still not clear however, how the various mitigation measures are going to be secured.

## **8.0 Royal Mail Objection (BNP Paribas 12<sup>th</sup> September 2012)**

8.1 I have seen a copy of the objection submitted by BNP Paribas on 12<sup>th</sup> September 2012 on behalf of the Royal Mail, which includes a detailed report by Northern Transport Planning Ltd. Geographically the NTP Report is concerned with different junctions to those that are considered in my various representations. However, the report also raises a number of methodological shortcomings in the assessment which place significant doubt on the weight that can be accorded to the conclusions. Although slightly different in nature, these concerns are consistent with those already raised by myself and include:

- Issues regarding the lack of justification for the assumptions adopted in the TA for traffic generation and how such assumptions could be controlled through the planning process. (See also my WR 28/06/12 Section 5.1).
- Lack of assessment of future year growth on the local highway network.

8.2 On this basis and notwithstanding the position reached by the applicant with the relevant Highway Authorities, it remains the case that there are significant inadequacies in the submitted assessment which prevent proper consideration of the impacts.



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## **9.0 Update on Port Masterplan**

9.1 My written representation of 28th June 2012 discussed (at Section 4.4 and 4.5), the implications of traffic growth from the Port of Immingham having regard to the then draft Port Masterplan. Since that time the Masterplan has now been formally adopted, and the forecasts of cargo have altered slightly and I have therefore reviewed the implications for my original assessment.

9.2 Based on the same assessment, the current masterplan forecasts would result in a 39% increase in road traffic between 2011 and 2020. My previous assessment forecast around 30%. On this basis the increase in flows would be higher and therefore there will be significantly less capacity on the road network than I had previously calculated, meaning that the impacts of the proposed ABLE development will in fact be worse than I have previously presented.

## **10.0 Conclusion**

10.1 On the basis of the above, it is clear that the additional information provided has not addressed the majority of the concerns raised by ABP, so that many of these significant concerns remain. I therefore consider it appropriate that ABP maintain its objection to the application on the grounds that the proposed development would have a manifestly unacceptable impact on main transport access to the Port of Immingham. It would also have a severe impact on the wider transport network to the extent that any consent would be contrary to Government Policy on Transport issues. In particular, the development is contrary to the requirements set out in Paragraphs 5.4.9 and 5.4.10 of the NSPfP in that the developer has not agreed to sufficient mitigation measures.

SJT/13204-07\_Further Response  
12<sup>th</sup> October 2012

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**PLANNING INSPECTORATE REFERENCE: TR030001**

**Unique Reference Number: 10015525**

**Comments on Responses to Second Round Questions**

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(Adams Hendry Consulting Ltd)

on behalf of

**ASSOCIATED BRITISH PORTS**

12 October 2012

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## SECTION 1. INTRODUCTION

1. In this document I comment on some of the responses given to the ExA's second round questions (Section 2). I then provide, for the assistance of the ExA, further project related points that follow from these responses (Section 3).
2. This document does not, however, seek to address outstanding issues with the draft DCO. These will be provided as necessary once the latest version of the draft DCO has been reviewed.

## SECTION 2. COMMENTS ON CERTAIN ANSWERS TO ExA SECOND ROUND QUESTIONS

### ExA Second Round Question 23 addressed to the Applicant

*Q23. Paragraph 4.5.8 of Report EX44.1 in the Supplementary Environmental Information states that the DRAX Heron Renewable Energy Plant site overlaps with proposed Mitigation Site A, and that if the DRAX project proceeds on its current basis then it may affect the viability of Site A. There is a suggestion in paragraph 4.5.19 that the impacts on Site A could be avoided by appropriate phasing of the AMEP project.*

*Please confirm*

- (i) what point the discussions with DRAX have reached*
- (ii) how the viability of Site A would be ensured if the discussions with DRAX were not successful?*

3. The applicant's answer to this question, which puts forward three potential options for addressing this issue, needs to be read in the context of its oral submissions and answers given at the specific issue hearing session on 12 September. At that session the answers of the applicant confirmed the following in respect of the options then presented.

4. *Option 1: Potential temporary mitigation.* The applicant confirmed in oral answers to questions that the environmental assessment of the AMEP proposal had not assessed the use of the area to the south of the proposed Station Road access as temporary mitigation whilst DRAX made use of their lay down area. No phasing details to show how this would work and over what timescale have been provided and no data has been provided that demonstrates the suitability of the area proposed for mitigation purposes.
5. *Option 2: Providing DRAX with an alternative laydown area.* The applicant at the issue specific hearing session on 12 September confirmed that this potential option was at a very early stage. It also confirmed that further consents and assessment would be required, although it was unable to put forward any detail on this matter.
6. In putting forward this alternative option the applicant indicated through agreement with the Panel that this option could be secured by way of a Grampian type of condition / requirement attached to the DCO. The ExA will recall that ABP's representatives at the hearing indicated that such an approach was unlikely to be lawful.
7. *Option 3: Using land at Halton Marshes.* The applicant confirmed that this area formed part of the mitigation for the Able Logistics Park proposals. No detailed explanation was given as to the implications the use of this area to mitigate the effects of AMEP would have on the timing and delivery of mitigation for the logistics park proposals.

#### **ExA Second Round Question 24 addressed to the Applicant**

*Q24. What progress has been made in discussion with Natural England about the specification and production of Ecological Monitoring and Mitigation Plans?*

8. In their answer to this question the applicant (paragraph 2.4) indicates that NE has advised them of the degree of completion of these documents it (i.e. NE) requires by the end of the examination. I would suggest, however, that it is not just NE which needs to be content with the state of these documents by the

end of the examination. They are important documents and as such need to be debated and considered through the examination process – a transparent exercise to which all interested parties should be able to contribute.

### **ExA Second Round Question 53, 54 and 55 addressed to the Applicant**

*Q53. None of the sources identified as being responsible for funding are a direct party to the application. Could the applicant therefore confirm how sufficient, necessary funds are to be secured, guaranteed and drawn upon within the terms of any compulsory acquisition provisions incorporated within the draft Development Consent Order?*

*Q54. In particular, does the applicant intend to secure a formal legal agreement with the Elba Group covering covenants to AMEP from Elba Group for compensation payments or possible claims for blight?*

*Q55. Given that the cost of the project as estimated by AMEP is £450m, and the Elba Group's assets are estimated as in excess of £300m, how are the necessary assets over liabilities to be maintained and demonstrated to be maintained?*

9. The applicant's answer to all of these questions is simply, "*An updated Funding Statement is included in Appendix 10.1*". From an examination of the applicant's updated funding statement the following is noted.
10. The funding statement claims (paragraph 1.2) to provide details of the funding for the acquisition of the land, interests and for the construction of the project. The statement that follows barely runs to a page and a half. Quite simply, the statement does not do what paragraph 1.2 claims that it does, and as a consequence, is unacceptable.
11. In paragraph 2.1 (under the heading 'Capital Funding'), it is made clear that Able Humber Ports Limited (the company) has "*taken professional advice regarding the estimated cost of acquiring the balance of the land required to deliver the development and the Group (assumed to be the Elba Group Limited) has sufficient existing Group cash reserves available to fund these acquisitions without recourse to any third party debt*".



