



ABLE MARINE ENERGY PARK (AMEP)
APPLICANT'S COMMENTS ON THE RELEVANT REPRESENTATIONS


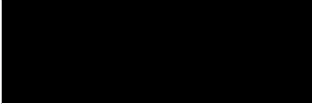
June 2012



AMEP
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RELEVANT REPRESENTATIONS

June 2012

APPROVAL & REVISION REGISTER

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1. **INTRODUCTION**

- 1.1 This document consists of the comments of Able Humber Ports Ltd (**the applicant**) on the 71 relevant representations received by the Planning Inspectorate on their application for the proposed Able Marine Energy Park (AMEP).
- 1.2 While Able believes that the information provided with its application is sufficient for it to be examined and determined, it acknowledges the concerns raised by the parties making representations and has accordingly provided additional information in response to them. It should be noted that the additional information supports the conclusions reached in the Environmental Statement (ES) and other application documents and does not change the project in any way. This additional information is provided in a series of supplementary documents that are included in two accompanying volumes (Files 17 and 18), the contents of which are detailed in the Schedules below.
- 1.3 In response to the relevant representations and prompted by the examining **authority's first set of questions, Able also proposes certain changes to the** Development Consent Order (DCO) and the additional information provided with these comments include a tracked change second draft of it at Appendix B. Again this does not change the project, but in this case the changes do alter the controls surrounding its implementation in response to the relevant representations. The most significant change is a complete replacement for Schedule 8, the deemed marine licence, which is in response to a draft licence provided by the Marine Management Organisation since it made its relevant representation, for which Able is grateful; although note that the replacement schedule still needs to be completed with certain data.
- 1.4 While the examination of the application is at the discretion of the examining authority, the current timetable would mean that any written response to these comments, including the proposed changes to the DCO, should be made to the Planning Inspectorate by the deadline of 27 July. Able would find responses to the changes in the DCO most helpful if they were in the form of alternative drafting of the relevant provisions of concern.
- 1.5 There is also an opportunity to make oral submissions on the drafting of the DCO at the specific issue hearing on 12 July, and 16 October has been reserved for a second hearing on this specific issue.

Schedule of Supplementary Environmental Information – File 17

1. EX 3.1 Able Humber Port Northern Area: Planning Committee Meeting Notes Feb 2012
2. EX 7.7 AMEP Material Management Plan
3. EX 8.5 Validation of 3D Flow & Sediment Models used for Assessment of Impacts of AMEP on Fine Sediment Transport
4. EX 8.6 Maintenance Dredge Variability
5. EX 8.7 Modelling of Final Quay Design (*Supplement to Annex 8.1*)
6. EX 8.8 Update to Longer Term Morphology Predictions in the Region of the Centrica and E.ON intakes and outfalls
7. EX 8.9 Historical Review of Morphological Change North of HIT (2001-2010)
8. EX 8.10 Long-Term Morphological Change of Embayment South of Quay
9. EX 8.11 Water Framework Directive of Compensation Site
10. EX 8.12 Water Framework Directive - Project wide
11. EX 8.13 IOTA Dredge Appropriate Assessment
12. EX 9.7 Assessment of the effects of relocations of the E.ON and Centrica outfalls on thermal recirculation
13. EX 10.4 Impact of Dredging and Dredged Material Disposal on 1) Subtidal and Intertidal Features and 2) Aquatic Ecology
14. EX 10.5 Supporting Information on Harbour Porpoises in the Humber Estuary
15. EX 10.6 Impact of Berthing Pocket Construction
16. EX 10.7 Soft Start and Seals
17. EX 11.14 Biotopes of the Intertidal and Subtidal Sediments around the AMEP site, in the Humber Estuary
EX 11.15 *Not Used*
18. EX 11.16 Assessment Update for Breeding Birds
19. EX 11.17 AMEP Vascular Plant Surveys
20. EX 11.18 Sensitive Months for Birds Using Intertidal
21. EX 11.19 AMEP Bat Surveys: Supplementary Note

22. EX 11.20 Draft Great Crested Newts Licence Application - acknowledgement of receipt
EX 11.21 Not Used
23. EX 11.22 The impact of SPMTs and Cranes on the Operational Buffer
24. EX 11.23 Immediate Habitat Losses within the Designated Site
25. EX 11.24 Medium and Long Term Losses within the Designated Site
EX 11.25 Not Used

Schedule of Supplementary Environmental Information – File 18

26. EX 11.26 Pumping Station
27. EX 11.27 Killingholme Phase 2 Survey
28. EX 11.28 Great Crested Newt Survey (2006)
29. EX 11.29 Water Vole Survey (2006)
30. EX 11.30 Location of Replacement Ponds for Great Crested Newts
31. EX 11.31 M456 Invertebrate Survey
32. EX 13.2 Addendum to Flood Risk Assessment
33. EX 14.4 Simulation Videos & Stills
34. EX 15.3 A160 Killingholme Humber Port Access, Stage 1 Road Safety Audit
35. EX 15.4 A160 Killingholme Humber Port Access, Stage 1 Road Safety Audit Designer's Response
36. EX 15.5 Additional Junction RSA
37. EX 19.1 Lighting Lux Plans
38. EX 20.3 Additional Landscape Masterplan
39. EX 28.1 Compensation Site Interim Report on Detailed Design
40. EX 28.2 Old Little Humber Farm: Wet Grassland Creation, Management and Monitoring Plan
41. EX 31.5 Re-use of In-Situ Material at CCS (inc Cherry Cobb Sands Phase 2 Site Investigation)
42. EX 34.2 An Assessment of Temporal Variation of Benthic Invertebrate Communities

in the Humber Estuary

EX 35.10 Not Used

EX 35.11 Not Used

- 43. EX 35.12 Farmland Disturbance at Cherry Cobb Sands
- 44. EX 35.13 Badger Bait-Marking Survey
- 45. EX 36.2 North Bank Flood Defence Crest Height
- 46. EX 36.3 Residual Flood Risk to Property on North Bank
- 47. EX 44.1 Supplementary In-Combination Assessment

2. **REPRESENTATION No. 1 – Dr Ken Jones**

Relevant Representation

- 2.1 The following representation was received by the Infrastructure Planning Commission from Dr Ken Jones on 23rd February 2012.

I have a particular interest in wild-life in the area in which I live. I am concerned that the Able UK Humber project will damage wild-life. I understand about 55 hectares of wild-life habitat will be affected without adequate compensation. Compensatory estuarine habitat is essential in this case as it is of world-wide importance to migratory waders in particular, though other species will also suffer.

Applicant's Comments

- 2.2 There are several responses similar to this, which question the adequacy of the compensation proposals – the text below covers all such responses (and is referred to after each similar representation).
- 2.3 The area of 55 ha quoted in the representation is incorrect. The figure of 55 ha was given in the Preliminary Environmental Information issued in accordance with the statutory Section 42 consultation required by The Planning Act 2008, but the sum of sub-tidal and intertidal habitat that will be directly affected by the reclamation works is actually 45 ha, as given in the Environmental Statement submitted with the application (para 4.3.2). This reduction arose from design development following the consultation process. The quantum and types of designated site habitat that are estimated to be affected by the development, both directly and indirectly, are detailed in Tables 11.16 and 11.17 of the Environmental Statement. This habitat loss cannot be mitigated, in the sense that no alternative solution exists that would avoid this impact; accordingly the applicant proposes compensation for this loss should the project be consented.
- 2.4 Whilst the total habitat loss within the estuary is limited to the direct effects of the project, indirect effects will also cause habitat change (as opposed to loss) within the estuary over decadal timescales. So, in the medium and long term, sub-tidal area may become intertidal and vice versa. The sensitivity of the **applicant's proposals to this effect are considered in** Explanatory Note EX11.24 included in the volume of supplementary environmental information.
- 2.5 As the loss of habitat affects a European site (the Humber Estuary SPA and SAC), then in accordance with Regulations 61 to 66 of The Conservation of Habitats and Species Regulations 2010, it is for the competent authority (in this case the Secretary of State for Transport) to make an appropriate assessment of the implications on the site of the effects of the project. EC Guidance, '**MANAGING NATURA 2000 SITES The Provisions of Article 6 of the 'Habitats' Directive 92/43/EEC**' (EC, 2000), explains that, '**(a)s regards content, an Article 6(3) assessment is narrower in scope than an assessment under Directive 85/337/EEC (the EIA Directive), being confined to implications for the site in view of the site's conservation objectives.**' In carrying out the assessment the competent authority is required to consult with, and have regard to, any

representations of the appropriate nature conservation body. In this case, that is Natural England.

2.6 In anticipation of the above process, the applicant has consulted extensively with Natural England and has accepted their advice with regard to the quantum and type of compensatory habitat that would be required to ensure the coherence of the Natura 2000 network should the decision-maker be satisfied that:

- the project would have an adverse effect on the integrity of a European Site, but;
- the project must nevertheless be carried out for imperative reasons of overriding public interest, and
- there is no alternative solution.

2.7 In considering the advice of Natural England, the applicant has been mindful of the High Court decision in *Akester & Anor (On Behalf of the Lymington River Association) v Department for Environment, Food and Rural Affairs* [2010] EWHC 232 (Admin), in which Owen J remarked that,

'(i)n making its appropriate assessment Wightlink (both the promoter and the competent authority in that case) was not obliged to follow the advice given by Natural England; its duty was to have regard to it. But given Natural England's role as the appropriate national conservation body, Wightlink (as the competent authority) was in my judgment bound to accord considerable weight to its advice, and there had to be cogent and compelling reasons for departing from it', (paragraph 112).

2.8 On 11 November 2011, Natural England advised ABLE that:

'regarding the amended proposal for a 100ha managed realignment site at Cherry Cobb Sands. We have reviewed this information and advise that the compensation ratios set out in the Black and Veatch letter – that is the creation of mudflat habitat to loss at a 2:1 ratio – does appear adequate in order to meet the test of maintaining and enhancing the overall coherence of the Natura 2000 network when it is considered alongside the commitment to also provide a 1:1 ratio for the loss of estuary habitat. I confirm therefore, that the assurances given in the Black and Veatch letter has given Natural England sufficient confidence that the managed realignment site is capable of delivering the required amount of compensation for the designated site habitat destroyed and/or damaged by the AMEP development'.

2.9 The applicant therefore believes that the compensatory habitat proposed is sufficient to ensure the coherence of the Natura 2000 network of sites.

3. **REPRESENTATION No. 2 – John Guggiari**

Relevant Representation

- 3.1 The following representation was received by the Infrastructure Planning Commission from John Guggiari on 23rd February 2012.

Able UK either have not given sufficient consideration to the environmental impact of their proposal or, if they have thought about it, then they have decided that their commercial return is more important than a sustainable environment on the Humber. In the recent past, Associated British Ports have set the right example when they developed port facilities on Humberside by adequately counter-balancing the environmental impact of their proposal with replacement habitat for birds and other wildlife. It seems ironic that a business promoting "renewable energy" is content to put a European Special Protection Area to the sword by insufficient investment in counteracting the negative environmental impacts of its plans. It appears that Able UK's proposals would remove some 130 acres of estuary habitat and this should not be permitted to proceed without adequate replacement habitat being created.

Applicant's Comments

- 3.2 The applicant contends that the representation is mis-informed.
- 3.3 Associated British Ports (ABP) has developed two managed realignment sites on the Humber Estuary to compensate for the loss of habitat within the Humber Estuary SPA/SAC/SSSI/Ramsar site. These two sites are at Welwick and Chowder Ness and compensate for losses that arose from the development of Immingham Outer Harbour (IOH) and the loss that would arise from the proposed development of Quay 2005. The latter scheme, although approved, has **never been built, and is now superseded by ABP's proposals for Green Port Hull** on the same site.
- 3.4 **With regard to ABP's 'example', the applicant** would observe that ABP's Environmental Statement for IOH did not include any assessment of the impact of constructing the related managed realignment sites at Welwick or Chowder Ness. Humber Sea Terminal (HST) sought to challenge the subsequent consent for IOH on the grounds that the Environmental Statement was deficient in omitting an assessment of these works (*HST v Secretary of State for Transport and ABP* [2005] EWHC 1289 (Admin)). In the event the challenge was unsuccessful; in dismissing the application, Ousley J explained his decision on the grounds that there was, **'no evidence that the compensation measures issue was seen as a main or likely significant issue by ABP'**.
- 3.5 By contrast the applicant has consulted widely on the likely significant effects of the proposed compensation site at Cherry Cobb Sands and has undertaken a thorough site selection process that has considered all feasible alternative sites.
- 3.6 **The applicant's proposals for compensatory habitat compare** very favourably to those secured **by the Secretary of State for ABP's developments on the Humber.**

The combined effect of IOH and Quay 2005 was the loss of 31 ha of mudflat which ABP compensated for by developing 56 ha of intertidal habitat at two new realignment sites, of which 31 ha is to be sustainable mudflat. In addition, 3 ha of existing intertidal mudflat at **Doig's Creek** was enhanced. These details are contained in a legal Agreement between: English Nature; The Environment Agency; RSPB, Lincolnshire Wildlife Trust and Yorkshire Wildlife Trust Limited. A copy of the Agreement is included in Appendix A; the document was obtained following a 'freedom of information' request and is Natural England copyright.

- 3.7 By contrast, the loss of mudflat caused by AMEP would be compensated for on a target ratio of 2:1 (gain:loss) with a minimum sustainable ratio of 1:1 which is identical to the ABP compensation scheme. The loss of sub-tidal estuary habitat would be compensated for on a ratio of 1:1.
- 3.8 The compensation site for AMEP is also considerably closer to the area of habitat loss than that provided by ABP for losses caused by their developments. The mudflat that was reclaimed was located in the Middle Estuary, whilst compensatory habitat was provided in the Inner and Outer Estuary.
- 3.9 A further point to note is that the only obligation on ABP with regard to the timing of their development of Immingham Outer Harbour and Quay 2005, as stated in the legal Agreement, was that simply they have sufficient '*proprietary interest*' in the compensatory habitat sites before their development commenced. There was thus no requirement for the compensatory habitat to be functional at the time the habitat loss occurred. Again, in *HST v Secretary of State for Transport and ABP* [2005] EWHC 1289 (Admin), HST sought to argue that the granting of a Harbour Revision Order for IOH had been unlawful because, '*it was critical that the replacement habitat be available before, or at the latest at the same time as, the destruction of the existing habitat (but) there was no trigger to start the compensatory works in the agreement, something usually achieved by a prohibition on development until the compensation measures were in place*'. In rejecting this, Ousely J observed that the argument failed '*because of the advice which (The Secretary of State) had received from English Nature as to the satisfactory nature of the compensation measures. The (compensation) land had been increased to its present size (as set out in the legal Agreement) to take account of the risks and possible time lags between work starting and the replacement reaching its full potential*', (emphasis added).
- 3.10 The applicant not only proposes to compensate for habitat loss to a greater extent than the loss itself but also proposes to include the creation of wet grassland.
- 3.11 On the basis of the above the applicant asserts that the compensation proposals for AMEP surpass those accepted by the decision-maker for ABP's developments within the Humber Estuary.
- 3.12 Refer also to the comments on Representation No.1.

4. **REPRESENTATION No. 3 – Tony Horrocks**

Relevant Representation

- 4.1 The following representation was received by the Infrastructure Planning Commission from Tony Horrocks on 23rd February 2012.