12. It would be helpful to understand what advice has been provided to Able in respect of the basis on which compensation will need to be paid for ABP's land proposed to be compulsorily purchased. Such compensation would need to correctly reflect the circumstances concerning this land and its ability to be used actively for port purposes.
13. In paragraph 2.3 of the funding statement, reference is made to third party funders having (amongst other things) high levels of security in the form of contractual commitments from tenants of the development, who are then claimed to each enjoy very strong credit ratings. The applicant has not identified likely users of the facility, nor provided details as to any commitment they have made. As such, it is not obvious how these claims can be substantiated.
14. At the end of paragraph 2.3 of the funding statement the applicant indicates that it has been working over the last 2 years with its financial advisors (Ernst & Young LLP) and has *"held ongoing discussions with a wide range of funders who have confirmed their willingness to be involved in funding this development"*. As these discussions have been on-going for some time the applicant should confirm whether the willingness indicated is in respect of the facility as originally applied for, or in respect of the facility subject to the recently proposed restriction (Requirement 3A). This confirmation is particularly required in light of the fact that the applicant's original position was that a facility subject to such a restriction would have difficulty in being funded.
15. Paragraph 2.4 of the funding statement highlights that the Directors (which are assumed to be the Directors of Able Humber Ports Ltd) do not envisage any problem in securing the necessary funds at very competitive rates of interest. The funding statement is effectively asking the Secretary of State to accept the word of Able's Directors, without then being able to test whether this is indeed the case. In light of the irretrievable damage that would arise to European and UK protected nature conservation sites as a result of the proposal, this statement is insufficient.

16. In paragraphs 22.14 and 22.15 of the ‘Applicant’s Comments on the Written Representations’ August 2012 (reference TR030001/APP/19 - which I subsequently refer to in this section as the ‘Comments Document’) the applicant seeks to suggest that it is addressing the IROPI arguments that I make in my written representation. In fact the representations do no more than criticise the conclusion I reach that a facility restricted to handling marine energy cargo is not an NSIP. Notably, the applicant fails to deal with the funding and viability points that I make in respect of IROPI issues (paragraph 5.16 and following of my written representations).

**ExA Second Round Question 64 addressed to Associated British Ports**

*Q64. Does AMEP submit that its case for acquisition [of ABP’s land] should stand on*

–

*(a) The extent to which its plans for the use of this land can be demonstrated to be more advanced than those of ABP might be;*

*(b) The importance or significance of its proposed use of the land as an NSIP compared with the plans of ABP;*

*(c) The ability of ABP to find alternative sites for its proposed use within its existing estate?*

17. The points raised in paragraph 21.1 of the applicant’s response are dealt with in ABP’s responses to the second round of questions.

18. The first sentence of paragraph 21.2 of the applicant’s response is a revealing summary of the applicant’s case for AMEP. It confirms that the AMEP facility does not consist of, and should not be considered as consisting of, a series of distinct separate parts, but should be considered as one facility made up of different parts reliant upon each other. Implications arising from this are considered further in section 3 of this document.

19. At the end of paragraph 21.2 of their response the applicant claims that, “AMEP provides the best possible opportunity (both from a commercial and environmental standpoint) for the offshore wind sector to develop in Britain”.

Leaving aside the fact that this statement further confirms that the case for the project is founded on offshore wind specifically, it is not understood how Able can claim AMEP is the best possible commercial opportunity. As indicated above in respect of the applicant's responses given to questions 53 to 55, Able has provided no information to demonstrate that the project is viable.

20. In paragraph 21.3 the applicant indicates that ABP's river frontage is needed for *"AMEP to proceed on the scale proposed"*, before going on to clarify that enabling ABP to develop a jetty on the land in question at some time in the future would *"have significantly reduced the benefit of AMEP without any guarantee of a jetty ever being built"*. The applicant provides no evidence in their documentation that a smaller facility would significantly reduce the benefit of AMEP as they claim.
21. At the issue specific hearing on 11 September, ABP requested clarification from Able as to the overall objective of the AMEP project. This question was raised, for convenience, in the context of DEFRA's draft guidance on the application of article 6(4) of the Habitats Directive, and in particular the 'Alternative solutions' test that needs to be met. The draft guidance at paragraph 10 highlights that alternative solutions to be considered are *"limited to those which would deliver the same overall objective as the original proposal"*.
22. In response to this question, representatives of Able highlighted the five objectives of the project that are detailed in section 7.2 of the HRA Report (TR030001/APP/15). As ABP pointed out at the hearing, these are generally broad objectives and, if considered individually, there are potentially a number of alternative solutions that would meet them. In the absence of an 'overall objective' the Panel cannot be satisfied that there are no alternative solutions to the AMEP project.
23. In their answer to ExA second round question 64 the applicant goes on in paragraph 21.3 to claim that it would be irrational to refuse AMEP on the basis of what it describes as alternative *"inchoate and less beneficial projects"* that

may possibly proceed at some time in the future. ABP's proposals and their certainty is explained in its response to the second round of questions.

24. In respect of a harbour facility NSIP, the National Policy Statement for Ports requires (amongst other things) applicants to assess any effects of precluding a new development or use proposed in the development plan (paragraph 5.13.5). As ABP's various written representations have made clear, the land on which ABP propose to develop facilities served by a new deep water jetty is identified in the North Lincolnshire Local Plan as the operational area of the Port of Immingham. Policy IN4A and supporting text makes clear that further development of this area associated with the Port of Immingham will be supported and encouraged.
25. No such assessment (as required by NPSfP) has been undertaken by the applicant. In such an assessment, due regard should be had to the benefits that ABP's development proposals would generate, which are in many respects similar to those benefits used by the applicant in support of their proposal.
26. Paragraph 21.4 of the applicant's response to question 64 summarises its position, which as is made clear is predicated on the scale of the development they propose. Leaving aside the point raised above (which ABP also raised in their oral submissions on 11 September in respect of IROPI and alternatives), namely that the applicant's argument that a smaller development would have significantly reduced benefits has not been demonstrated, the following response is made -
27. In respect of the applicant's first part of their position (case (a)), there is no certainty that AMEP will secure consent and currently there is no evidence to demonstrate that AMEP is viable and will therefore actually come forward even if it receives consent. ABP has sought information on the viability of the project.
28. In the context of case (b), the applicant does not provide evidence to support its claim that the overall benefits of AMEP will 'certainly' be significantly greater than ABP's proposed development of the proposed deep-water jetty and

associated land. As highlighted, no assessment (as required by NPSfP) has been provided of the effects of AMEP of precluding ABP's proposals coming forward. ABP's proposals, as has already been highlighted, are themselves of national strategic importance. In this respect, not only would ABP's proposals address a specific need of significance but they also consist of the further development of an existing established port complex which, as the local authority acknowledge in their local plan, is already a facility of national economic and functional importance.

### **SECTION 3: FURTHER GENERAL PLANNING POINTS ARISING FROM ANSWERS GIVEN TO SECOND ROUND QUESTIONS**

29. In this section I set out further general planning points that develop out of the responses to second round questions provided by the applicant having regard to other related information provided to the ExA.
30. Before doing so, however, I address the applicant's criticism of ABP for not being objective in the position it is taking (see for example paragraphs 22.1 to 22.6 of the document 'Applicant's Comments on the Written Representations' August 2012 – reference TR030001/APP/19 - which I subsequently refer to in this section as the 'Comments Document').
31. Both my written representations and further representations submitted on behalf of ABP were written on an objective basis. They raise important and relevant concerns and issues which the ExA should consider in the context of this DCO application.
32. A further general point is that throughout their Comments Document the applicant, when considering my written representations, uses phrases such as 'AHC assert' or 'AHC argue'. It, however, does not give specific references to show which part of my written representation it is actually referring to. Furthermore, the points that I put forward in my representations are often not as the applicant represents them.

33. Finally, in respect of such matters it is not clear who has provided the comments of the applicant to my written representations. The quality sheet at the beginning of the Comments Document would appear to indicate that they have been provided by Mr Cram. Mr Cram's qualifications and experience are, however, not provided.

### **The Planning Act 2008**

34. In section 2 of this document I highlight that through their response to ExA second round question number 64, the applicant confirms that the AMEP facility does not consist of, and should not be considered as consisting of, a series of distinct separate parts, but should be considered as one facility made up of different parts reliant upon each other. Other examples of where the applicant has expressed a similar view include:
- (i) In responding to question 15 of the ExA's first questions, the applicant makes it clear that the AMEP project is indivisible and must be viewed as a whole rather than a series of parts.
  - (ii) At the hearing on 11 September 2012, Mr Etherington on behalf of the applicant characterised the manufacturing facilities as integral to and at the heart of the project.
35. In the following paragraphs I give further consideration to some implications that arise from this. In doing so I have had regard to the comments provided by the applicant in its 'Comments Document' at paragraphs 22.7 to 22.29.
36. In paragraphs 22.28 to 22.29 of its Comments Document, the applicant puts forward a new argument that even when restricted to 'marine energy infrastructure' cargo only, the quay element of the facility is still capable of handling the required amount of cargo to qualify as an NSIP. This argument of the applicant follows on from an earlier suggestion (in paragraph 22.8 of its Comments Document) that the position I put forward in my written representations (which I assume to be paragraph 2.11) in respect of cargo

handling capability is wrong because it has regard to what the ES indicates *will* be handled at the facility as opposed to what is *capable* of being handled.

37. The aspect of the test for a harbour facility to qualify as an NSIP being considered is not, as the applicant details in paragraph 22.8 of their Comments Document, simply related to the quantity of goods that the harbour is ‘capable of handling’. The test is related to the quantity of material the harbour facility is ‘expected to be capable of handling the embarkation or disembarkation of’ per year. For various reasons, including those explained in the following paragraphs, I do not agree with the applicant that when considering this issue, *“It is not relevant that in practice it will not do this [i.e. handle the required amount of cargo], the threshold is only a matter of what it is capable of handling”* (paragraph 22.29 of the Comments Document).
38. The applicant’s new argument considers just the theoretical handling capability of the quay in isolation - I suspect because that is what it has carefully defined as the NSIP in the DCO. The quantity of material a harbour facility (the terminology used in the Act) is expected to be capable of handling the embarkation or disembarkation of per year cannot, however, simply be the theoretical handling capability of the quay element looked at in isolation. A correct analysis of this issue has to also take account of the expected capability of necessary landside and marine side facilities that make up the overall facility being created which are associated with the quay, and which are needed for the quay to operate and function.
39. It is noted that the need to take account of factors other than just the theoretical capability of the quay in determining the amount of material a harbour facility is expected to be capable of handling the embarkation or disembarkation of is an approach that is supported and accepted in Able’s submitted application documentation. For example, see the application document ‘Nationally Significant Infrastructure Project Justification’ (TR030001/APP/23c), albeit that the detail given in that justification document is in respect of a break bulk terminal.

40. The recent response of the applicant to question 64 of the ExA's second round questions (which, as demonstrated, is consistent with the position expressed elsewhere by the applicant), further emphasises the fact that in respect of the AMEP facility, the calculation of the amount of material that it is expected to be capable of handling the embarkation or disembarkation of has to have regard to factors other than what the quay element could, in isolation, be theoretically capable of handling. The quay (as the applicant has made clear) is 'indivisible' from the other parts of the facility.
41. Chapter 5 of the applicant's environmental statement (titled 'The need for the development') provides the applicant's explanation as to why it is seeking consent for what it is. This explanation further demonstrates that the expected capability of the landside facilities being created behind the quay (which will effectively create the cargo being handled) will influence not only the expected handling capability of the quay, but the facility as a whole.
42. Although the applicant in schedule 1 of the draft DCO has defined the NSIP as 'a quay of solid construction', it is noted that in article 2 of the DCO the term 'harbour' is defined to mean "*the authorised development within the area of jurisdiction ...*" (i.e. the whole of the facility and not just the quay). This further emphasises that when calculating the amount of material the AMEP facility is expected to be capable of handling the embarkation or disembarkation of, regard has to be had to the capability of the harbour facility (the terminology used in the Act) as a whole and not just what the quay element could, in isolation, be theoretically capable of handling.
43. Even if, however, contrary to the above position the applicant's argument is accepted, there are subsequent significant issues to be overcome. The first issue is that the part of the project which the applicant identifies as the NSIP (the quay of solid construction alone) has been defined in the draft DCO without any provision being made for the creation of land behind the quay (this being put forward as an element of associated development). It follows, therefore, that if it is correctly considered in isolation, the 'quay of solid construction' is not capable of handling any cargo.