The Humber is hugely rich in wildlife and is one of the UK's most important estuaries for wintering birds. It is also home to a couple of birds of protected species, to whit Marsh and Hen Harriers both of which I have seen hunting in the area in question. This application if passed will destroy 55 hectares of estuarine habitat which is vital for wintering and migrating wildlife. The current proposal will not adequately compensate for this loss. It is important that damage caused by this proposed development should be offset fully by a comprehensive compensation package of new habitat. These developers should fully address the environmental impacts of this proposal. Able UK have been advertising the fact that they have worked fully with the RSPB over these proposals....apparently not true according to a letter I have received today from the RSPB of which I am a member. At the entrance to this proposed site Able UK plowed up at least 200 metres of hedging in April, a prime time and habitat for nesting birds. This is NOT the action of a company with environmental issues! Last but by no means least please consider the long suffering residents of the area (of which I am one) who really have enough industrial works in the local area with two oil refineries, an electro generating station, a ship loading terminal and various others plus planning permission is in for a Glass wool insulation product manufacturing plant.

Applicant's Comments

- 4.2 Refer to the comments on Representation No.1.
- 4.3 The RSPB has mis-informed its members about the quantum of habitat loss, appearing to have based its directions to its members on the preliminary environmental information.
- 4.4 The applicant met, and held detailed discussions with, the RSPB on 11 occasions between 16 November 2010 and 9 August 2011. During this period the applicant also provided the RSPB with draft application documents for comment. However the design developed further between August 2011 and the date of submission to the IPC; this included a reduction in the footprint of the development onto the Humber Estuary SPA/SAC. The applicant has received and had regard to several letters from the RSPB in response to the consultation process.
- 4.5 With respect to the area of mitigation provided on the south bank (Mitigation Area A, Drg AME-02003-A submitted with the application), this is consistent with **RSPB's** response to the applicant dated 10 June 2011, reproduced in part below, which followed circulation of the applicants proposals for a 23 ha plot to mitigate for the loss of farmland used by SPA birds for roosting and feeding:

'The RSPB's response to the questions posed 23 May 2011

At the most recent consultation meeting with Natural England you indicated that you would welcome high level responses from both the RSPB and Natural England regarding whether the proposed terrestrial mitigation was a) appropriately located and b) sufficient in size.

Is the proposed mitigation for SPA and Ramsar waterbirds in an appropriate location?

The RSPB considers that the supporting information suggests that the proposed location of the terrestrial SPA and Ramsar waterbird location is appropriately located subject to the current open flight paths from the estuary and connectivity to the estuary being retained.

For completeness, we consider there are a number of alternative locations within the footprint of the AMEP proposal which would also be suitable, including those which would connect directly and enhance other areas of high value to SPA and Ramsar waterbirds such as North Killingholme Haven Pits or have direct connectivity to the estuary frontage.

The currently proposed location does appear to be wholly compatible with the proposed strategic mitigation approach being pursued by North and North East Lincolnshire Councils as part of their Local Development Frameworks. We consider that the proposed mitigation could be amended in its currently proposed location to ensure it is compatible with the strategic approach.

Is the proposed mitigation for SPA and Ramsar waterbirds sufficient in size?

The RSPB considers that the draft mitigation document is clear that SPA and Ramsar waterbird mitigation is required for several species, notably curlew, and must mitigate for loss of both foraging and roosting resources. It is less clear from the draft document the degree to which other species will be potentially affected and therefore what, if any, mitigation is appropriate for waterbirds other than curlew. The document also does not clarify the thinking or process by which the mitigation requirements were calculated. We would welcome clarity on these two points.

We submit that if the calculations for "wader days" which have been put forward by Andrew Taylor are used, then it is essential to consider the calculated area (in ha) in light of ecological principles and a full understanding of the ecology of the species affected, such as disturbance distances for each species and the sightlines required by each species. We consider that the calculated area must be provided as "core" habitat i.e. an area which is optimally managed and anticipated will deliver optimal function as it is surrounded by an area of optimally managed land which is anticipated to have sub-optimal function due to edge effects. This would be consistent with the approach adopted for the Logistics Park application (PA/2009/0600) at East Halton. The width of the area which will be appropriate to "buffer" the "core" is likely to be 150m; any

deviation from this must be justified and supported by robust and credible scientific evidence.

On the basis of the approach set out above we consider that the mitigation area that is likely to be appropriate to the AMEP development alone is likely to be in the order of 45-50ha on the basis of the information available to date and the proposed location. Therefore, we consider that the proposed c.23ha of Area A proposed for waterbirds is insufficient to mitigate the potential impacts of the proposed AMEP on SPA and Ramsar waterbirds which currently use the farmland within the footprint of the current proposal. The currently proposed mitigation is only c.300m in width along the whole length of the cluster of fields identified. We understand that there is a tall hedge/treeline along the Marsh Land boundary and that there is potential disturbance from the residence and access along this route. Therefore, as proposed we consider that a large proportion of the proposed mitigation is likely to deliver sub-optimal function due to edge effects which will affect a high proportion of the mitigation as currently proposed as a function of the overall size and geometry of the area proposed and the character of the adjacent features e.g. tall hedgelines etc., (underline added)

4.6 The final submitted proposals for mitigation for SPA roosting and feeding birds on the south bank are therefore **consistent with RSPB's** stated views.

4.7 With respect to the compensatory proposals, RSPB provided the following general response to the applicant in a letter dated 14 July 2011, based on the footprint of the reclamation area at the time:

'if the proposal results in 35ha of intertidal mudflat being lost, current EU Commission guidance and judgements to date suggests that compensatory habitat should be calculated at a ratio of greater than 1:1 and in the order of 1:1.5 - 1:3. In this instance, this could result in the need to provide at least 52.5ha to 105ha of intertidal mudflat habitat alone to simply address the loss of extent of this specific habitat type i.e. not taking into account the loss of ecological function.'

4.8 The final submitted proposals for the quantum of compensation are therefore **consistent with RSPB's advice in** that it lies within the identified range. However, the applicant would clarify that, with regard to the quantum of compensatory mudflat, the overriding objective is for the area of **sustainable** compensatory mudflat to be no less than that lost; that is 31.5 ha destroyed plus the functional loss of a further 11.6 ha.

4.9 **Able UK has not 'plowed (sic) up at least 200 metres of hedging in April'** at the site entrance. Able UK did remove a length of hedging at the entrance to the consented URSA glass wool factory on a nearby site (North Lincolnshire Council planning consent PA/2008/0525) following the grant of planning permission. The removal of the hedgerow was therefore covered by Section 6(1)(e) of The Hedgerow Regulations 1997. The shrubs and trees were removed between 12 – 14 April 2011 following an inspection for the presence of nesting birds.

4.10 The development proposals are compliant with the land use designated for the site by the local planning authority in their Core Strategy.

5. **REPRESENTATION No. 4 – John Wasling**

Relevant Representation

- 5.1 5.1 The following representation was received by the Infrastructure Planning Commission from John Wasling on 23rd February 2012.

I am concerned about the loss of habitat and natural feeding areas for migratory and resident birds. I believe that we cannot afford any loss of such facilities and wish to know that any development will not result in a net loss.

Applicant's Comments

- 5.2 Refer to the comments on Representation No's 1 and 2.

6. **REPRESENTATION No. 5 – Jayne Regan**

Relevant Representation

- 6.1 The following representation was received by the Infrastructure Planning Commission from Jayne Regan on 24th February 2012.

I live on the north bank of the Humber and I am fully aware of the importance of this area for the many birds that depend upon the banks of the Humber for their survival. A large amount of vital habitat will be lost as a result of this proposal. The current proposal does not fully compensate for this loss of vital habitat. It is extremely important that any loss of habitat is offset by a comprehensive compensation package of new habitat. I understand the need for renewable energy however, as this proposal stands the effect on the environment will be negative.

Applicant's Comments

- 6.2 Refer to the comments on Representation No's 1 and 2.

7. **REPRESENTATION No. 6 – Mark Lenton**

Relevant Representation

- 7.1 The following representation was received by the Infrastructure Planning Commission from Mark Lenton on 24th February 2012.

As a Humber resident, I fully support the application for the development, but have concerns regarding what, on the basis of information available, would appear to be a significant reduction in the amount of extremely valuable estuarine habitat, given that the region holds a number of designations under various EU Directives, and has UK SSSI status.

I would like there to be guarantees that the developers will be required to fully and adequately compensate for lost habitat and fully engage with the RSPB and others in the consultation process to this end.

The recent ABP Green Port Hull development has shown that this process can be successful and economically viable and it would be a great shame if something so economically and environmentally valuable to both the region and the nation were also to be the cause of unnecessary environmental damage to this region.

Applicant's Comments

- 7.2 Refer to the comments on Representation No's 1 and 2.
- 7.3 With respect to the applicant's consultations with RSPB, refer to the comments on Representation No. 3.

8. **REPRESENTATION No. 7 – John C Nicholson**

Relevant Representation

- 8.1 The following representation was received by the Infrastructure Planning Commission from John C Nicholson on 24th February 2012.

Under no circumstances whatsoever must any food producing land be converted to a "Wildlife Haven" Nature reserve or whatever similar.

The World has an expending population as does the UK within it. The UK has for a long time been unable to produce enough food to feed its population. There is a huge number of malnourished people in the World and doubtless some in the UK - in the latter case perhaps more on a basis of subsisting on a poor diet rather than unfed, due to economic inability to buy properly nourishing food.

There is in various documents included with this application references to land being "Undeveloped". This often refers to land used for agricultural purposes - such land, far from being undeveloped is highly developed for food production purposes. Such statement is therefore false.

There is a dire need for large scale production of low cost nourishing food within the UK to contribute to overall world food production. There are seemingly no statistics within the documentation to show the magnitude of food production capacity to be lost in terms of tonnage production lost, number of people food for whom is lost by such production capacity loss. There should be.

There are huge social problems in the UK caused by unemployment and poverty and if food shortages are added to such there will be significant price rises which will adversely affect an even greater proportion of the population. This will lead to increased societal breakdown and civil disorder requiring a paramilitary police force to contain. We must avoid this altogether.

This is a serious issue of national security.

Applicant's Comments

- 8.2 The loss of agricultural land is acknowledged and has been assessed within the Environmental Statement which states that the,

'(c)reation of the Compensation Site will result in the loss of approximately 115 ha of Grade 2 agricultural land at Cherry Cobb Sands and 38ha of Grade 2 agricultural land at Old Little Humber Farm. This loss equates to 0.009 percent of the total agricultural land available in the Yorkshire and Humber region and therefore considering the local, regional and national extent of Grade 2 land, loss of this potential food resource is assessed as being of low magnitude. The sensitivity of the food resource being low as the area of arable farmland being lost is small in comparison to regional and national land resources and it is not currently supporting specialist crops (such as organic produce). The resulting overall effect is a permanent negative impact of minor significance', (paragraph 42.6.13).

9. **REPRESENTATION No. 8 – Stewart Padget**

Relevant Representation

- 9.1 The following representation was received by the Infrastructure Planning Commission from Stewart Padget on 24th February 2012.

Whilst I believe that the economic development of the Humber region to be an extremely important issue I have grave concerns that this proposed development currently fails to address the significant impact this project will make on marine wildlife. I would urge that before the approval of any plans such an impact is made an absolute priority.

Applicant's Comments

- 9.2 The potential for the project to give rise to significant effects on marine wildlife is considered in Chapters 10 and 34 of the Environmental Statement.
- 9.3 With respect to marine mammals, two species are known to use the estuary: the harbour porpoise is a rare visitor and the grey seal is an occasional visitor. Neither species is present in significant numbers, so the applicant has agreed with Natural England that the implementation of a soft start procedure for piling works would be sufficient to avoid harm to any individuals that might be present. This procedure would provide for an initial stage of low energy impact piling and allow time for any individual present close by to swim away from the noise source if they choose to do so.
- 9.4 With respect to fish, the ES identifies the potential for underwater noise to have an adverse effect on some species and the applicant acknowledges that fatalities of fish have been recorded very close to piling operations. However, the wider disturbance effects of underwater noise on fish are not understood with any degree of scientific certainty. Any mitigation is therefore precautionary, as its benefits cannot be quantified in any scientific sense.
- 9.5 **In accordance with Section 6 of the Environment Act 1995, the EA has a duty 'to maintain, improve and develop salmon fisheries, trout fisheries, freshwater fisheries and eel fisheries'.** In addition, sea and river lamprey are present in the estuary, though they are not a primary reason for the selection of the site as a SAC. Lamprey are a poorly researched species and it is not known whether they are able to hear anything at all (ES Annex 10.2, paragraph 63).
- 9.6 The applicant is still seeking to agree precautionary, but proportionate, mitigation measures with NE, EA and the MMO, to address the unknown risk to fish, including migratory fish, from impact piling. In this regard, it is observed by the applicant that these public bodies are currently advising that no impact piling should be undertaken between 7 April and 1 June, and that impact piling works should be limited throughout the rest of the year. However, ***The Associated British Ports (Grimsby Riverside Ro-Ro Terminal) Harbour Revision Order 2011***, only permits piling operations between ***'1st May and 31st July in any year'***. There is therefore an inconsistency in approach and the matter will be further addressed in a Statement of Common Ground to be agreed jointly with the three public bodies that have regulatory responsibility for, inter alia, marine wildlife.

10. **REPRESENTATION No. 9 – Raymond Leslie Hazel**

Relevant Representation

- 10.1 The following representation was received by the Infrastructure Planning Commission from Raymond Leslie Hazel on 24th February 2012.

I believe any land used for all wild animals/ birds, should be kept intact or at least any land that is taken for other use, a similar piece of land should be provided nearby twice the area that is taken.

Killingholme is in Lincolnshire, and Kingston upon Hull in Yorkshire.

Applicant's Comments

- 10.2 Refer to the comments on Representation No's 1 and 2.
- 10.3 The area proposed for compensation is proximal to the area, and in the same ecological sector of the estuary, that would be reclaimed by the project; it is also more than twice the area lost.



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11. **REPRESENTATION No. 10 – Martin L Francis**

Relevant Representation

11.1 The following representation was received by the Infrastructure Planning Commission from Martin L Francis on 24th February 2012.

The Able UK Marine Energy Park would destroy or seriously interfere with habitat that is very important for wintering and migrating wildlife, particularly birds. The proposed compensatory measures may not be adequate.

Applicant's Comments

11.2 Refer to the comments on Representation No's 1 and 2.

12. **REPRESENTATION No. 11 – Michael Huntley**

Relevant Representation

- 12.1 The following representation was received by the Infrastructure Planning Commission from Michael Huntley on 25th February 2012.

The Humber is hugely rich in wildlife and is one of the UK's most important estuaries for wintering birds.

Able UK's marine energy park application would destroy 55 hectares of estuarine habitat, (roughly the size of 80 football pitches), which is vital for wintering and migrating wildlife. The current proposal will not adequately compensate for this loss.

It is important that damage caused by any development should be offset fully by a comprehensive compensation package of new habitat.

Sustainable economic development on the Humber is possible if developers fully address the environmental impacts of a proposal through appropriate mitigation and where necessary, compensation measures

Applicant's Comments

- 12.2 Refer to the comments on Representation No's 1 and 2.

13. **REPRESENTATION No. 12 – Dr Peter English**

Relevant Representation

- 13.1 The following representation was received by the Infrastructure Planning Commission from Dr Peter English on 26th February 2012.

I am concerned as a local resident on the impact of the Humber habitat for migrating birds.

The compensatory area seems inadequate to offset the loss of such an important area.

Applicant's Comments

- 13.2 Refer to the comments on Representation No's 1 and 2.

14. **REPRESENTATION No. 13 – Graham Atkins**

Relevant Representation

- 14.1 The following representation was received by the Infrastructure Planning Commission from Graham Atkins on 26th February 2012.