44. The second issue is that if the facility created is genuinely expected to be capable of handling 5 million tonnes of cargo, then that is the volume of cargo in respect of which the proposed facility ought to have been environmentally assessed. This has patently not been done.
45. Finally, whilst considering the applicant's proposed cargo handling restriction and the implications arising, I would highlight that the applicant has not dealt with the subsequent significant assessment point that I identify in paragraphs 4.30 and following and paragraph 2.12 of my written representations. That point is that the ES, because it identifies that in the longer term the facility will be used as a general port once the offshore energy need has been addressed (see paragraphs 4.2 to 4.12 of my written representations), has to assess this change of use irrespective of whether a further consent is needed. On this issue, it is noted that in oral evidence on 11 September 2012, Mr Etherington (on behalf of the applicant) indicated that the longest period any potential user of the facility may require the facility for purposes associated with offshore wind turbines is 15 to 25 years. This leaves a potentially long period of time in the future unaccounted for, with the activities occurring during that time unassessed.

### **Associated Development**

46. The answer given by the applicant to question 64 of the ExA's second round questions also highlights issues of relevance as to whether the onshore manufacturing facilities element of the project can be associated development.
47. In paragraph 22.11 of its 'Comments Document', the applicant begins by stating that I argue that the manufacturing facilities are not associated development since they are not subordinate to the quay that is the NSIP element of the project, and implies, incorrectly, that this is my only point on this matter. Unhelpfully, no reference is given, but it would appear that the applicant is referring to paragraph 3.10 of my written representation. Leaving aside the fact that the applicant does not then address the arguments that I have put forward, my submissions on the subject of associated development are in fact considerably more extensive – see for example paragraph 5.11 and

following, and Appendix 1. The applicant does not refer to these other aspects of my submissions nor does it attempt to deal with the arguments that are raised – the conclusion to be drawn being that it is unable to do so.

48. In the remainder of paragraph 22.11 of its Comments Document the applicant points out that it is no longer a requirement that the ExA must have regard to the guidance on associated development issued by the Secretary of State. The applicant misunderstands the significance of this change. The requirement being referred to was previously contained within section 115(6) of the Planning Act 2008 (repealed by virtue of Schedule 13 of the Localism Act) and related to the previous position where the decision on a DCO was being made by the examining panel rather than the Secretary of State. The guidance is, in fact, more important now that the Panel are merely reporting to the Secretary of State rather than making the decision.
49. In replacement for the statement contained in the current guidance on associated development that the IPC must have regard to certain principles (paragraph 10), the recent DCLG consultation document on associated development makes clear that, *“In making this decision (i.e. the decision on whether or not development should be treated as associated development) the Secretary of State is likely to take into account the following core principles, subject to paragraphs 7 and 8 below.”* (paragraph 6). The core principles and paragraphs 7 and 8 of the consultation guidance (the latter paragraph being incorrectly numbered paragraph 10 in the consultation document) contain those aspects of both the current guidance and the consultation guidance on which I concentrate in both my written representations and my further representations. These are aspects which have not been addressed by the applicant.
50. The impression the applicant clearly wishes to give is that the guidance is of no particular importance in the decision making process. Such an approach is obviously misconceived, given that there would be no point in the Government producing such guidance if it were not to be taken account of. Whilst it may not now be a legislative requirement that the decision maker must have regard to guidance on associated development, it is clear that it is there to be taken into account.

51. Indeed, I understand from ABP's legal advisors that it would be unlawful (on ordinary administrative law principles) for the Secretary of State to ignore his Government's own guidance. He would need to explain any departure from the approach envisaged in the guidance and justify the frustration of the legitimate expectation which people have that he will act in accordance with Government guidance.
52. The applicant makes reference, in the first part of paragraph 22.12 of its Comments Document, to the guidance on associated development being reviewed and makes the point that in my written representations I only quote the existing guidance. Making clear that the current guidance is likely to have been superseded by the time of any decision on AMEP, the applicant then goes on to highlight certain elements of the current guidance that they consider are helpful to them. These are parts of paragraphs 18 and 19 of the guidance, found under the heading 'Examples of associated development' that introduce Annex A of the guidance.
53. I have considered the consultation version of the guidance in my further representations, highlighting that the suggested changes to the core principles and supporting paragraphs of the guidance cause the applicant further difficulties (paragraph 3.27 of my further representations) rather than assisting it.
54. In its selective quotations from paragraphs 18 and 19 of the current guidance the applicant fails to quote the important concluding sentence of paragraph 18 which reads *"All associated development, including that which is in the annexes, must comply with the principles set out in paragraph 10 and with the requirements of the Act"*. The principles in paragraph 10 are those parts of the guidance that I have concentrated on in both my written representations and further representations, demonstrating how the applicant's 'manufacturing facilities' do not comply with them. The applicant does not deal with the implications of these principles in its Comments Document.

55. In paragraph 22.13 of its Comments Document, the applicant states that the manufacturing facilities are consistent with the principles of associated development contained in the consultation draft guidance on associated development, before highlighting one particular aspect.
56. The aspect of the consultation guidance quoted by the applicant in this paragraph (i.e. that which is found at bullet point 4 of paragraph 7 of the consultation guidance) is, however, not one of the *core principles*. The *core principles* in the consultation guidance are provided in the four numbered sub-paragraphs that follow paragraph 6. The applicant does not deal with these core principles set out in the consultation guidance in their Comments Document (or anywhere else as far as I have been able to determine). In particular they do not address the issues I have raised relating to these core principles.
57. The applicant attempts to further deal with associated development issues in their document titled 'Responses to Answers Posed to the Questions Raised by the Examiner' dated 24 July (reference TR030001/APP/14b) at paragraphs 2.7 to 2.13. This purports to address issues arising from the responses given by ABP to questions posed by the ExA. The comments of the applicant fail to take account of the points on associated development that I deal with in my written representations.
58. During the specific issue hearing on 11 September, reference was made by the applicant to its Habitat Regulations Assessment Report (TR0300001/APP/15) and the assessment of alternatives. The first stage of the applicant's consideration of alternatives is described as the zero option and consists of the consideration of:
- the construction of manufacturing facilities for offshore wind turbines without a quay, or
  - not building offshore wind manufacturing facilities at all (HRA paragraph 7.4.1).

59. In dismissing these options, the applicant states that, “*manufacturing facilities for next generation offshore wind turbines need a quay and the development cannot proceed without it*” (HRA paragraph 7.4.4), before further concluding that, “*A quay is therefore an essential requirement for new offshore turbine manufacturing facilities*” (applicant’s emphasis – HRA paragraph 7.4.9). This assessment by the applicant and the conclusions it reaches actually support the point I have made in paragraph 3.10 of my written representations (which the applicant has failed to address), namely that it is the quay which is being provided to service the manufacturing facilities and it is the quay, therefore, that is necessarily subordinate to these manufacturing facilities.

**Planning Act 2008**

**Infrastructure Planning (Examination Procedure) Rules 2010**

**Able - Proposed MEP, Killingholme**

**Associated British Ports (10015525)**

**Representations in relation to the responses to the ExA's Second Round  
Questions and Summary Comments**

**Terrestrial Ecology**

**Prepared by**

**Andrew Baker**

**11 October 2012**

## Summary and Conclusions

1. Having reviewed the responses given to the ExA's second round questions, the plethora of other *ad hoc* information presented to the hearing and attended the issue specific hearings I am of the opinion that the applicant has not presented sufficient ecological information, in a structured, coherent manner that would allow a proper assessment of the ecological impacts of the proposal. To grant permission based upon the level of detail presented would be contrary to the international obligations and European law domestic legislation for the conservation of the natural environment.

## Introduction

2. Having read the responses and comments made by the applicant and other parties and attended the relevant issue specific hearings I am still firmly of the view that there remain serious concerns regarding terrestrial ecology. There are a number of fundamental issues that have not been satisfactorily resolved by the applicant in the context of ecological matters and these matters constitute clear legal barriers to the progression of this project in terms of both European and UK law.
3. In summary, and with reference to the ExA's second round questions and responses I have set out below the key issues that remain unresolved.

## Adequacy of the Environmental Statement

4. As I highlighted in my written representations and during my attendance at the issue specific hearings there remain serious faults in the Environmental Statement (ES) and the underlying survey work that informed the ES. In a number of cases the baseline data is either insufficient, or it is inaccurately interpreted or simply not provided. Some aspects of the project have been entirely excluded from the Environmental Impact Assessment process.
5. The process of EIA is a requirement of European Legislation which has been translated into domestic law. It is a requirement of the Directive and the domestic legislation that the EIA describe and assesses the direct and indirect effects upon flora and fauna in an appropriate manner. For the reasons set out in my written representations and my evidence to the hearing, this has not been done. The key shortcomings of the EIA are listed below.
  - i) Scope of the ES is insufficient, key species or groups of species have not been surveyed or assessed including invertebrates, vascular plants and bats, the latter being European Protected Species.
  - ii) The assessment presented within the EIA has not followed industry guidance and as such has not been carried out in an '*appropriate manner*'.
  - iii) Bat surveys have been wrongly interpreted. The Copse, which will be lost to the development, appears to support breeding sites or resting places for bats. Bats are European Protected Species (EPS) and subject to a regime of strict protection under the Habitats Directive and the relevant domestic legislation. The ExA has a legal duty to consider the impact upon EPS which cannot be discharged given the flaws in the bat survey work and the interpretation of those surveys that were completed.
  - iv) The impacts upon nesting birds have been underestimated.
  - v) The location and design of the mitigation area is unknown due to the conflict with the consented DRAX proposal. The efficacy of the mitigation cannot therefore be assessed.

- vi) The proposed mitigation sites put forward as a result of the DRAX conflict (East Halton) and the compensation area of Cherry Cobb Wet Grassland, which were submitted once hearings were underway, have not been subject to EIA.
  - vii) The EIA has not assessed the potential impact of the full scope of the project, that of a general cargo port.
6. These issues cannot be addressed in a piecemeal manner, as the cumulative impacts also needs to be reassessed. In order to meet the requirements of the EIA directive and domestic legislation the ecology chapter should be subject to a complete rewrite, resubmission and public consultation.

## Habitat Regulations Assessment issues

7. For the reasons set out in my written representations the shadow HRA submitted by the applicant is inadequate, has no legal status and must not be relied upon. As the competent authority the ExA is required under the Habitats Regulations 2010 to produce its own Appropriate Assessment.
8. In terms of ecological impact, I still remain concerned that insufficient information and data has been provided for a project that may, and I am aware that others are dealing with the proposed restriction in the draft DCO as to use, be used as a general cargo port. As the Ex.A will be aware, in accordance with the WaddenzeeWaddenzee case (ECJ C-127/02), the ExA must assess **all** *'aspects of the plan or project which can, by themselves or in combination with other plans and projects, affect the site's conservation objectives must be identified in light of the best scientific knowledge in the field'* (ODPM Circular 06/2005 para 18). The applicant has clearly only supplied information relating to the use of the site as a MEP. There is no data, in terms of ecological impact to support the use as the new port for the import and export of general cargo. Such impacts would have first to be assessed and examined.
9. It follows that the HRA, which must be completed by the ExA, must assess the tests of *'no alternative solutions'* and *'imperative reasons of overriding public interest'* based on the use of the site as a general cargo port. An assessment of these two legal tests based upon the use of the site as an MEP would not meet the requirements of the Habitats Directive.
10. It is a matter of common ground among all parties that the proposed project requires compensation because there is a negative impact upon the interest of the European sites. The purpose of compensation is to maintain the overall coherence of Natura 2000, and in this case it is the population of Black Tailed Godwits that are most affected by the proposal. The applicant has provided no detail on the newly proposed compensation site known as Cherry Cobb Sands Wet Grassland. Neither has the new compensation proposal been subject to HRA to ensure that in itself it does not cause harm to the interest of the European sites. Without such detail it is not possible for the ExA to assess whether the compensation will meet the requirements of the Habitats Directive.



Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

Able - Proposed MEP, Killingholme

Associated British Ports (10015525)

Comments on the responses to the ExA's Second Round Questions

Reference Questions 68 & 69 and on the query raised

by the Applicant as to the integrity of ABPmer

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# 1 Part 1 Note on Outstanding Hydrodynamic and Sedimentary Issues

## 1.1 Introduction

1. This is an overview of outstanding Hydrodynamic and Sedimentary issues for the AMEP site ES which need to be resolved, notwithstanding our previous reservations on the modelling studies undertaken and are pertinent to NE/MMO and the Environment Agency considerations of questions 68 and 69 of the 2<sup>nd</sup> round of ExA questions.