The proposed development is in an area designated as a special protection area and as such must not be developed. Any development here will destroy wildlife (mainly birds) and will do untold damage to the habitats of very important and very rare species. There are many more suitable sites for a development of this scale and the developer should be encouraged to look at these .. including those on the north bank of the Humber.

It would be an outrageous and unlawful act to give planning consent in this location for this scale of development. With all developments of this scale full consultation with English nature and the RSPB must be a given and to date this has only been a token gesture by the Developer. I therefore strongly object to this development.

Applicants Response

- 14.2 Refer to the comments on Representation No's 1 and 2.
- 14.3 Development may be permitted within a Special Protection Area where it does not have an adverse effect on the integrity of the specific site. Development may also be permitted where an adverse effect on integrity would occur subject to the derogation tests set out in paragraph 2.6 above.
- 14.4 The choice of site and the alternatives considered are fully explained in Chapters 6 and 30 of the ES.
- 14.5 With respect to the applicant's consultations with RSPB, refer to the comments on Representation No. 3.

15. **REPRESENTATION No. 14 – East Yorkshire and Derwent Area of the Ramblers**

Relevant Representation

- 15.1 The following representation was received by the Infrastructure Planning Commission from East Yorkshire and Derwent Area of the Ramblers on 26th February 2012.

The East Yorkshire and Derwent Area of the Ramblers object to the application for the "Alteration to the local network at Cherry Cobb Sands" as proposed by Able UK.

Able UK wrote to us on the 4th May 2011 with an "indicative" proposal to divert Paull Footpath No.6 from the top of the existing flood bank to the base of a new flood bank. At present walkers have long views over 360 degree from the whole of the footpath, whilst Able's proposals greatly would restrict the long views of for the path users.

We responded with a number of questions, which the developer responded to on the 22nd September, and included Drawing No. AME - 02060, and information from Natural England and the RSPB.

According to the paper on Advice from Natural England and RSPB on suitable buffers for SPA and Ramsar waterbird mitigation areas within the South Humber Gateway. Which in its conclusion states; We believe that the proposed buffer of 150m is the minimum that should be considered in a situation where the adjacent land use is unsecured.

We forwarded to Able a modified plan, which taken with the following shows the compensation site will provide winter feeding far in excess of the present 55ha on the south bank and that the footpath could easily be provided on the flood bank top as it is at Paul Holme Stray.

1) On your map I have drawn a 150m buffer strip between the top of the bank and the river. This leaves 67 ha. Outside the buffer zone, which is more than you are taking on the south bank.

2) The closure of the existing footpath (Paull 6) will give an additional 30 ha to the site from which the public and dogs will not be disturbing birds.

3) A large section of the 55 ha site south of the river, will be unavailable to birds as a) it is below low tide, b) there is a footpath along the river bank which needs a 150m strip removing from the measurements.

4) Therefore the Ramblers propose that the footpath should be diverted around the top of the flood Defence wall.

5) The above calculations are based on the footpath south of the 250m breach in the flood Defence wall being kept open.

6) *As there are no measurements on the plan, I have scaled them to the best of my ability.*

As Able UK have not responded to our proposal, or East Riding of Yorkshire Council's request for a sight meeting, we hereby object to the above planning application

Applicant's Comments

- 15.2 The issue is whether the realigned footpath on the north bank of the Humber should run along the top of the new flood defence that will surround the compensation site, or should run along its landward toe. Consultees have proposed conflicting solutions – the applicant is neutral as to which one is adopted (or whether a compromise solution is adopted). In simple terms the former solution, advocated by East Riding of Yorkshire Council (ERYC) and the Ramblers, will benefit recreational walkers using the footpath, who will benefit from a view of the estuary. The latter solution, advocated by Natural England and the RSPB, is considered to be more beneficial to the wildlife using the compensation site as it is less likely to be disturbed. ERYC has also proposed a compromise of having both footpaths, and allowing the use of one or the other at different times of year.
- 15.3 The Humber Estuary Management Scheme commissioned a report from Footprint Ecology to examine, *'the current impacts of recreation on the Humber Estuary, in relation to disturbance to birds'*, (*'Desk Based Study on Recreational Disturbance to Birds on the Humber Estuary'*, Footprint Ecology, 2010). Whilst the estuary wide effects of disturbance are too complex to model quantitatively the report does identify, (Map Annex, Map 37 reproduced in Figure 15.1 below), that this area of Cherry Cobb Sands is frequently used by dog walkers; many ornithologists believe that this activity causes a high level of disturbance to waterbirds.
- 15.4 Providing a footpath to the rear of the flood defence effectively screens the wildlife from potential disturbance and avoids having to increase the size of the compensation site to buffer against disturbance activity. By contrast the mitigation site on the south bank is provided with a 150 m buffer zone that results in the core area of 16.4 hectares being located within a 47.5 ha plot. The Footprint Ecology report includes amongst its recommendations, *'measures to limit impacts of disturbance at realignment sites such as Paull through screening, routing of paths around the base of the embankment on the inland side etc.'*, (emphasis added).
- 15.5 To mitigate for the loss of estuary wide views, the application includes proposals for bird hides along the top of the realigned defences to enable views of the new site.

Map 37: Questionnaire results: Mean frequency of walking and dog walking in WeBS sectors

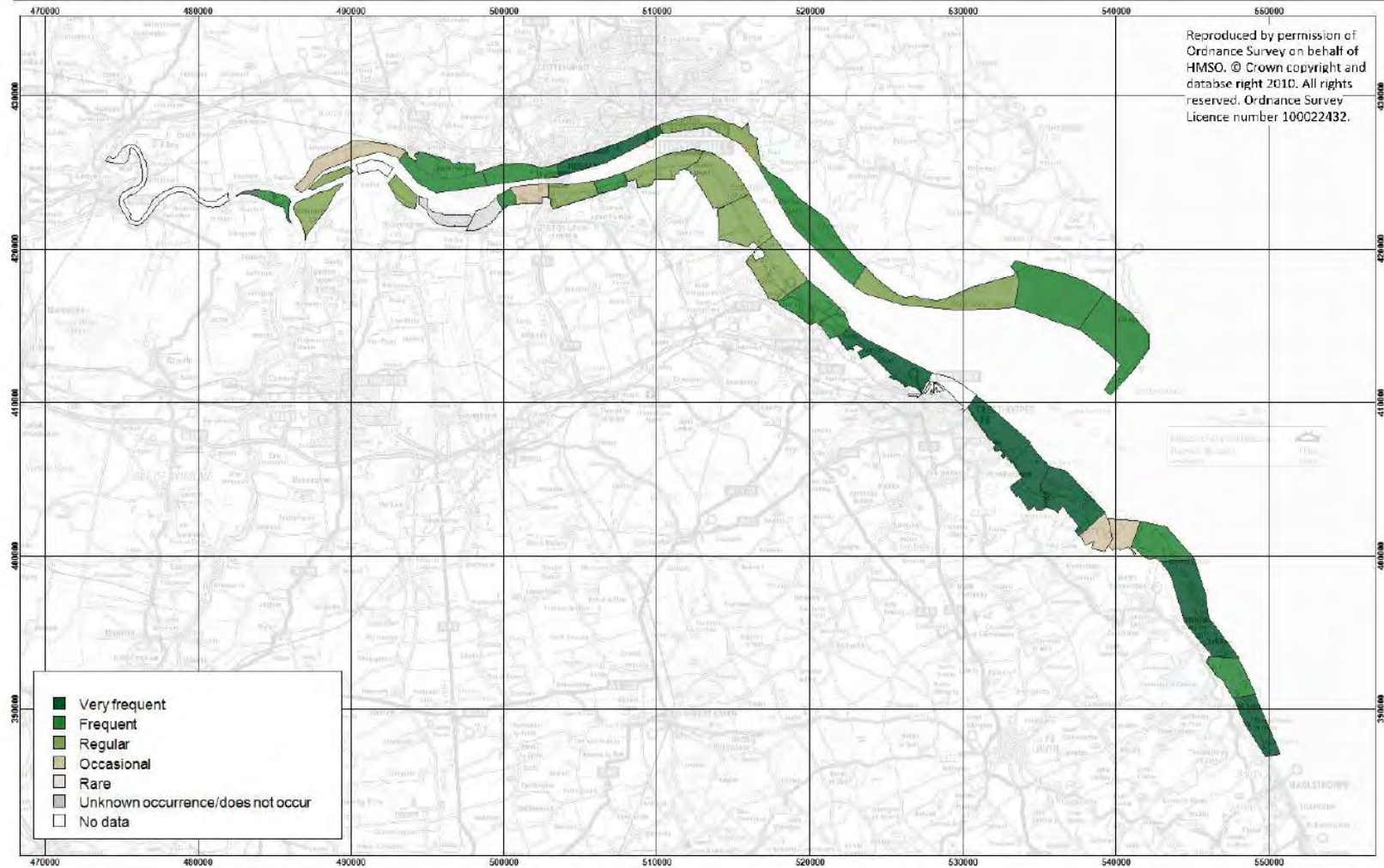


Figure 15.1 : Abstract from 'Desk Based Study on Recreational Disturbance to Birds on the Humber Estuary', Footprint Ecology, 2010

- 15.6 Able has carefully weighed up the options (and the evidence) and has decided to include the footpath behind the bund in its application, together with regular hides on top of the bund that will allow walkers to view the wildlife without causing disturbance.
- 15.7 On 5 December 2011, the applicant advised the local authority verbally that the competing views of consultees on this matter appeared irreconcilable. The conversation was confirmed by e-mail, the main text of which is reproduced below:

'Just to confirm our discussions this morning.

We have taken into account all of the representations in respect of the footpath diversion on the north bank and have ultimately decided (to) include in the application a diversion along the rear toe of the new flood defence. This minimises disturbance to the compensatory habitat site. Disturbance is a key issue for NE and RSPB and minimising disturbance ensures that we minimise the land required for compensation.

Once the application is accepted it will be advertised and any party is entitled to submit their view in writing to the IPC. We are however highlighting within the consultation report that accompanies the application the fact that diverse views have been received and the IPC will therefore be alerted to this particular issue.

<http://infrastructure.independent.gov.uk/legislation-and-advice/our-guidance-and-advice>'

16. **REPRESENTATION No. 15 – Emma Overton**

Relevant Representation

- 16.1 The following representation was received by the Infrastructure Planning Commission from Emma Overton on 26th February 2012.

I am sincerely pro renewable energy. However, Able Marine's proposed energy park would destroy 55 hectares of estuary habitat, vital in one of the UK's most important estuaries for birds. Able Marine's proposed package of new habitat is insufficient to compensate for this loss. I do not believe that the environmental impacts of Able Marine's development proposals have been properly considered, and provided for. The Humber area is an SPA, SAC and SSSI - we cannot afford to get this development wrong - the cost to nature could be catastrophic. A rethink is urgent. There are other areas of the country where renewable energy projects have taken into account the environmental impacts of their proposals very successfully, by consulting with, and implementing the recommendations of, relevant organisations and environmental groups. I urge Able Marine to do the same.

Applicant's Comments

- 16.2 Refer to the comments on Representation No's 1 and 2.
- 16.3 It is inevitable with any major infrastructure project that the environmental impact is a matter of debate or controversy. That controversy does not necessarily arise however **because the impacts have not been 'properly considered'**; more frequently it is simply because the impacts are weighted differently, and from different perspectives, by the individual considering them.

17. **REPRESENTATION No. 16 – Sean Guggiari**

Relevant Representation

- 17.1 The following representation was received by the Infrastructure Planning Commission from Sean Guggiari on 26th February 2012.

While I support the need for greater investment in renewable energy, it must not come at a cost to the natural environment. In this application, I believe that insufficient compensation has been planned to replace the important estuary habitat that will be destroyed by the development. This habitat is of vital importance to international bird species during migration, as recognised by, for example, the European Birds Directive and the Convention on Wetlands of International Importance. Currently, the application does not seem to recognise the global importance of the estuary with regards to wildlife, as their proposed compensation does not match with the scale of what they are planning to destroy; this risks the several species that need the Humber estuary to survive over the winter or during migration. I believe that the application needs to be rejected until sufficient compensation is planned for the displaced habitat.

Applicant's Comments

- 17.2 Refer to the comments on Representation No's 1 and 2.

18. **REPRESENTATION No. 19 – Civil Aviation Authority**

Relevant Representation

- 18.1 The following representation was received by the Infrastructure Planning Commission from Civil Aviation Authority on 27th February 2012.

Proposed Able Marine Energy Park (AMEP)

The Civil Aviation Authority (CAA) has been advised that the IPC have accepted an application for a Development Consent Order related to the proposed AMEP, which includes the provision of onshore facilities for the manufacture, assembly and storage of marine energy infrastructure and related items. We are advised that comment related to the project / application should be forwarded to the IPC. I trust the following, which fundamentally mirrors comment provided at the scoping stage, is useful.

Whilst I must concede that the volume of associate documentation made available has made it extremely difficult to find the aviation related material, I believe that the civil aviation related issues are appropriately detailed within Chapter 22 of the Environmental Statement (ES). It remains the CAA's case that:

- Aerodrome Safeguarding. Given the location of the development it is essential that Humberside Airport is given the opportunity to comment upon the aerodrome-related conclusion detailed within the ES, which generally infers that the development would have little impact upon the Airport and related operations.*

- Aviation Warning Lighting. The UK Air Navigation Order (ANO) demands that any structure (permanent or temporary) of a height of 150 metres (m) or more must be equipped with aviation warning lighting; ANO Article 219 refers. Structures less than 150m high might need aviation warning lighting if, by virtue of their location and nature, they are considered a significant navigational hazard:*

- In this case ES Chapter 22 implies that, wind turbines aside, buildings (including chimney stacks) associated with this development would not exceed 55m in height. That being the case, in isolation, the CAA would not make any case for such structures to be equipped with warning lighting.*

- Wind Turbines. The ES indicates that wind turbine erected at the AMEP would be approximately 165m high. As stated, such structures will need to be equipped with aviation warning lighting (ANO Article 219 provides the baseline specification). ES Chapter 22 intimates (at 22.4.5) that any turbines erected at the AMEP will not be operational; this is translated as, the turbine will not be rotating. Note that would most likely be significant radar-related issues associated with rotating blades of 165m high wind turbines in the subject location.*

- *Aviation Notification of Tall Structures.* Any structure, permanent or temporary, of a height of 300 feet (91.4m) or more will need to be promulgated and charted for civil aviation purposes. This process is initiated through the developer / planning organisation providing details to the Defence Geographic Centre.
- *Emergency Services Helicopter Operations.* Due to the unique nature of associated operations in respect of operating altitudes and potentially unusual landing sites, it is important to establish the viewpoint of local emergency services air support units in respect of the power station and associated new structures.
- *Gas Venting / Flaring.* It is anticipated that AMEP would not involve the venting and/or flaring of gas, either routinely or as an emergency procedure such as to cause a danger to overlying aircraft. If that is not the case parties are invited to use myself as an appropriate point of contact for any further related discussion.
- *Helicopter Landing Site.* The ES continues to indicate the intention to incorporate a helicopter landing site within the AMEP development. Notwithstanding that the ES records that the exact location and design of the facility has yet to be determined, the CAA's related position remains as detailed within our scoping report contribution. In essence, on the basis that this would not be a CAA-licensed facility, notwithstanding the planning process to establish the related viewpoint of Humberside Airport, the Authority has no issues associated with the proposed redevelopment of the land (the construction of the helicopter landing pad) or the use of the site for aviation related activities.

Whilst out-with the scope of this application, it is worth recording that there are potentially significant issues associated with the transportation of the wind turbine post construction. It is understood that the turbines will be shipped to the offshore locations in the vertical position. Given that the wind turbine supporting towers alone will measure considerably more than 300ft in height, they will individually constitute an en-route obstacle and will require notification to the UK aviation community. The notification of what is effectively a large number of moving obstacles is, in UK airspace, somewhat unprecedented. Known timeframes associated with wind turbine construction coupled with definite ideas about transportation arrangements will prompt a need for discussion related to such aviation notification of turbines (whether in a fully or partly constructed state).

Whilst none of the above negates any aforementioned future need to consult in line with Government requirements associated with the safeguarding of aerodromes and other technical sites, I hope this information matches your requirements. Please do not hesitate to get in touch as and when you require any further comment or needs clarification of any point.



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- 18.2 The applicant confirms that consent is not being sought for operational wind turbines.
- 18.3 The applicant has held consultation meetings with the operators of Humberside International Airport and has had regard to their comments in ensuring that the safety of air traffic is not compromised in any way. Details of the consultation meeting are included in Section 22.4 of the ES.
- 18.4 The application does not include any proposals for a helicopter landing site.
- 18.5 The application does not seek consent for the transportation of fully erected wind turbines. Any consent necessary for such transport proposals would need to be obtained by the relevant windfarm developer.

19. **REPRESENTATION No. 21 – Simon Taylor**

Relevant Representation

- 19.1 The following representation was received by the Infrastructure Planning Commission from Simon Taylor on 27th February 2012.

to be submitted later

Further detail provided in email of 29/03/12:

I have no objection and fully support the ABLE application as described for the Killingholme site. My concerns relate solely to the compensation site on the North bank.

I have concerns about the following issues

Diversion and relocation of the public footpaths.

Long term flood protection provide by the new banks.

Long term maintenance and responsibility for the scheme.

Size of compensation land required in relation to the actual habit loss.

The need for any compensation site is not proven.

Silting up of Stone Creek will effect drainage of Holderness and lead to an increased flood risk.

Silting of Stone Creek and the exit channel into the Humber will end navigation for the SCBC.

Long term, off site risks and responsibilities for maintenance.

Location of the new Southern flood bank.

Applicant's Comments

- 19.2 With regard to the diversion of the footpath on the north bank refer to the comments on Representation No. 14.
- 19.3 The new flood defences have been designed for a 1:200 year flood event from the sea with an allowance for 100 years of climate change. This is in accordance with advice received from the Environment Agency. This exceeds the protection afforded by the existing defences on Sunk Island which will only provide protection against a 1:11 to 1:18 year flood event by 2108 (*'Environment Agency South Holderness Study Tidal Flood Study'*, (Arup, 2011)), refer to Figure 19.1.
- 19.4 The applicant will enter into a legal agreement with the Environment Agency that provides for the maintenance of the flood defences.
- 19.5 With regard to the size of the compensation site and the need to provide compensation at all, refer to the **comments on Representation No's 1 and 2.**
- 19.6 The impact of the scheme on sedimentation in Stone Creek is assessed in Annex 32.4, Section 4.5 of the ES. Siltation is not expected to change as a

consequence of the scheme. Nevertheless, an effect cannot be excluded due to the uncertainty attached to hydrodynamic modelling. Accordingly paragraph 4.5.5 of the ES recommends monitoring of sediment levels. Routine maintenance dredging is currently undertaken. It is considered that there is only a slight risk that the frequency of dredging operations increases due to the scheme.

- 19.7 The location of the southern section of the flood bank was realigned following the Section 42 consultation so that it was 100 m from the access track to the radar station which is as requested by Mr Taylor in his written response to the Section 42 consultation undertaken in early 2011.

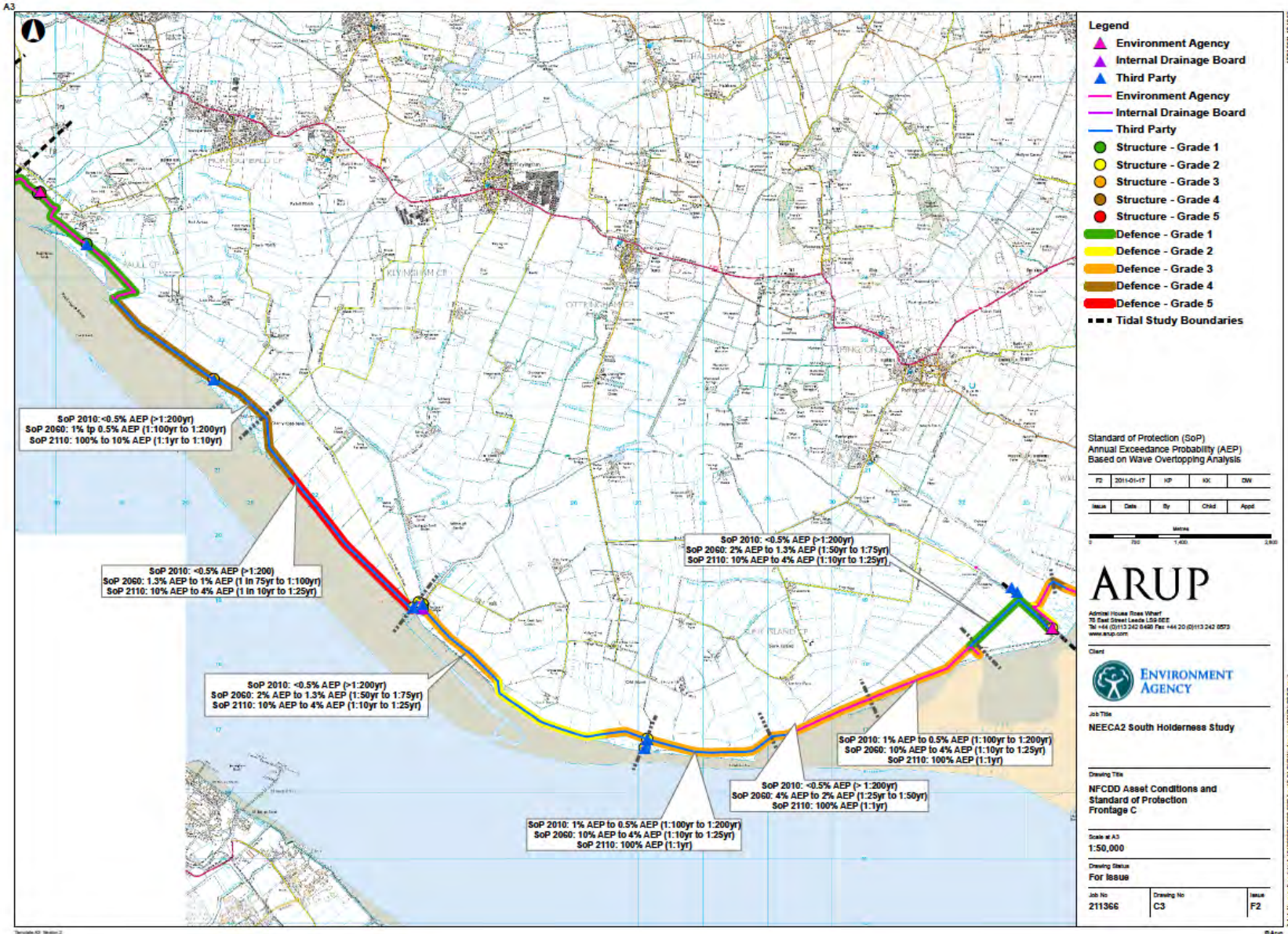


Figure 19.1: Abstract from 'Environment Agency South Holderness Study Tidal Flood Study', (Arup, 2011)

20. **REPRESENTATION No. 22 – Pauline A Bursell**

Relevant Representation

20.1 The following representation was received by the Infrastructure Planning Commission from Pauline A Bursell on 28th February 2012.

'Although I live on the north bank of the Humber I feel that the loss of 327 hectares of land would reduce vital feeding areas on both sides of the river. If Able UK intend using this land they must be prepared to compensate by securing another area of wetland for the future well being of migrating and wintering birds that flock to the Humber each year. As a member of the South Holderness Countryside Society who own land on the north bank and work tirelessly to upkeep the SSSI estuary I feel that you should not allow planning to continue until all these conditions are met.'

Applicant's Comments

20.2 The project will not result in the loss of 327 ha of bird feeding habitat.

20.3 The bird feeding areas that would be lost, or lose their functionality, as a consequence of the development are:

- a. 43.1 ha of intertidal mudflat used as a feeding resource by several species of SPA birds. This loss is to be compensated for by the creation of new mudflat on the north bank at Cherry Cobb Sands and temporarily at Old Little Humber Farm.
- b. 100.3 ha of terrestrial habitat outside of the designated site but occasionally used by up to 100 curlew for feeding and roosting. This loss is being mitigated for the creation of sufficient wet grassland within the development to cancel any negative effect.

20.4 Refer to the comments on Representation No's 1 and 2

21. **REPRESENTATION No. 23 – A Simpson**

Relevant Representation

- 21.1 The following representation was received by the Infrastructure Planning Commission from A Simpson on 1st March 2012.

The scale of the proposed marine energy park and the benefits produced from this massive enterprise will not be of sufficient value to justify the environmental damage it creates. The Humber Estuary is one of the most beautiful and important areas of the UK, and not just purely for the wildlife that it sustains.

Historically, geographically and environmentally this part of the United Kingdom is of great importance and any applications that will damage one of our most valuable resources and assets must be rejected unless an immediate National catastrophe is imminent. This project is not worth such destruction.

Applicant's Comments

- 21.2 The need for the development of a significant marine energy park on the east coast of Britain is set out in Chapters 5 and 6 of the ES. There is no alternative location that will meet the objectives of the project.



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22. **REPRESENTATION No. 24 – R W Rambler**

Relevant Representation

22.1 The following representation was received by the Infrastructure Planning Commission from R W Rambler on 2nd March 2012.

My concern is that a comprehensive package of measures is included in this scheme to offset the 55 hectares of habitat that will be lost.

Applicant's Comments

22.2 Refer to the comments on Representation No's 1 and 2.

23. **REPRESENTATION No. 25 – Calum Fox**

Relevant Representation

- 23.1 The following representation was received by the Infrastructure Planning Commission from Calum Fox on 2nd March 2012.

I am greatly concerned that this project could have a huge effect on the diverse wildlife either already in the area or "visiting" wildlife that finds the Humber estuary essential to it's way of life. ie. to breed etc. We are already very fortunate to have some rarities unique to our area, for example bitterns and marsh harriers. (to name but a few) I am all for renewable energy, but at what cost to our already delicate surroundings ? If 55 hectares of estuarine habitat is taken away from our natural world, it should be compensated with something back in return. Hell, we never seem to put un-used developed areas back to "green" areas once we've finished with them because of cost, eventually there will be nothing left but all the "mess" we've created and abandoned!

Take away wild spaces only when you can give something back, please.

Applicant's Comments

- 23.2 Refer to the comments on Representation No's 1 and 2.

24. **REPRESENTATION No. 26 – Peter John Ainscough**

Relevant Representation

- 24.1 23.1 The following representation was received by the Infrastructure Planning Commission from Peter John Ainscough on 7th March 2012.

I am concerned that the development as proposed impacts on the very rich wildlife of the area without adequate arrangements to offer alternative habitat. The Humber Estuary is visited by many migrating birds of both land and shore varieties and their flight paths and feeding grounds must have adequate protection.

I am not opposed to industrial development in this area and particularly any that intends to contribute to an increase in the production of renewable energy - although I have some reservations about the number, size and distribution of "wind farms" and turbines across the country's more attractive landscape. However, any industrial development which impacts on the area's wildlife should only be allowed if appropriate and adequate provision is made for the protection of that same wildlife.

Applicant's Comments

- 24.2 Refer to the comments on Representation No's 1 and 2.

25. **REPRESENTATION No. 28 – John Houghton on behalf of The Crown Estate Commissioners**

Relevant Representation

25.1 The following representation was received by the Infrastructure Planning Commission from John Houghton on behalf of The Crown Estate Commissioners on 13th March 2012

The letter which we understand Able Humber Ports Limited (Able) has circulated pursuant to Section 56 Planning Act 2008 and Regulation 8 Infrastructure Planning (Application Prescribed Forms and Procedure) Regulations 2009 is understood to refer to three parcels of land that will be used for the project in the following terms:

"The next map shows the three parcels of land that will be used for the project and that is subject to compulsory purchase powers bounded by a red line. The land to the south side of the Humber is for a marine energy park, the larger area on the north side of the Humber is for the permanent compensation site and the smaller area is for the temporary compensation site."

The permanent compensation site on the north side of the Humber to which reference is made (the Site) is at Cherry Cobb Sands and is in the freehold ownership of The Crown Estate. The Statement of Reasons prepared in compliance with the requirements of Regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, which seeks to justify the compulsory acquisition of land sought in the draft DCO, refers (2.6) to the Site of the proposed permanent compensatory habitat as agricultural land (2.14) and as being owned by three different farmers and about 115 ha in extent (2.11). Reference is made to those with the greatest amount of land being acquired as being Total Oil and ABP, and The Crown Estate on the north bank.

Section 135 of the Planning Act 2008 provides as follows in respect of interests in Crown land:

(1) An order granting development consent may include provision authorising the compulsory acquisition of an interest in Crown land only if:
a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown; and
b) the appropriate Crown authority consents to the acquisition

It is made clear in the Statement of Reasons (7.1) that it is proposed that Crown Land will be included within the scope of compulsory purchase, but only to the extent that Able has obtained permission to do so under Section 135 of the Planning Act 2008.

It is also made clear (5.17) that Able will continue to seek to acquire all the land by agreement, but must rely on compulsory powers as a backstop.



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We wish to make clear that no consent has been given by The Crown Estate to compulsory acquisition of any interest in Crown land pursuant to Section 135(1) of the Planning Act 2008. However The Crown Estate have carried out a formal procurement process in respect of the Site and invited tenders, following which The Crown Estate are now in discussion with Able as to the possible acquisition of the Site by agreement, pursuant to paragraph 5.17 of the Statement of Reasons.

Applicant's Comments

- 25.2 The applicant is continuing to negotiate the purchase of the land from the Crown Estate and has been advised by them that it is the '*preferred bidder*'.



AMEP

**APPLICANT'S COMMENTS ON THE
RELEVANT REPRESENTATIONS**

Date: June 2012

26. **REPRESENTATION No. 30 – North East Lindsey Drainage Board**

Relevant Representation

- 26.1 The following representation was received by the Infrastructure Planning Commission from North East Lindsey Drainage Board (NELDB) on 15th March 2012.

My Board are the public body responsible for flood protection and land drainage and the method of surface water disposal from this site must be agreed with the Board prior to site works commencing and a written consent as required by the Land Drainage Act 1991 issued.

The Flood Risk Assessment included in the Application relates to a pumping scheme as the solution for the surface water disposal from the development. Providing the scheme goes ahead then the Board's consent will be issued.

The scheme is dependent on European Grant and Developer contributions and as these are not yet secured alternative arrangements may have to be put in place should the scheme not proceed.

If this is the case I confirm that Able will be responsible for their own surface water disposal arrangements which must be submitted to the Board for approval prior to site works commencing.

Applicant's Comments

- 26.2 The application includes for the development of a pumping station that would accommodate the surface water drainage from the development plus any existing flows from within the Killingholme Marshes drainage catchment. The project is therefore not dependent on the implementation of the NELDB's scheme.