## 1.2 Hydrodynamic and Sedimentation Issues

2. Following submission of the ES a considerable amount of new Supplementary Environmental Information (SEI) has been provided which is of greater significance than mere clarification of the ES. I query how reliable some of this information is. However, even if the results are considered to be sufficiently reliable, the new information does little to improve the level of certainty in the modelling predictions. This is due to the fact that, firstly, in many cases, the information shows new modelling data which contradicts the data used in the original ES for the area of the AMEP development. Secondly, it is due to the fact that the ES itself has not been updated with new assessment based on the new information. The ES and its conclusions therefore still remain unsound. By way of example the hydrodynamic modelling in the ES did not include the circa 22ha dredge area of the Immingham Outer Harbour and the supplementary information does not make it clear whether this is included in the new modelling. Even if it is, the ES is in need of updating. I fail to see how the ES, before the ExA, as currently drafted can be accepted.
3. The new fine sediment modelling documents showing further information on the calibration, and the comparison of the effects of IOH being included in the model or left out, remain unconvincing. This is because no difference at all is shown between the two scenarios even at the Immingham Bulk Terminal immediately adjacent to IOH. The supplementary information therefore does little to remedy the uncertainty of the modelling results and the reliability of the original ES in particular.
4. There is still insufficient assessment of the possible impacts of disposal of the maintenance material at HU080 on the local ecology and possible future implications for dredging within Sunk Dredged Channel (SDC).
5. It is noted from the Able record of the Marine Matters Specific Issue Hearing that Able have committed to undertaking the following studies in order to address some of the identified issues and omissions. In particular, they committed to:
  - Undertake as a condition of the DML real-time monitoring of sedimentation of the cooling water intakes during construction;
  - Make a financial contribution towards construction of walkways to mooring dolphins at the South Killingholme Oil Jetty if sedimentation causes difficulty;
  - Provide an assessment of drag effects around neighbouring jetties;
  - Undertake a simulation in the 3D flow model of the effects of a suitable distribution of vessels along the AMEP berth; and

- Assess the risk of spillage of sediment from the deposit ground HU080 into the Sunk Dredged Channel.
6. For transparency all these studies/commitments and those reported in the SEI should be incorporated and environmentally assessed in a revised ES of the project as now proposed. Until this has been undertaken the ES for the project remains unsound.

### 1.3 Comment

7. These studies should have been identified and undertaken prior to submission of the original ES. Compliance with the Environmental Impact Assessment (EIA) legislation requires all issues and studies to be transparent within the ES, with the impacts suitably assessed. In short the ES needs to be thoroughly updated, therefore I fail to see how the ES, as currently drafted and before the ExA, can be accepted.

## 2 Part 2 Response to Able's questioning of ABPmer's Integrity

8. In response to Para 43 of the Able written summary of the marine hearing of 13 September 2012 concerning the cross examination of Mr Peter Whitehead of ABPmer I make the following comment.
9. Firstly, ABPmer is a wholly owned subsidiary company of Associated British Ports Holdings Limited, which also owns Associated British Ports (ABP) – the body which owns and operates various UK ports. As such ABPmer operates independently of ABP, but is part of the same overall Group. Further it is generally retained by ABP as its preferred advisor on marine issues due to its acknowledged expertise in the field, in which there are very few such experts, and its unrivalled knowledge of ABP's port locations. Accordingly there is a relationship between ABPmer and ABP and no attempt has been made to suggest otherwise.
10. The role of ABPmer, and its individual staff, is to provide robust scientific, technical and expert advice based on field investigations, existing data and modelling studies. In addition to advising ABP, ABPmer regularly undertakes studies for, and provides independent technical advice to, third parties and regulators (including the Environment Agency, Natural England, Marine Management Organisation and Cefas).
11. In cross-examination Mr Whitehead was asked whether clearance was required from ABP before giving advice or undertaking studies for third parties. Mr Whitehead agreed that this was the case where a clear conflict of interest might arise, particularly since in such circumstances ABP might well wish to use ABPmer's services and would not want to find it was unable to do so.
12. All work undertaken by ABPmer (whether for ABP or a third party) is underpinned by the scientific evidence and technical information available to provide the best practical scientific solution/ information without commercial considerations. Our expert analysis and advice has been given in an impartial manner to all clients irrespective of its implications for ABP.

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

**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**

**Objector Reference: 10015525**

Comments on the answers of the Applicant and Network Rail to the 2<sup>nd</sup> ExA questions  
on matters of Rail Transport  
by Christopher John Geldard  
on behalf of ABP

9<sup>th</sup> October 2012

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Associated British Ports

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## 1. PRELIMINARY

The purpose of this document is to set out my response, on behalf of ABP, to the replies by the Applicant and Network Rail to the ExA's second set of questions relating to The Killingholme Branch and Loop as issued on 17<sup>th</sup> August 2012.

These comments should be read in conjunction with the three earlier sets of representations which I have produced on behalf of ABP dated 28<sup>th</sup> June, 1<sup>st</sup> August and 24<sup>th</sup> September 2012.

## 2. COMMENTS ON THE ANSWERS OF THE APPLICANT TO THE 2<sup>nd</sup> ExA QUESTIONS

**Q 29. *If the Killingholme Branch remains within the National Rail network is the development of the Marine Energy Park on the scale and extent proposed a viable proposition?***

### Applicant reply

*The Applicant provided a lengthy answer to this question which is summarised in the following terms:*

*"The Applicant has never asserted that the development of AMEP is only viable if the Killingholme Branch is removed from the public rail network."..... "Two possible options exist to ensure that the development can operate as a single coherent site: at grade (or level) crossings and grade separated (or bridge) crossings."..... "Bridge crossings will be substantially more costly to construct than level crossings, potentially incurring a cost penalty in the order of £5-10 million pounds."*

*In addition to the above statement the Applicant has provided comprehensive, technical details and plans describing the four bridge crossings appropriate to the development. They state that the bridge solution is "more costly to construct than level crossings" and that "bridge approaches generate a significant footprint on the development".*

### 2.1 ABP Comment

- 2.1.1 This is the first occasion in which the Applicant has openly acknowledged that the development could proceed if the Killingholme Branch remains within the National Rail network. This is significant.
- 2.1.2 Arguments regarding at grade level crossings are restated by the Applicant however this solution could only be applied if traffic was at minimal levels. It takes no account of the likely development of the Killingholme Loop. Both Network Rail and ABP have emphasised, in both written and oral evidence, how the Killingholme Loop is of strategic significance for the likely growth in rail traffic in the local area over the next 5-10 years. Level crossings within the AMEP site would be unacceptable for high traffic volumes that would use the Killingholme Loop.
- 2.1.3 Level crossings could only be a short term and restrictive solution. In addition, the development of the site using the level crossing option is likely to limit the possibility of introducing bridge crossings at a later stage. To maintain flexibility, it is important that buildings and structures are positioned to accommodate the four bridge option. Otherwise, at such time as it proves necessary to introduce bridges in order to accommodate the Killingholme Loop, operators at AMEP may well seek to block their introduction on the basis

that it would interrupt their activities to an unacceptable degree. Accordingly, the bridges must be designed into the site layout on commencement of the development. Overall, level crossings are neither practical nor cost effective in the long term.