AMEP
APPLICANT'S COMMENTS ON THE
RELEVANT REPRESENTATIONS

Date: June 2012

27. **REPRESENTATION No. 32 – North Lincolnshire Council**

Relevant Representation

26.1 The following representation was received by the Infrastructure Planning Commission from North Lincolnshire Council on 22nd March 2012.

Following a telephone discussion with the Case Officer I have been advised to register in addition to our status as Relevant Local Authority.

Applicant's Comments

27.1 No comment.

28. **REPRESENTATION No. 33 – Hull City Council**

Relevant Representation

28.1 The following representation was received by the Infrastructure Planning Commission from Hull City Council on 23rd March 2012.

Hull City Council's comments have already been submitted to the IPC following a cabinet decision in May 2011. Since that date further comments were submitted to Able UK on the 28th June 2011 and a further response was made to the IPC in relation to the level of consultation undertaken in December 2011.

The Council's interest in the project relates predominantly to the Habitats Regulations and consistency of approach in undertaking the Appropriate Assessment. The Council in principle supports the concept of developing appropriate sites for use as offshore wind turbine manufacturing facilities across the Humber. However it is essential a consistent approach is taken to the selection of sites to ensure they are appropriate.

The Council is well placed to provide some clarity on how the Habitats Regulations should be applied as we have an application lodged by ABP and Siemens for a manufacturing plant for off-shore wind turbines which triggers the need for an Appropriate Assessment, this has led to lengthy and detailed discussion with all statutory consulters across the Estuary. The council intend on determining this application on the 17th April 2012 and then referring it on to the Secretary of State.

The Council has also concluded consultation on the 13th March 2012 for a Local Development Order on Alexandra and Queen Elizabeth Docks which provides outline consent for B2 uses associated with the renewable industry. The Council will be submitting the final LDO to the Government at the end of March 2012 for confirmation. It is essential a consistent application of the Habitats Regulations applies across the LDO, ABP/Siemens application and Able UK proposal and it is for these reasons specifically the council wish to be involved in the examination.

Applicant's Comments

28.2 It is not obvious why the Secretary of State would need Hull City Council to clarify the application of the Habitats Regulations - the Secretary of State is not inexperienced in these matters. The applicant has submitted a Habitat Regulations Assessment Report with the application which addresses, *inter alia*: the need for the development; the absence of any alternative, and which concludes that the project should proceed as there are imperative reasons of overriding public interest for it to do so.

28.3 The representation notes that Hull City Council wish to ensure that sites on the Humber are appropriate for development but is silent on its own views. The ES provides evidence that no better site exists.

28.4 The applicant is preparing a Statement of Common Ground with Natural England, The Environment Agency and the Marine Management Organisation to cover HRA issues.

29. **REPRESENTATION No. 34 – Stone Creek Boat Club**

Relevant Representation

29.1 The following representation was received by the Infrastructure Planning Commission from Stone Creek Boat Club on 23rd March 2012.

Stone Creek Boat Club rents land and moorings around Stone Creek adjacent to the area designated for the Intertidal Habitat. The club believes that the building of this park will adversely affect silting in the creek which will:

Prevent/reduce boat movements in an area used as a port since the land was first reclaimed.

Adversely affect drainage in an area already prone to flooding which is currently some of the best agricultural land in the country.

As this side of the river is an area of deposition and above the mean high tide level it fails to fully meet the requirements for an Intertidal habitat.

Applicant's Comments

29.2 Refer to the comments on Representation No. 21. It is unlikely that the project will give rise to increased rates of accretion within Stone Creek which is already subject to maintenance dredging.

29.3 The land within the realigned flood defence will be re-contoured to provide the levels most suitable for mudflat and other estuarine habitats to develop. Monitoring of other realignment sites within the Humber Estuary will be taken into account when determining initial ground contours. These details are shown in drawing AME-02016-A which is included in the application.

30. **REPRESENTATION No. 35 – Juliet Clark on behalf of Network Rail Infrastructure Limited**

Relevant Representation

30.1 The following representation was received by the Infrastructure Planning Commission from Juliet Clark on behalf of Network Rail Infrastructure Limited on 26th March 2012.

Note: The issues affecting Network Rail are significant and in spite of efforts to do so, it was not possible to limit the word count to 500 words.

(A) Network Rail

1. Network Rail owns and operates the heavy rail infrastructure of Great Britain and is responsible for its maintenance, repair and renewal. Train services on the network are operated by train operating companies to which Network Rail grants rights to use its railway in the form of access contracts approved by the Office of Rail Regulation. The track access contracts incorporate national access conditions approved by the Office of Rail Regulation which, amongst other things, provide procedures dealing with changes to the network which seek to ensure all users of the railway infrastructure are properly consulted and protected.

2. The activities of Network Rail as network operator are regulated by the Office of Rail Regulation under the Railways Act 1993 (the 1993 Act") by means of network licence described in paragraph 3 below.

3. Network Rail operates the railway network under the authority of a network licence granted under section 8 of the 1993 Act. Condition 1 of that licence (Network Management), which was revised in April 2009 sets out Network Rail's responsibilities for maintaining, renewing and developing the rail network.

4. The purposes specified in the network licence are to secure:-

- 4.1. The operation and maintenance of the network;*
- 4.2. The renewal and replacement of the network; and*
- 4.3. The improvement, enhancement and development of the network.*

5. In each case Network Rail must carry out its responsibilities in accordance with best practice and in a timely, economic and efficient manner so as to satisfy the reasonable requirements of persons providing services relating to railways and funders in respect of quality and capability of the network. Network Rail is under a duty (enforceable by the Office of Rail Regulation) to operate and manage the rail network efficiently and economically, so far as reasonably practicable and having regards to all relevant circumstances, to satisfy the needs to train operators and rail users.

6. Where part of the network ceases to be in operational use but is retained as part of the network, it is termed 'mothballed'. It is often the case that railway is mothballed for some time, and then taken up by the network when the requirement for it is resumed. Railways Closures Guidance issued by the

Department for Transport under Part 4 of the Railways Act 2005 (18 October 2006) ("the Closures Guidance") recommends that in formulating closure packages, it may be appropriate to consider options for mothballing parts of the network or stations considered for closure where, for example, there is a reasonable prospect that demand for services over that part of the network might increase in future years to an extent that would reverse the results of the closure assessment.

(B) Context

6. Network Rail was in discussions with the Applicant regarding the sale of certain land, which is now subject to compulsory acquisition under the proposed DCO. The land comprises the track and track-bed for the Killingholme branch line which connects Humber Sea Terminal with the wider Network. This branch is part of the operational Network used for freight traffic. Network Rail is unable to commit to sell this land to the Applicant as it contains part of the Network that services third party land (Humber Sea Terminal) pursuant to an existing contract. Consent of those third parties is required in the event of the land being sold and any network change. In addition, closure of the Killingholme branch line is subject to the regulatory procedures in Part 4 of the Railways Act 2005.

7. In October 2011 Network Rail notified the Applicant that the sale would not be possible as third party consent had not been obtained on the grounds that the line is required to retain a connection to the Network.

8. In addition, Network Rail is aware of potential requirement for an increase in demand for line capacity both from the Port of Immingham and other third parties. This increase in demand is likely to be compounded by proposed development in the area (including renewable energy development). There is a mothballed track-bed which links the Killingholme Branch to the Barton on Humber Branch at Goxhill which might potentially service this requirement if brought back into the Network.

(C) Impact on Network Rail

9. The proposed DCO seeks in article 29 powers to compulsorily acquire land owned by Network Rail, or in which Network Rail has an interest, comprising operational railway. This land is identified on the Land Plans submitted with the Application as the land numbered 02008, 03013, 03014, 03015, 04004, 04013, 04014, 04024, 04025, 05023 to 05028, 07001.

10. In addition, the proposed DCO seeks in article 47 to remove part of Network Rail's operational railway where that railway is within the limits of the DCO, and in so doing to deem the closure of that part of the railway as a minor modification for the purposes of Part 4 of the Railways Act 2005. The effect of this deeming provision is to circumvent the regulatory framework set out on the Railways Act 2005 relevant to such decommissioning of operational railway.

(D) Network Rail's concerns Compulsory Acquisition of operational land

11. Network Rail objects strongly to the compulsory acquisition of its operational land as detailed in paragraph 9 of this Relevant Representation.

12. *The grounds on which Network Rail objects to the compulsory acquisition of its operational land are as follows:-*

12.1. *Operational Network: The proposed DCO seeks powers to compulsorily acquire land within Network Rail's operational network. The effect would be that the Promoter would be able, without any consultation, to acquire and take possession of operational railway infrastructure, and operational land in the vicinity of the railway. As mentioned in paragraph 5 above, Network Rail is under a statutory obligation to procure the availability of safe train paths. The proposed compulsory purchase is of great concern to Network Rail. The compulsory acquisition of operation land will involve obstructing the railway network by effectively closing the parts of the railway network affected by the proposed DCO to the exclusion of Network Rail and existing users with the benefit of valid contracts. This would have major safety implications, for example, Network Rail would have limited access to cables, signalling and other conducting media required for the safe and efficient operation of adjoining railway infrastructure. It would also place Network Rail in breach of the existing access contracts.*

12.2. *Statutory undertaker's land: Network Rail is a statutory undertaker for the purposes of section 127 of the Planning Act 2008. The land referred to in paragraph 9, which is subject to the proposed compulsory acquisition, is land used for the purposes of carrying on Network Rail's undertaking. Section 127 states that an order granting development consent cannot contain provision authorising compulsory acquisition of statutory undertakers' land unless the Secretary of State is satisfied that its that the nature and situation of the land is such:- that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or that if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on thereof." Network Rail submits that this test cannot possibly be satisfied in respect of the land subject to compulsory acquisition under the proposed DCO. This part of the network is fundamental for access by rail to Humber Sea Terminal. Network Rail is committed under the terms of an existing Connection Agreement with Humber Sea Terminal to provide access to the Network. The compulsory acquisition, were it to proceed, would cause serious detriment to Network Rail in placing it in breach of the terms of the contracts for the provision of rail services in the course of its undertaking.*

12.3. *Protective Provisions: Notwithstanding Network Rail's objection to the effect of article 47 of the proposed DCO (as to which see paragraph 13 below), Network Rail would expect to see protective provisions within the proposed DCO. Protective provisions are invariably included in private Bills, Orders promoted under the Transport and Works Act 1992 and Development Consent Orders (such as the proposed DCO) for the protection of operational railway networks, and have the effect of protecting Network Rail, it's operational land and infrastructure. Network*

Rail is concerned that no such provision is made in the proposed DCO. As such, the proposed DCO is materially deficient.

12.4. Consultation: As is explained in paragraph 7, early discussions with the promoters took place regarding the potential sale of operational land. The promoters ceased to engage with Network Rail following advice from Network Rail that the sale of the land would not be possible, and no consultation on the compulsory acquisition of the operational land set out in paragraph 9 was undertaken. This lapse in consultation is against the spirit of the Planning Act 2008 and related Guidance Notes, which is specific in its requirement that a developer has a duty to allow those affected by a development the opportunity to influence the proposal before it is finalised, at the pre-application stage. Network Rail has not been afforded any such opportunity in respect of the proposed compulsory acquisition of its operational land. 12.3. Licence conditions: In the event that railway is removed from the regulatory framework described in section (A) above, Network Rail would be in breach of its statutory duty to operate the rail network efficiently and economically. Network Closure.

13. Network Rail strongly objects to the proposed forced closure of part of its network. The effect of section 47 of the DCO, if made, will be to undermine the detailed regulation of network closure set out in Part 5 of The Railways Act 2005, and the Closure Guidance. This expressly contradicts the intention and purpose of the Railways Act and Closures Guidance and is completely unjustified.

13.1. Railways Closure Guidance

(i) Closures Test

The Railways Closure Guidance prescribes that the decision to close part of the Network must be made by the rail operator, or the Rail Funding Authority ("RFA"). Five objectives for transport are central to the appraisal of whether a closure should be made, being (1) Environmental, (2) Safety, (3) Economy, (4) Accessibility, (5) Integration. A two-limbed test must be satisfied prior to that decision being made: (a) the closure proposal (or appraisal thereof) is consistent with the closures guidance and any subsequent changes made to it; and (b) the retention of the rail service, station or network proposed for closure does not represent good value for money compared with the opinion of the closure. Network Rail has been approached by third parties regarding a renewable energy developments, including a proposed Biomass Generating Plant, which require rail service from the Killingholme branch line. As noted in paragraph 5, the Closures Guidance recommends against the closure of part of the Network where there is a reasonably prospect of demand for rail services over that part increasing. The closure of the Killingholme branch line would therefore be directly contrary to the Closures Guidance. Not only is there real prospect of the demand for rail services over that part of the Network increasing; given that increase in demand, the closure does not represent good value for money, and therefore fails to satisfy the second limb of the test.

(ii) Procedure

The Railways Closure Guidance also prescribes the procedure to be complied with prior to a closure. Wide ranging public consultation concerning the proposed closure, setting out a clear summary of the results of the assessment of the proposed closure, a summary of the options considered as part of the initial review and the reasons why these were not followed, a description of the likely effects on passengers using the services to be closed and a description of the existing public transport provision in the area. The consultation should also provide such detail as may reasonably required to enable those responding to do so in a reasonable way. Network Rail are not aware of any such consultation being carried out, and in particular note that the documentation of the consultation undertaken with the ORR does not address the proposed closure.

(iii) *Role of the ORR*

The role of the ORR in closure scenarios is to provide an independent review of whether the closure proposals satisfy the guidance. Where the ORR does not consider this to be the case, it may issue a non-ratification closure notice. In deeming the closure of the Killingholme branch line to be a minor modification, the effect of section 47 of the proposed DCO is to undermine the independent review of the closures process, thus striking to the heart of the regulatory intention of the legislation and Guidance. Not only does this deeply prejudice Network Rail's position and ability to comply with the terms of its Network Licence, but it also sets a worrying precedent as regards the legislative status of a development consent order.

14. *Railways Act 2005*

The 2005 Act distinguishes between a closure and a 'minor modification'. Section 34 provides that a proposal is a minor modification if comes within the definition of s 35. The Killingholme Branch is a network asset, open to all to use. It does not come within the definition of s35 of the Railways Act 2005 and requires Network Change authorisation and authorisation pursuant to s33 of the 2005 Act.

(D) *Conclusions*

15. *Network Rail does not object in principle to the scheme. However, it strongly objects to the proposed compulsory acquisition of operational land, as well as the proposed effect of section 47 of the DCO.*

16. *Network Rail reserves the right to raise further issues in evidence should the Applicant accept that section 47 be removed from the proposed DCO and protective provisions be inserted in the proposed DCO in the interests of Network Rail.*

Applicant's Comments

- 30.2 The applicant's proposals do not include closure of the railway in the sense that it would be taken out of service. Nor does the applicant seek to deny rail access to Humber Sea Terminal, now C.Ro Ports (Killingholme) Ltd (CPK), a point that the applicant has made clear to both parties.
- 30.3 The section of rail line affected by the scheme does not serve the passenger network at all and there is no realistic prospect of passenger services being re-introduced on the line.
- 30.4 In August 2010, Network Rail confirmed to the applicant that selling or leasing the railway to the applicant was their preferred option which seems to negate any genuine argument that the line is essential for their undertaking.
- 30.5 The section of the railway that passes through the site currently serves a single user who has not made use of the facility for several years, and the line is effectively mothballed. The applicant wishes to retain the benefit of the railway for AMEP and CPK and the most reasonably practicable solution is to incorporate the rail line into the operational port, managed by the port operator. This same situation exists within the Port of Immingham.
- 30.6 **The Office of Rail Regulation (ORR) was consulted on the applicant's proposals as part of the statutory consultation process. The ORR specifically commented on the proposed transfer of ownership of the Network Rail land stating that:**
- '(w)e note your intention to transfer the land from Network Rail to the developer which implies that this will obviate level crossing renewals. You should therefore note that the same safety standards do apply to private level crossings as to Network Rail level crossings'.*
- 30.7 It is therefore evidenced that the rail line passing through the site and terminating at Humber Sea Terminal can be safely operated and managed as part of the port estate, obviating an unnecessary and complex interface with the public railway. In effect it would operate as a private siding with its own appropriate safe operating procedures.
- 30.8 The applicant considers that the alternative of retaining Network Rail infrastructure through the site would be a significant encumbrance to the efficient and cost effective operation of the development; Network Rail has advised the applicant that in this event, there would need to be **'a solution that bridges the existing Rail Network line'**. This is not a reasonably practicable solution for the end-use of the site as a port.
- 30.9 The applicant has considered the option of diverting the railway around the site but has discounted it as there is no feasible alignment that would not result in a significant proportion of **the site being 'cut through'**.
- 30.10 Network rail states that it, **'is aware of potential requirement for an increase in demand for line capacity both from the Port of Immingham and other third parties. This increase in demand is likely to be compounded by proposed development in the area (including renewable energy development). There is a**

mothballed track-bed which links the Killingholme Branch to the Barton on Humber Branch at Goxhill which might potentially service this requirement if brought back into the Network', (paragraph 8 above). It further states that it, 'has been approached by third parties regarding a renewable energy developments, including a proposed Biomass Generating Plant, which require rail service from the Killingholme branch line', (paragraph 13.1(i) above).

- 30.11 Network Rail does not elaborate very greatly on the need argument that it seeks, at least in part, to rely on; the broad contention being (ironically), that the transfer of land to the applicant **would risk the UK's renewable energy objectives**. The applicant acknowledges that Drax Biomass Immingham Limited has recently obtained consent for a 299 MW biomass power station to the south of AMEP. Whilst the Environmental Statement for that development identifies movement of fuel and ash by road, rail and sea, the application contains no proposals for the use of the existing Killingholme Branch Line.
- 30.12 The applicant is not aware of any other detailed proposals for biomass fuelled power stations in the area although the proposed C.GEN facility may wish to use rail to service its site. The applicant notes however that the initial proposals for AMEP included a biomass power station but that insufficient commercial interest existed to retain it within the final proposals.
- 30.13 The applicant is aware that Network Rail undertook a preliminary study in 2007 to improve rail connectivity to the South Humber Bank. Network Rail produced a draft report but the study does not appear to have been published as a finished document; it is understood that this was due largely to the absence of a compelling economic case for any rail improvements at that time. The applicant appreciates that the economic case may have changed very recently but the need for retaining this spur of the network as operational Network Rail infrastructure appears inchoate at best. Network Rail seem to be giving great weight to the mere possibility of a demand arising in the future rather than any certain need.
- 30.14 Notwithstanding the wide ranging legal argument and policy issues set out by Network Rail, the Planning Act 2008 provides a valid mechanism for the compulsory purchase of statutory undertakers land where it is in the public interest to do so. Indeed, under the provisions of the 2008 Act, where the undertaker maintains an objection to compulsory acquisition, then it is for Parliament to decide on the merits of the issue.
- 30.15 The AMEP proposals have been broadly consulted upon in accordance with the statutory requirements of that Act and the applicant contends that the public interest is best served by the development of AMEP as a coherent single port site with a private rail siding.
- 30.16 Whilst therefore Network Rail has confirmed to the applicant that it is no longer prepared to sell its land and infrastructure to the applicant, the case for retaining it as part of their operational network, as currently expressed, does not seem either compelling or to be in the public interest.

31. **REPRESENTATION No. 36 – Lincolnshire Wildlife Trust**Relevant Representation

- 31.1 The following representation was received by the Infrastructure Planning Commission from Lincolnshire Wildlife Trust on 26th March 2012.

The Lincolnshire Wildlife Trust (LWT) is registering an objection to this application: we are not satisfied that the need for this type of development at this location has been proved conclusively (consideration of alternatives) or that the mitigation and compensation measures proposed are sufficient to fully mitigate and compensate for the adverse impacts that would be caused to internationally, nationally and locally important habitats and species. LWT supports development of renewable energy sources and infrastructure but is firmly of the opinion that such development should not be to the detriment of protected or priority habitats and species. The proposed location for the Marine Energy Park is within and adjacent to the Humber Estuary therefore the Trust has serious concerns regarding the impact of the proposed development on the Humber Estuary Special Area of Conservation (SAC), Special Protection Area (SPA), Ramsar Site and Site of Special Scientific Interest (SSSI), and North Killingholme Haven Pits SSSI. Of particular concern is the loss of 55 ha of estuarine habitat. This includes 31 ha of the Killingholme Marshes intertidal mudflat habitat, important for wintering and migrating SPA wader species. Killingholme Marshes is of particular importance to wading bird species, such as black-tailed godwit, dunlin and redshank, which have been recorded in numbers greater than 1% of their Humber SPA qualifying populations. 66% of the SPA population of black-tailed godwit has been recorded here. LWT considers that the loss of estuarine habitat is likely to damage the integrity of the Natura 2000 site and is not yet convinced that the proposed compensation would deliver both the habitat types in the ratios to compensate for those lost and also the functionality to provide a feeding resource needed by SPA birds such as black-tailed godwit. To demonstrate its ability to function, the compensation site should be delivered before development begins at Killingholme Marshes. Effective monitoring must be a condition, to determine whether it is effectively delivering in form and function. A contingency plan should be a condition of any approval to ensure adequate compensation is delivered in the event that the compensation proposed is inadequate. The proximity of the proposed development to Killingholme Haven Pits Nature Reserve and SSSI is also of serious concern to LWT: the pits support significant populations of SPA species such as black-tailed godwit, dunlin and redshank (97% of the SPA population of black-tailed godwit recorded roosting at Killingholme Haven Pits) and avocet and marsh harrier breed. The SSSI is already surrounded on three sides by development: the proposed quay will increase isolation from the estuary. LWT is satisfied that the proposal for mitigating loss of habitat of value for feeding, roosting and loafing by estuarine birds appears to fit in with the South Humber Gateway mitigation principles. LWT is satisfied that issues could be resolved relating to other protected species. LWT is concerned over the proposed loss of Station Road Field Local Wildlife Site. The proposal to create additional neutral grassland in Mitigation Area A requires further examination as this area should be managed as wet grassland to provide feeding and roosting habitat for birds such as curlew. LWT considers that an area of species rich neutral grassland at least

double that to be lost should be created and managed without compromising the functioning of Mitigation Area A for SPA birds.

Applicant's Comments

- 31.2 The area of 55 ha quoted in the representation is incorrect, refer to the comments on Representation No. 1.
- 31.3 The need for the development, and the absence of any alternative is comprehensively addressed within Chapters 5 and 6 of the ES.
- 31.4 The representation is rather contradictory with respect to its views on the adequacy of measures proposed for mitigation and compensation. It begins by stating that, *'we are not satisfied that the mitigation and compensation measures proposed are sufficient to fully mitigate and compensate for the adverse impacts that would be caused to internationally, nationally and locally important habitats and species.* However towards the end, the representation concludes that, *'LWT is satisfied that the proposal for mitigating loss of habitat of value for feeding, roosting and loafing by estuarine birds appears to fit in with the South Humber Gateway mitigation principles. LWT is satisfied that issues could be resolved relating to other protected species'*, (underline added).
- 31.5 With respect to the proposed compensation measures, refer to comments on Representation No's 1 and 2.
- 31.6 The impact of previous development around the pits is considered in Annex 35.6 which states that:
- 'It is clear that there has been major increase in use of the pits by Black-tailed Godwits for roosting at high tide at the same time as these developments have been implemented; there is no apparent adverse effect on the birds' use of the Pits.*
- All of these developments have not affected the open character of the Pits to the seaward eastern side, allowing the godwits and other roosting waders a clear flight line into the pits from their feeding areas on the shore to the south-east and from the north bank across the Humber'*, (page 17).
- 31.7 The neutral grassland at Station Road fields will be recreated within the buffer strip for Mitigation Area A that serves to protect the core bird feeding area from disturbance. Twice the area that is lost will be recreated. Management of this area will be detailed within the Ecological Monitoring and Management Plan (EMP) for the site.
- 31.8 The draft Development Consent Order includes a requirement for an EMP to be agreed with the local planning authority before commencement of the development.
- 31.9 The applicant has sought a meeting with LWT following receipt of the RR but they declined to attend one before the pre-examination meeting had been held. A site meeting was subsequently held with their representative on 19 June 2012, to discuss maintenance works requirements at NKHP.



AMEP
APPLICANT'S COMMENTS ON THE
RELEVANT REPRESENTATIONS

Date: June 2012

32. **REPRESENTATION No. 37 – Homes and Communities Agency**

Relevant Representation

32.1 The following representation was received by the Infrastructure Planning Commission from Homes and Communities Agency on 28th March 2012.

The Homes and Communities Agency (HCA) has been consulted on this application under Regulation 13, Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. The Homes and Communities Agency (HCA) is the national housing and regeneration agency. I can confirm that the HCA has no directly relevant comments to make on this application.

Applicant's Comments

32.2 No comment.

33. **REPRESENTATION No. 38 – David K. Hickling on behalf of Mr. Stephen Kirkwood**

Relevant Representation

33.1 The following representation was received by the Infrastructure Planning Commission from David K. Hickling on behalf of Mr. Stephen Kirkwood on 28th March 2012.

33.2 TEXT OF ORIGINAL RELEVANT REPRESENTATION RECEIVED 08 MARCH 2012

I represent the tenant farmer of land included in the application as nature compensation land at Cherry Cobb Sands, Keyingham, East Yorkshire. I am of the opinion that the assessment of alternative nature compensation sites in the application is inadequate and does not comply with the requirements of the EIA Regulations, 2011. I believe there to be more suitable sites for replacement nature conservation purposes than that chosen at Cherry Cobb Sands. I am of the opinion that the proposed nature conservation land at Cherry Cobb Sands will not, indeed cannot, (due to site and tidal levels), provide a suitable like for like" ecological habitat for that being lost to development at North Killingholme and that, consequently, the requirements of the Habitats Regulations are not fully met. In particular, I am of the opinion that the scheme will not produce any inter-tidal mud-flats to replace that being lost at North Killingholme - and have evidence with regard to site and tidal levels to support this view. In this respect I have reservations about, and a lack of confidence in, the role and involvement of Natural England in the application process, who appear to be agreeing to something that is contrary to their own guidance as well as the European Directive. Local residents are willing to produce statements and / or give evidence to the IPC to refute the statements made in the application that a similar habitat creation scheme at Paull Holme has been successful. Local residents are also willing to attest that inter-tidal mud-flats are growing in the vicinity of Cherry Cobb Sands at an appreciable rate - suggesting that the mud-flats lost at North Killingholme could be replaced naturally, without the need for the proposed nature compensation land. I am of the opinion that the data and data analysis relating to silting and sedimentation contained in the application is out of date and being used to draw invalid conclusions. I have seen recent data, obtained by a local resident at Stone Creek, to show that the application makes inaccurate assumptions and predictions about sedimentation, in particular at the outfall to Stone Creek into the Humber Estuary. If I am correct, and the application data is found to be inaccurate, it is likely that the proposed works to provide replacement nature conservation land at Cherry Cobb Sands will lead to silting that would significantly reduce the flow of local drainage channels into the Estuary, thereby exacerbating flooding inland, and would also quickly lead to the closure of a local boat club. I am of the opinion that the applicants have carried out inadequate and insufficient investigations into the likelihood of land contamination in the area described as "Field 4" in the application. If, as is strongly suspected, a large part of this area is contaminated, it is possible, indeed likely, that large amounts of contaminated land will have to be removed from the site. Neither the application nor the ES anticipates this possibility, which could give rise to significant environmental effects in the nearby local communities. Neither is there any discussion in the ES as to where such

contaminated material might be relocated to. I am of the opinion that a large amount of material will have to be removed from the site in order to create the levels stated. As this material is not suitable, on its own, for creating the proposed new flood banks, it will have to be removed from the site - and new material brought in to create the flood banks. Neither the application nor the ES anticipates this possibility which could give rise to significant environmental effects in the nearby local communities. I have reservations about some of the data presented in the application, for instance where figures presented are "+/- 50%" or "within 1 -2 metres". I am also concerned that some data is over 5 years old, which in a constantly changing estuarine environment is simply not acceptable, in my opinion. Finally, I have been unable to locate any reference to planning policy relevant to the proposed nature conservation compensation land at Cherry Cobb Sands, i.e. the East Riding of Yorkshire Council / Hull City Council Joint Structure Plan and the Holderness Local Plan - both of which are part of the statutory development plan. These plans contain policies of relevance to the planning application. Submission to the Infrastructure Planning Commission on behalf of Mr S. Kirkwood, the tenant farmer of land at Cherry Cobb Sands, East Yorkshire, identified in the application by Able (UK) Ltd as nature compensation land under IPC reference TR030001.

Applicants Comments:

33.2.1 The representation raises a number of issues, viz.

- The proposed compensation site at Cheery Cobb Sands is incapable of **delivering 'like for like' compensation.**
- That previous managed realignment schemes have not delivered mudflat habitat.
- That natural change can be relied on to compensate for the direct impacts of the development.
- That data used in the assessment is no longer valid.
- That the project will cause increased siltation at Stone Creek.
- That contaminated land might be present within the proposed compensation site and that potential impact has not been assessed.
- Material will need to be imported to construct the new flood defences.
- There is no reference to local planning policies

These matters are addressed in turn below.

33.2.1.1 The EC Habitats Directive 92/43/EEC does not define how compensatory measures should address the adverse effects of a project. However **Commission guidance, 'Clarification of the Concepts of: Alternative Solutions, Imperative Reasons of Overriding Public Interest, Compensatory Measures, Overall Coherence, Opinion of the Commission'**, (EC, 2007) sets out priorities and principles. The Directive sets out a requirement to protect coherence and therefore presumes that the original network is coherent. Commission guidance states that measures should:

'a) address in comparable proportions the habitats and species negatively affected;

b) provide functions comparable to those which had justified the selection of the original site, particularly regarding the adequate geographical distribution', (page 13).

This is often referred to as 'like for like' compensation.

Commission guidance also sets out priorities for the location of compensatory measures which are, in order:

- i. Compensation within the Natura 2000 site.
- ii. Compensation outside the Natura 2000 site concerned but within a common topographical or landscape unit provided the same contribution to the ecological structure and/or network function is feasible.
- iii. Compensation outside the Natura 2000 site in a different topographical or landscape unit.

33.2.1.2 Topographical and landscape unit is not precisely defined. In the UK the established practice has been to locate compensation within the same geographical area or ecological system (following priorities i and ii above). This reduces the risk that the measures will fail to protect coherence, as they are acting within the same part of the geographical distribution of the habitat or species. It is relatively straightforward with this approach to show that proposed measures will make an equivalent contribution to the coherence of Natura 2000. The third option of compensation in a different area (topographic or landscape unit in the words of the Commission guidance) has not been widely applied in the UK.