- 2.1.4 The Applicant has in this reply provided details of the requirements and design for the four bridge option. The comprehensive, technical information relating to clearances, gradients, spans, deck thicknesses and embankment approaches as well as the impact of the bridges as shown on the Master Plan, are a clear illustrations of how such a solution could be implemented.
- 2.1.5 The detail also shows how the four bridge option can be incorporated as part of the design in the preliminary development of this site. I believe that this is the only solution that is capable of satisfying the needs of all parties.
- 2.1.6 The direct advantages of this option are:
1. The Killingholme Line remains in the ownership and control of Network Rail without the need for any compulsory purchase or lease of the line.
  2. All interested are protected. In particular, C.RO/C.GEN's concerns regarding operations, their connections and access are resolved.
  3. The development of the Killingholme Loop is safeguarded.
  4. This option provides the safest working solution for all parties.
- 2.1.7 Further, the following practical issues fall to be considered with this option:
1. The line should be fenced at the statutory safe distance from the track within the length of the AMEP site. Any operational inconvenience would be more than compensated by the increased levels of safety on the AMEP site.
  2. To avoid future disruption the bridges would be designed into the site layout on commencement of the development, and not at a later stage. Thereby the difficulties involved in trying to 'introduce' the bridges to the application site at a time when commercial operations are already active, are avoided.
  3. Even if one accepts without query the applicant's costings for the bridges, these costs are modest in terms of the overall development costs. Strategically, these are insignificant in terms of the value that the Killingholme Loop will deliver to industry in the area.

**Q 30 Has AMEP developed specific proposals in relation to level crossings and other possible requirements for discussion with Network Rail?**

Applicant reply

*"As the expectation has been that the track would be operated and maintained by the Applicant, specific details of the crossing have not been provided to Network Rail (NR). In the event that the track is now leased to the Applicant, which now appears to be the more likely scenario, the Applicant would be content for a protective provision that would require the Applicant to obtain approval from Network Rail for the design of any crossings to be approved by NR if that was required."*

**2.2 ABP Comment**

- 2.2.1 The Applicant, in its earlier submissions, failed to recognise the significance of National Rail infrastructure and the statutory responsibilities of Network Rail as the infrastructure



provider. It is not surprising therefore, that specific details of proposed crossings have not been provided to Network Rail.

- 2.2.2 The option to lease the line from Network Rail will impose on the Applicant significant protective provisions for both Network Rail and other interested parties. These would include Network Rail approval for any type of crossing.
- 2.2.3 The need for Network Rail and the Applicant to reach an agreement on the terms of a lease within the ExA's required timetable is not assured. Indeed, I question whether an agreement is a realistic possibility.
- 2.2.4 To avoid such uncertainty ABP believes the bridge solution, with all its advantages and features as described in paragraphs 2.1.6 and 2.1.7 should be a condition imposed by the ExA as part of the DCO.

### **3. COMMENTS ON THE ANSWERS OF NETWORK RAIL TO THE 2<sup>nd</sup> ExA QUESTIONS**

**Q31. Is it correct that Network Rail is now prepared to offer a lease on the section of track running through the AMEP site?**

#### Network Rail reply

*"Yes, Network Rail has offered a lease to Able on a without prejudice basis. However, it appears that the suggested terms would mean that such a lease is unsuitable for Able. This is due to the fact that Network Rail would want to ensure use of the line by trains would not be obstructed by Able's use of new level crossings on the route and be free and open for the regular through traffic that is envisaged if the Killingholme Loop proposals for a line out towards Goxhill come to fruition. Able have now stated they wish to have unrestricted road vehicle access over the entire length of the line rather than a number of discrete level crossings and such a requirement would not be consistent with increased through rail traffic along the route. This use by Able may be accommodated if the railway line through the site just serves local rail terminals around Killingholme but it is incompatible with the line handling through traffic to and from the Port of Immingham which would involve greater train numbers operating at higher speeds."*

#### **3.1 ABP Comment**

- 3.1.1 I agree with the comments from Network Rail.
- 3.1.2 As can be seen from the Network Rail reply the current lease proposal is not acceptable to AMEP who now seem to require unrestricted road access along the entire length of track. This could only be acceptable if the line is to be lightly used with no Killingholme Loop.
- 3.1.3 As part of any lease I understand the Applicant may be required to find an alternative route for the Killingholme Loop that would run to the west of their site. From previous experience I think this would be almost impossible. Working with Network Rail for almost 2 years I assessed numerous options to gain an alternate rail access to the Port of Immingham. The Killingholme Loop proved to be the only realistic option. If the Applicant is to propose an alternative route, it must be shown to be genuinely deliverable.
- 3.1.4 All interests would be protected through the conditional enforcement of the four bridge option as described in paragraph 2.1

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**Q32. If Network Rail is being governed by the principle that ability to operate the railway line through the AMEP site must be preserved, what restrictions or protection would Network Rail need to seek or impose around the track?**

Network Rail reply

*“If the railway line remains as Network through the AMEP site then Network Rail would seek to enforce its usual Asset Protection rules to ensure that any new construction within 10m of the railway boundary is carried out in such a manner that no effect on the operational railway.”*

**3.2 ABP Comment**

- 3.2.1 I agree that Network Rail must insist that the Line remains in their ownership and they would then impose these conditions.

**Q33. Would there be any practical difference in terms of Network Rail’s requirements if the line were limited to less than the 60m.p.h. goods line said to be the basis of current planning?**

Network Rail reply

*“No. The problem is that the proposed conversion of the entire length on the line into an industrial site where road movements may cross over at any time and any point take capacity for rail paths out of the route by making it an unacceptably slow and impractical option for through trains to operate in the Killingholme Loop scenario.”*

**3.3 ABP Comment**

- 3.3.1 I agree with this reply although I consider the initial proposal for 60mph is impractical. The speed on the Loop was introduced by Network Rail’s consultants, Corus when evaluating the Loop. Realistically, a speed of 20 to 30mph would be required for the Loop however if the entire length of the AMEP line is converted to an industrial site, a very low speed limit would be required for safety reasons. This scenario is impractical in the context of the Killingholme Loop.