33.2.1.3 **The applicant's proposals for compensation** are consistent with the EC guidance summarised above. The detailed design of the intertidal site will include for the re-grading of the site to ensure that initial ground levels and gradients are optimal for the creation of like for like compensation. The design process will include computer modelling to provide long term predictions for the development of habitat over a 5 year and 10 year timescale.

33.2.1.4 The applicant will agree a monitoring and maintenance plan for the site with Natural England to ensure optimal management of the site.

33.2.1.5 A review of completed managed realignment schemes on the Humber Estuary has been undertaken by the applicant and is reported in Annex 32.5 of the ES. The development of these sites will inform the detailed design of the compensation site. Whilst the development of the compensation site cannot be predicted with certainty, this is in part addressed by the quantum of compensation that is proposed which is significantly greater than the quantum of direct and indirect losses estimated to occur and by the plan referred to above.

- 33.2.1.6 The representation claims that significant mudflat is being created in the vicinity of Cherry Cobb Sands. Whilst information in relation to natural change within a very small area of the designated site is useful, it cannot be taken in isolation; estuary wide monitoring undertaken by the EA indicates that mudflat is being lost within the Humber Estuary as a whole due to natural change. This is anticipated to continue for the foreseeable future due to sea level rise, refer to the '*Humber Estuary Coastal Habitat Management Plan*' or CHaMP, (EA, 2005).
- 33.2.1.7 Whilst the representation claims that data used in the assessment is no longer valid, it is not specific. As the representation is predominantly concerned with hydrodynamic effects then the applicant confirms that the modelling used the latest available information at the time that the work was undertaken.
- 33.2.1.8 The impact of the scheme on sedimentation in Stone Creek is assessed in Annex 32.4, Section 4.5 of the ES. Siltation is not expected to change as a consequence of the scheme. Nevertheless, an effect cannot be excluded due to the uncertainty attached to hydrodynamic modelling. Accordingly paragraph 4.5.5 recommends monitoring of sediment levels. Routine maintenance dredging is currently undertaken. It is considered that there is only a slight risk that the frequency of dredging operations increases due to the scheme.
- 33.2.1.9 The potential for contaminated land to be present within the proposed intertidal area has been assessed and the options for addressing that risk should it be realised are outlined in Annex 31.4 of the ES. The applicant is currently undertaking further intrusive investigations of the site to provide sufficient information for detailed engineering design purposes. Preliminary results indicate that contaminated land is present in one of the areas identified within the applicants risk assessment. Initial evidence indicates **that the material was deposited on the site in the late 1960's to early 1970's**. In these circumstances the Environmental Protection Act 1990, Part IIA, requires that any necessary remediation work is the responsibility of an '*appropriate person*', or, alternatively that the enforcing authority may undertake remediation work and recover the cost of doing so. An '*appropriate person*' is defined as either being any person or persons who caused or knowingly permitted the substances giving rise to the contaminated land being in, on or under that land, or is the owner or occupier of the land in question.
- 33.2.1.10 Subject to treatment by the addition of lime or cement, there is sufficient material within the compensation site to construct the new flood defences.
- 33.2.1.11 The site selection process undertaken by the applicant for the compensation site is detailed in Annexes 30.1 and 30.2 of the ES and includes references to local plan policies. There are references within the ES with respect to both local plan policies and the Joint Structure Plan (for example, Section 36.2). The flood risk assessment for the compensation site also noted that, '*(a)t present, the whole Compensation Site is covered by the Joint Structure Plan for Kingston Upon Hull and the East Riding Of*

Yorkshire (Hull City Council & East Riding of Yorkshire Council, 2005) and the Holderness District Wide Local Plan (1999)' (Annex 36.1, para 2.1.12); a brief review of the relevant policies is then presented.

- 33.3 A further relevant representation submitted 28 March 2012. As, in this instance, the representation is particularly long, the applicant's comments have been inserted in plain type at appropriate intervals.

Introduction

1. This submission is made by Hickling-Gray Associates, Chartered Town and Country Planning Consultants, of 11, Saturday Market, Beverley, East Yorkshire, HU17 8BB, on behalf of Mr S. Kirkwood of , , , , .

2. Mr S. Kirkwood is the tenant farmer currently occupying around 100ha of land at Cherry Cobb Sands, East Yorkshire, identified within IPC application reference TR030001 submitted by Able (UK) Ltd.

3. The proposed use of the land at Cherry Cobb Sands is as replacement inter-tidal mudflats to compensate for the loss of similar land at North Killingholme, where the applicants wish to construct a new manufacturing and port facility to serve the emerging renewable energy market.

4. Mr Kirkwood ("the objector") wishes to register his opposition to the use of land at Cherry Cobb Sands as replacement nature conservation land (not to the construction of the proposed new port / manufacturing facility per se) for the following reasons, each of which is expanded upon below: -

(i) There may not be a need for any compensation land to be provided in connection with the proposed development;

(ii) If such provision is found to be necessary, however, the site at Cherry Cobb Sands (CCS) is not the most suitable alternative and the site identification process was not robust, transparent, or objective;

(iii) Data, including some baseline survey information, and assumptions, relied upon in the ES, is either out of date, inaccurate, and / or leads to uncertainty;

(iv) The proposed measures will not create the conditions necessary to provide "like for like" compensation and will not, therefore, maintain the overall integrity of the Natura 2000 site;

(v) The proposed development at CCS will lead to increased silting at the outfall of Stone Creek to the detriment of land drainage in South Holderness and users of the Stone Creek Boat Club, and;

(vi) The applicants have paid inadequate attention to the issue of land contamination and the potential need to use and/or move soil and other materials from, to, and within, the site;

(vii) The likely effect on footpath users has been under-valued.

(viii) The need for nature compensation land

5. The objector is a longstanding local resident at Sands House Farm, having lived there all his life. He, and other local residents, are very familiar with the estuary coast at, and close to, CCS and have observed constant changes in coastal morphology from week to week, month to month, and year to year.

6. The objector, (and others) has observed the natural formation of some 16ha of new inter-tidal mudflat between Little Humber and Stone Creek over the past 7 years as coastal currents have deposited sediment in this general location. This activity is a small part of the longer-term accretion and formation of mudflats in the Humber Estuary stretching back some 2 - 300 years.

7. Whilst the objector has no documentary evidence to support this assertion, he and other local residents maintain the veracity of their claim, and, in accordance with the precautionary principle, feel that their claims warrant further investigation by the applicants to avoid a situation whereby the land at CCS is taken unnecessarily.

8. If the objector's claim is found to be correct, the applicants would be justified in not providing any nature compensation land in their application, thereby saving them unnecessary expense and the loss of high quality farmland, since the mudflats lost to the proposed development will be replaced through natural processes over a relatively short time period.

9. The loss of high quality farmland is, in itself an important issue that has been largely ignored in the application. At a time when climate change makes future food security an important - and uncertain - issue, the objector is of the opinion that society should not be sanctioning the loss of such land when circumstances may not warrant it.

Applicants Comments:

33.3.1.1 The representation does not substantiate the assertion that there has been 'longer-term accretion and formation of mudflats in the Humber Estuary stretching back some 2 - 300 years', and the objective evidence relating to the historic changes to the estuary over the last 200 years does not support it. A useful summary is provided in, '*Habitat Loss in the Humber Estuary, UK*', (Harbasins, 2008); Table 1.1 of that report is reproduced below.

Table 1.1: Absolute change in the extent of the intertidal area between surveys (ha).

Area	Middle Humber	Outer Humber	North Lincs. Coast	Total
1828 to 1875-77	-1,051	-1,798	-508	-3,357
1875-77 to 1913-19	139	-345	118	-88
1913-19 to 1993-96	199	157	250	606
Total	-713	-1,986	-140	-2,839

33.3.1.2 The EA's Humber Estuary CHAMP details predicted losses of intertidal habitat over the period 2000-2050. Table 5.2 of the CHAMP is reproduced below, all figures are in hectares.

Table 5.2 Estimated changes in intertidal area 2000-2050

	Humber (excl. rivers)	Outer Estuary	Middle Estuary	Inner Estuary	Rivers Ouse + Trent
1.8mm/yer sea level rise	-200	-50	-140	-10	+5
6.0mm/year sea level rise	-600	-180	-360	-60	+10
Historic change 1950-2000	-55	80	-485	350	Not known

NOTE: 'Humber' includes outer, middle and inner sections, but excludes the Ouse and Trent rivers.

(ii) Alternative sites

10. *If, following further investigation, a case for the provision of nature compensation land is found to exist, and having considered the alternatives set out in the application, the objector maintains that the site at CCS is not the most appropriate choice.*

11. *The applicant's submissions provide information on a series of possible alternative sites for the nature compensation land required under Stage 4 of the Article 6 assessment. Of these, there are 5 which appear to the objector to represent more suitable alternative nature compensation opportunities than CCS, namely: Site 3, Little Humber; Site 8, Outstray Farm; Site 10, Skeffling; Site 12, New Holland; and Site 15, Halton Marshes.*

12. *Furthermore, paragraph 4.1. 2 of Annex 30.1 "Alternative Sites Assessment" (Black and Veitch: May 2011) states that "other sites remain potentially feasible", suggesting that the applicants' site analysis is incomplete. Certainly, there is no consideration in the alternative sites assessment of such issues as land ownership, agricultural quality, local economic impact, the security of food production, etc. etc.*

13. *Another important consideration missing from the applicant's analysis of alternative sites is the increased risk to domestic properties from flooding resulting from the proposed development.*

14. *In the present case, as Drawing No. 121726-5000-004 Rev. A shows, the proposed re-alignment of flood defences at Cherry Cobb Sands brings the objector's dwelling within the "Danger to All" category - with a subsequent impact on property values, risk to life and property, and on his position under the European Convention on Human Rights.*

15. *Somewhat surprisingly, and with no justification whatsoever, the alternative sites assessment makes it quite clear that only sites owned by the Crown Estate Commissioners have been considered, (paragraph 1.2.1), leading to speculation that some sort of an arrangement had been entered into between the applicants, the Crown Estate, and Natural England - hardly a "transparent and objective" approach!*

16. *Of the 5 sites listed above, two are located on the Humber south bank and are, therefore, in much closer proximity to the site being "lost" than CCS or any of the other north bank sites listed in Annex 30.1, and the objector notes that*

proximity is an important consideration in the Stage 4 guidance for Article 6 assessments

17. Indeed, the official guidance relating to Stage 4 requires applicants to address, in comparable proportions, the habitats and species negatively affected in as close proximity as possible .." (to the site being "lost"), thereby clearly suggesting that compensation sites closer to the affected land should be adopted before other, more distant sites, where other considerations are equally balanced.

18. Further doubts regarding the robustness of the alternative sites assessment arise from paragraph 4.1.4 of Annex 30.1 which states that "no data or ground levels has been obtained" for any of the possible alternative sites. 19. The objector is unclear how the applicants could possibly have reached an informed conclusion regarding alternative sites without such basic information, and cites this as an example of the less than robust manner in which the site selection process has been undertaken, (a further example being the absence of any "clearly defined implementation and management objectives" for the CCS site).

Applicants Comments:

- 33.3.1.3 The assessment of potential alternative compensation sites has been proportionate. Even if the applicant had undertaken extensive EIA on every alternative site, there would still be an element of subjectivity about the site selected; this is because many factors must be weighed in the balance and people make judgements from different perspectives. The issue is also, understandably, emotive.
- 33.3.1.4 A detailed flood risk assessment for the compensation site is provided in Annex 36.1; the impact of the development on flood risk to properties is provided in Section 2.4 of the report. Following further consultation between the applicant and the Environment Agency, an Explanatory Note (EX36.2) on the change in flood risk to properties on Sunk Island has been prepared and is included in the volume of supplementary environmental information.
- 33.3.1.5 Whilst ground levels were not considered in detail within the broad site selection process outlines in Annex 30.1, digital mapping was used to screen the more detailed assessments in Annex 30.2 (refer to para 2.1.2).

(iii) Inadequate data

20. As stated in paragraph 14, above, the objector has reservations about some of the data sources used in the application. In the examples cited above, it is the absence of adequate data that causes concern (regarding site levels and natural mudflat creation); in the case of nature conservation issues, it is the age of the data used.

21. Bearing in mind the well-known and well-documented rates of erosion and accretion in the Humber Estuary, it is somewhat surprising - and can hardly be described as being "robust" - that the application relies on 5-year old information

regarding the possible rate of mudflat and salt marsh creation at CCS - specifically, the baseline data relating to the much-relied upon managed realignment site at Paull Holmes Strays dates from 2008.

22. Surely, where the creation of suitable replacement habitat is such an important consideration, and where the example being used is in such an early stage of its development, more recent data (2007 - 2012) should be supplied - in accordance with the precautionary principle? This would also have the benefit of corroborating (or disproving) the objectors claims regarding natural rates of mudflat formation in the Estuary (see paragraphs 5 - 9 above).

23. For reasons set out in more detail below, the objector is firmly of the opinion that such up-to-date information would cast a very different light on the suitability of the land at CCS as a replacement habitat site. Consequently, the objector considers that the Article 6 Assessment and the ES are neither robust, nor objective, nor transparent.

24. In support of this view the objector notes that the UK methodological guidance states that where there is uncertainty as a result of "an insufficiency of data, or it is inconclusive or imprecise in nature" conservation objectives should prevail (ref. footnote1).

25. Other examples of data inadequacy / inaccuracy can be found at paragraph 5.1.3 of Annex 32.3 (the Black and Veitch Breach Design Report) where it is assumed (with no apparent justification) that "high tide levels at the site are similar to those at Immingham"; in Table 1 of the same report, where a choice of 3 other previous years' figures would give very different results; on drawing ref. AME 02016, which indicates finished site levels plus or minus 1 metre (leading to a frequency of tidal inundation somewhere between 12% and 60% of the time - a very uncertain situation); and on the proposed site layout drawings, where it is evident that site levels were taken as recently as December 2012, and which is still marked as being "Preliminary"

Applicants Comments:

- 33.3.1.6 With regard to the use of data from Paull Holme Strays; the site was breached in 2003 and detailed monitoring undertaken until 2008. This information has been used to infer how a managed realignment site might develop at Cherry Cobb Sands over its first 5 years. Information regarding the development of three other sites is also reviewed in Annex 32.5 of the ES, so far as information was actually available in the public domain.
- 33.3.1.7 Annex 32.3 does not have a paragraph numbered 5.2.3. However, given that the Compensation Site is almost directly opposite to the Port of Immingham, the statement that, "**high tide levels at the site are similar to those at Immingham**" is, to all intents and purposes, axiomatic.
- 33.3.1.8 Table 1 of Annex 32.3 is reproduced below. It is evident to the objective reader that the average of three years data was used to establish an average, as the data for two other years was incomplete. It is also clear that, on any critical reading of the table, the three year average provided

in the final column would not alter significantly even if the full 5 year data had been used where it was available.

Table 1 Frequency of occurrence of high tides at Immingham 1996, 2008-2011

Level mAOD	1996	2008	2009	2010	2011	Average (5 years)	Average (3 years) 1996, 2008, 2010
Percent >2.5	64.0	55.5	56.7	58.6	59.6	58.9	59.4
Percent ≥ 3.0	41.2	32.3		34.8			36.1
Percent ≥ 3.4	15.4	9.6	10.8	11.2	11.9	11.8	12.1
Percent ≥ 3.8	2.5	0.4	1.3	2.6	2.8	1.9	1.8
Percent ≥ 4.0	0.3	0.0		0.7			0.3

33.3.1.9 Drawing AME-02016 submitted with the application shows site levels within the compensation site to be within a specified range which is 2.5 ± 1 mAOD, or 1.5m to 3.5 mAOD. The frequency of inundation will be determined by the breach level which is proposed to be 2m AOD as detailed in para 5.1.1 of Annex 32.3.