**Q34. Does Network Rail consider that the Killingholme Loop is a necessary requirement to accommodate projected growth at Immingham and other Humber ports?**

Network Rail reply

*“Studies show that it is the only way to create significant additional capacity so that trains can get to the wider rail network without having to cross KIL1 in the Port of Immingham if the maximum foreseeable rail demand were to arise. It is the only feasible way that has been the subject of studies to create a through route out of the west end of the Port and therefore relieve capacity on KIL1. If customers require more trains then there may be a need for more capacity than KIL1 can cope with and therefore make the Killingholme Loop viable. The key issue is to create another route to the wider rail network that avoids KIL1 within the Port of Immingham hence the requirement to protect the route running through the AMEP site.”*

**3.4 ABP Comment**

- 3.4.1 The loop is essential to accommodate the forecast growth in rail freight. It is anticipated that biomass will augment coal as a fuel stock in the coming decades, and will also be used for co-

firing at many power stations. Much of this volume is already planned to be imported through the Port of Immingham. ABP's new rail served biomass facility, costing £70m is soon to be constructed.

- 3.4.2 In addition and although there is likely to be an overall decline in UK Electricity Supply Industry (ESI) coal consumption, Immingham is still likely to see further growth in this market. This results from increased access charges which will be introduced in April 2014. As access charges are paid by gross tonne kilometres the proximity of the import location to the power stations will become ever more critical. Immingham has long standing contracts with the five large nearby, Aire and Trent Valley coal fired power stations and is expected to benefit from these changes in the ESI coal market.

**Q35. If so, in Network Rail's estimate, when is this likely to become necessary, or alternatively what event might trigger it?**

Network Rail reply

*"This will be triggered by customer demand. Current proposals to protect the potential future capacity are driven by the Biomass market. This is a new market of which Britain has little experience to date - both in terms of its commercial potential and its logistics. However, information gained from our close links to the major electricity generators suggest that there is sufficient confirmed interest in conversion of plants to biomass generation to make it prudent for us to cater for a "high demand" case for this sector. The events of the next 5 - 10 years should determine whether this high demand transpires and whether we need to respond with greater network capacity. Our ability to respond is of strategic national importance since Immingham is the country's biggest bulk handling port and well situated to serve a number of major power plants within its hinterland by rail."*

### 3.5 ABP Comment

- 3.5.1 ABP agrees with Network Rail and consequently the option to develop the Killingholme Loop must be maintained. Indeed ABP's position is that irrespective of events over the next 5 to 10 years, the importation of large volumes of biomass will be a long-term strategic requirement. For this reason the Killingholme Loop must be protected for perpetuity.

**Q36. Is the Killingholme Loop necessary (or only necessary) to permit the operation of 'merry-go-round' trains?**

Network Rail reply

*"The Killingholme Loop option for a route out towards Goxhill may become necessary to relieve the capacity on KIL1 for serving any of the customers in this locality such as ABP and Corus and potential future customers such as Able, C.Gen and C Ro. Ports Killingholme. The term "'merry-go-round" trains is used to apply to a specific type of coal train within the rail industry and could be misleading in this context. However, it is fair to say that the need for a Killingholme Loop line (or another line with equivalent functionality for which plans do not exist currently and for which the viability is unproven), would be driven mainly by additional demand for trains loaded at the port of Immingham to operate to locations away from the local area."*

### 3.6 ABP Comment

- 3.6.1 ABP agrees with Network Rail. The Loop provides much greater operational flexibility which includes merry-go-round trains, network resilience, network flexibility and increased capacity. This would apply to all users of the network.
- 3.6.2 The Loop is also of strategic importance in that it also provides an alternate access route to the Port of Immingham and to other rail user's facilities in the event of a catastrophic incident rendering the Humber Road Bridge unserviceable.

**Q37. Has a business case been prepared for discussion with government about the funding of the Killingholme Loop? What priority does the scheme have within Network Rail's programmes?**

Network Rail reply

*"Network Rail's funding by government is set for 5 year "Control Periods". Control Period 4 ends in 2014 when Control Period 5 [CP5] will begin. Network Rail has been granted £200 million for freight schemes in CP5. The plans for spending this money in CP5 do not include the Killingholme Loop currently. However, there is time for the priorities to change before the list of freight schemes currently under review is finalised if that is the wish of the wider industry. Also, it should be noted that, during CP4, government found additional funds to pay for extra freight schemes after our original plans were finalised in order to boost investment in infrastructure and promote economic growth. We would welcome any further such developments during the currency of CP5. Regardless of the list of schemes funded currently our position has to be that we protect future demand. Planning for key national infrastructure has to have a longer term horizon than the next 5 year funding period whereas projections for train movements in the locality have altered considerably in just the last 2 years as Biomass has come on stream."*

**3.7 ABP Comment**

- 3.7.1 ABP has a long history of working closely with Network Rail to develop major network enhancements of strategic significance. ABP can provide practical examples to illustrate this fact and to substantiate the reply provided by Network Rail. Major port related enhancements in which ABP has been an active partner include the doubling of capacity on the Hull Docks Branch Line (£20m), the reopening of the Brigg Line to provide a third route to the Port of Immingham (£16m), and Southampton to West Midlands gauge enhancements allowing the carriage of high cube containers on standard height wagons (£64m).
- 3.7.2 ABP contributed to the costs of these projects and helped secure funding through the Network Rail Discretionary Fund (NRDF), the Transport Innovation Fund (TIF), the Strategic Freight Network (SFN) and through local and regional bodies throughout Control Period 4.
- 3.7.3 There is every possibility that the Killingholme Loop Project could be funded and implemented in CP5.

**Q38. Does Network Rail consider that the Killingholme Loop is consistent with ABP's headshunt proposal?**

Network Rail reply

*"On current levels of demand the rail network has capacity to handle train movements generated by the ABP Headshunt proposal. This is the first option being taken forward under*

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*the original Killingholme Loop proposals to relieve capacity in the Port of Immingham. Once installed the headshunt means ABP can run more trains over KIL1 and so reduces capacity for other users who might want to take trains from KIL2 onto KIL1. Therefore, the headshunt proposal makes the likely need for other options such as a route west out to Goxhill more likely to avoid what would be a bottleneck for train capacity on KIL1. We do not believe that the two proposals are inconsistent with each other."*

**3.8 ABP Comment**

- 3.8.1 Having been directly involved in the original planning of the Killingholme Loop during 2006 I can assure the ExA that the Loop and the HIT headshunt are fully compatible. When in 2008 the business case for the Loop fell below required levels the HIT headshunt evolved as an immediate and affordable first phase of the construction of the Killingholme Loop.
- 3.8.2 The HIT headshunt improves capacity on KIL1 through a greater level of flexibility in the operation of train movements. It does not add infrastructure on KIL1 nor does it take trains away from KIL1.
- 3.8.3 The Killingholme Loop provides a significant infrastructure enhancement. In my opinion it is capable of halving train movements on KIL1 and increasing rail freight capacity in the area by at least 30%.

C J Geldard  
10<sup>th</sup> October 2012