33.3.1.10 It is normal custom and practice for professional engineers to mark drawings that are not intended for construction as '*Preliminary*'. Nothing other than that should be inferred in this case.

26. As recently as 22nd March, 2012, the Crown Estate's agents, Messrs Carter Jonas of York, wrote to the objector stating that "there is a requirement for further site investigation work" on the land at CCS, and that the "final drawings" are still awaited from the applicants.

27. This provides further evidence to support the objector's opinion that the applicants simply do not know what they intend to do on the land at CCS, and, consequently, that the precise details of the current application are uncertain, and that the application process has been neither robust or transparent.

Applicants Comments:

33.3.1.11 The further investigations referred to are to inform detailed design of the managed realignment scheme, including the identification of any contaminated land postulated to be present by the respondent during the consultation process.

28. The application is also very poorly informed with regard to future maintenance and monitoring of the nature compensation site at CCS (in the event of the development proceeding) and there are no contingency arrangements in the event of a breach of the proposed defences, unanticipated silting, or habitat failure. Not "like for like" compensation

Applicants Comments:

33.3.1.12 Schedule 11, Requirement 14 of the Development Consent Order provides for the approval of Ecological Management Plans before commencement of any stage of the development. This will cover the development of the Compensation Site and will include monitoring of, inter alia, sensitive receptors such as Stone Creek.

33.3.1.13 Contingency arrangements for tidal flooding will be no different to those in place at present, whereby the Environment Agency provides warnings of flood risk.

29. The objector maintains that the proposed compensation provisions at CCS will not produce "like for like" conditions as required under the Stage 4 notes in the methodological guidance, (footnote 1), which requires the compensatory provisions to "address in comparable proportions, the habitats and species negatively affected in as close proximity as possible...and to provide comparable functions." to the affected site.

30. On the 15th February 2011 Dr Fiona Neale, Natural England's Conservation Adviser to the Marine and Coastal Team in Yorkshire and Humberside confirmed in an e-mail to the objector that, "the created habitat needs to be of the same ecological character and function to that which is lost".

31. On the 16th February, 2011, this opinion was reinforced in a further e-mail from Emma Hawthorne, NE's Conservation Adviser with regard to this project, who stated that, "When deciding on the location of a managed realignment site, there needs to be sufficient evidence that it will provide suitable habitat for all of the relevant designated features that will be impacted through the development. If the site is not deemed suitable then it would be necessary for the developer to secure an appropriate alternative site. Essentially, the created habitat needs to be of the same ecological character and function to that which is lost.

32. Paragraphs 5.4.13 and 14 of the applicants' own Habitats Regulations Assessment Report admits that the land at CCS will not produce "like for like" nature compensation measures. in direct conflict with the regulations, the U.K guidance, and Natural England's own advice.

33. In an attempt to recover this situation the applicants are proposing to convert twice as much land for nature compensation purposes at CCS than is being lost at North Killingholme - thereby acknowledging the fact that the compensatory land will not be on a like for like basis!

34. This is quite clearly a case of the applicant seeking to bend the clear rules set out in the Habitats Regulations, and, perhaps somewhat surprisingly, Natural England agreeing with them!

Applicants Comments:

33.3.1.14 Refer to paragraph 33.2.1.1 above.

33.3.1.15 Four habitat types that are specifically protected by the EC Habitats Directive 92/43/EEC are affected by the reclamation works:

- a. 1130 Estuaries
- b. 1140 Mudflats and sandflats not covered by seawater at low tide
- c. 1310 *Salicornia* and other annuals colonising mud and sand.
- d. 1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)

These habitat types are being compensated on a 'like for like' basis.

35. The objector is of the opinion that the proposed compensation arrangements will not maintain or enhance the overall coherence of the Natura 2000 site because recent, (2007-2012), activity at the Paull Holmes managed re-alignment site suggests that the land at CCS will not develop into mud flats as predicted in the ES / Article 6 assessment, and will not, therefore, produce a "like for like" compensation site.

36. Indeed, there are clear signs in the 2008 Harbasins Report that the Paull Holmes site was / is not delivering the expected nature conservation benefits, as can be seen from the following extract: - ".the foraging assemblage remains dissimilar from that on adjacent existing mud flats in the Middle Humber and whilst targets have been met in terms of species using the site, this is for an area of mudflat far greater than that lost to coastal squeeze and direct land claim. Waterfowl foraging densities in the realignment site remain substantially below those from adjacent areas of the Humber and the site's waterfowl carrying capacity is considered to be well below that for a mid-estuary inter-tidal area" (footnote 2, page 12).

37. The Harbasins report also notes considerable differences in accretion rates between active and less active sections of the Estuary, where rates may range from 5.5cm/yr to 1.3cm/yr.

38. The objector's point is that the applicants use the Paull Holme site as a direct comparable to the land at CCS in order to predict future development of mud flats and salt marsh, whereas, in fact, no such comparisons can be made because the Estuary is more dynamic at Paull Holme than at CCS, with stronger tidal currents. The acknowledged fact that the Paull Holmes site is silting up (and forming salt marsh rather than mud flats) provides firm evidence to suggest that the same effect will occur at CCS, (which has weaker tidal currents and will, therefore, silt up more quickly).

39. The objector maintains that an up to date (2012) baseline survey of actual conditions at Paull Holme would show that the land has developed

almost exclusively as salt marsh, not mud flats, and is not, therefore, performing as expected / predicted by the Environment Agency and Natural England when the scheme was being promoted by them.

40. Given the failure of the Paull Holmes scheme in nature conservation terms, surely it is necessary for the current applicants to consider the possible cumulative adverse effects on the Humber Estuary Natura 2000 site, if the site at CCS were also to experience a similar failure, (as seems likely), but no such analysis has been carried out.

Applicants Comments:

33.3.1.16 Information regarding the development of adjacent sites is extremely useful in determining the initial ground levels that are most likely to deliver the habitat compensation required and has been reviewed in Annex 32.5 of the ES.

33.3.1.17 If Paull Holme Strays fails to meet its compensation objectives, then it is for the developer of that site, the EA, to remedy that fault; it is not for the applicant to remedy it.

(v) Increased silting

41. The objector, together with other local residents, Associated British Ports, the Stone Creek Boat Club, and the local Internal Drainage Board (IDB), is concerned that the proposed development of the land at CCS for nature conservation purposes could lead to increased silting within the Estuary at the mouth of Stone Creek.

42. This possibility is acknowledged in Annex 32.1 of the ES, which states (at paragraph 2.3.5) that "a problem may arise." in this respect - again reflecting the uncertain nature of data submitted with the ES and Article 6 assessment.

43. The objector (and others) is also concerned that proposals to create a new inlet / outlet channel at Stone Creek will reduce velocities and therefore increase the likelihood of silting both within Stone Creek and at its outfall into the Estuary.

44. If such additional silting were to occur, land drains using Stone Creek as an outfall to the Humber would back up during periods of heavy rainfall, thereby increasing the possibility of flooding in local villages, including Thorngumbald, Keyingham, Burstwick, Ottringham and Roos.

45. Local residents and boat club members have taken readings (depth of water) in the Estuary close to the mouth of Stone Creek and found that in some parts of the navigable channel downstream of Stone Creek Sluice there is as little as 0.6m of water above the sea / river bed.

46. This figure represents less than adequate operating conditions for the Stone Creek Boat Club and suggests that outfall flows from Stone Creek

could be severely affected, causing local land drains to back up and the risk of flooding in local communities to increase.

47. As noted above, (in paragraph 26), the application does not contain any monitoring or maintenance arrangements of action in the event of increased silting either within the Estuary itself or in Stone Creek.

48. Overall, the objector is of the opinion that the applicants have carried out insufficient survey work and technical analysis to predict with any reasonable degree of certainty, the likely effects of the proposed development on Stone Creek and its outfall into the Humber Estuary. Consequently, it is considered that the possible effects of the proposals on flood risk in local communities and on local recreational facilities has not been properly assessed.

Applicants Comments:

33.3.1.18 The impact of the scheme on sedimentation in Stone Creek is assessed in Annex 32.4, Section 4.5 of the ES. Siltation is not expected to change as a consequence of the scheme. Nevertheless, an effect cannot be excluded due to the uncertainty attached to hydrodynamic modelling. Accordingly paragraph 4.5.5 recommends monitoring of sediment levels. Routine maintenance dredging is currently undertaken. It is considered that there is only a slight risk that the frequency of dredging operations increases due to the scheme.

(vi) Soil suitability and land contamination

49. The applicants were advised of the possible existence of contaminated areas within the site at CCS as part of the pre-application process.

50. As a result, a limited amount of survey work was carried out, and areas of contamination were identified, resulting in the proposals being amended (Fields TP11 and 12). 51. It is noted that such considerations were not, and have not been subsequently, factored into the alternative sites assessment in Annex 30.1. Had they been so, a different result may have arisen.

52. However, the objector has spoken to various local residents who recall municipal waste from Kingston-upon-Hull being dumped within the site in other locations, not surveyed by the applicants, (Field 4). Consequently, there remains a very real possibility that parts of the proposed nature conservation compensation site contain deposits of contamination that could potentially harm the Natura 2000 site.

53. The Black and Veitch report estimates that over 30,000 cubic metres of waste material could be located within Field 4, yet there are no firm proposals to deal with this in the submitted application: If it does exist, will it be treated on-site? If so, how, and what are the risks to the site? If it is

to be transported off site, where will it be taken to, and what will be the effects on local roads and communities?

54. Similarly, the application pays little attention to the issue of soil (and other material) movements that will be necessary as a result of the proposed development, (see, for instance, paragraph 3.8.3 of Annex 6.1 which states that, " the level of the site will need to be reduced over the entire area to ensure mud flat development.")

55. There appears to be an implicit assumption that material from within the site area will be suitable for use in construction of the new flood banks - but this may not necessarily be the case (this possibility having been acknowledged by the applicants' representatives at the pre-application consultation event held at Keyingham Village Hall last year).

56. The objector is aware of concerns expressed by the Environment Agency with regard to the suitability of on-site soil (described in the application as being "silty / sandy" and "silty / clayey") for the construction of flood defences, which reinforce his own concerns in this respect.

57. If (as seems likely) new material is required, it will have to be brought onto the site: From where? Using which routes, and with what effects on local communities? If existing materials are not suitable for bank construction, what will happen to it? Will it have to be removed from the site? If so, to where, and by what means, and with what effects on local communities?

58. The objector considers that the absence of any assessment of such significant environmental, social, and economic effects represents a serious failure of the ES, in breach of the current (2011) EIA Regulations.

Applicants Comments:

33.3.1.19 The application does not assume that the soils within the realignment site are suitable for use. The applicant has sought the opinion of suitably qualified and experienced contractors with regard to the suitability of the soil for treatment with lime or cement. Such treatment will modify the soils and render them suitable for re-use. The impact of importing material to the site to stabilise the in-situ material is assessed in the application.

(vii) The footpath diversion

59. Finally, the objector wishes to register an objection in support of that made by The Ramblers to the proposed re-routing of the coastal footpath inland, behind the proposed flood defences.

60. This proposal does not provide a footpath with any views of the estuary or of local wild life, which the present alignment clearly does, and is a very poor replacement facility of insufficient merit to warrant a footpath diversion being allowed - especially one that forms part of the coastal footpath system.



AMEP
APPLICANT'S COMMENTS ON THE
RELEVANT REPRESENTATIONS

Date: June 2012

*61. Natural England's position with regard to the disturbance of bird life is not sustainable, in the objector's opinion, since the existing path (and many other similar paths around the Humber Estuary) does not appear to have disturbed local bird life. Natural England has a policy of seeking to improve access to, and enjoyment of, coastal locations around the UK - and this path forms part of that network - so they should not be encouraging a re-alignment that reduces the enjoyment of such facilities.
Hickling-Gray Associates (on behalf of Mr S. Kirkwood) March 2012"*

Applicants Comments:

33.3.1.20 Refer to the comments on Representation 14.

34. **REPRESENTATION No. 39 – Highways Agency**

Relevant Representation

- 34.1 The following representation was received by the Infrastructure Planning Commission from Highways Agency on 28th March 2012.

The Highways Agency is an Executive Agency of the Department for Transport (DfT), and is responsible for operating, maintaining and improving the strategic road network in England on behalf of the Secretary of State for Transport. The Highways Agency is an interested party as the draft DCO is conditional upon the implementation of highway mitigation measures on the A160 which is an all-purpose trunk road under its responsibility. The key issues for the Highways Agency in respect of this application are: - The impact on the A160 and A180 of construction trips (including HGV trips) associated with the development; - The impact on the A160 and A180 of trips (employees and deliveries) during the operational phases of the development; - Mitigation measures which are identified on the A160 all-purpose trunk road; and - Construction and operation of the development which has the potential to impact upon the construction of the A160 upgrade scheme, construction of which has been delayed until 2015 at the earliest by the government. The Highways Agency has worked with the developer to agree as much detail as possible in respect of the matters above and this will be reflected in a statement of common ground to be entered into by the Highways Agency and the developer. We are content that the transport information submitted within the Environmental Impact Assessment is correct insofar as it relates to the strategic road network and represents a suitable assessment of the impacts on the network under our responsibility. While without the A160 upgrade scheme the impacts of the development cannot be mitigated such that the road operates at a level no worse than if the development were not to take place, we are satisfied that the proposed mitigation is the best that can be achieved within the existing highway. We are also satisfied that the identified mitigation does not affect the ability of the Highways Agency to deliver the A160 upgrade scheme should it subsequently receive government approval and funding. As an interested party, we would seek to retain the right to make a written representation at a later stage in order to protect the interests of the Secretary of State for Transport, and to ensure that conditions within the DCO which relate to the strategic road network are fully implementable within an appropriate timescale while allowing for flexibility in the delivery of the scheme.

Applicant's Comments

- 34.2 No comments

35. **REPRESENTATION No. 40 – Keyingham Level Internal Drainage Board**

Relevant Representation

35.1 The following representation was received by the Infrastructure Planning Commission from Keyingham Level Drainage Board on 29th March 2012.

My Board is an Internal Drainage Board under the Land Drainage Act 1991. My Board's interest is purely in the environmental flood mitigation land at Cherry Cob Sands and Old Little Humber Farm. My Board have significant reservations in principle to the flooding of good agricultural land for environmental mitigations. However my Board are concerned with 3 main points which will affect Land Drainage:-

- 1. The probable silting up of Stone Creek outfall due to the effect on the River Humber's current. The applicants believe there could be an increase in the build up of silt. We propose that a planning condition should be imposed on the applicants in order for them to be responsible for the maintenance of a clear drainage channel to this Board's satisfaction.*
- 2. The Board is concerned that the height of the bank may not be sufficient and there should be a planning condition imposing long term maintenance liability and a liability for the future lifting of these banks if they prove of insufficient height.*
- 3. At Cherry Cob Sands and Old Little Humber the boundary ditches of the site could cause flooding of neighbouring land either directly or indirectly. We ask a planning condition is imposed making the applicants liable to maintain these ditches for the benefit of the adjoining riparian owners.*

Applicant's Comments

35.2 The applicant has undertaken an assessment of the effects of the project on sedimentation within the Creek.

35.3 Stone Creek is currently subject to maintenance dredging as sedimentation within the Creek has the potential, if not managed, to restrict (and potentially, to block) the outfalls to four significant surface water drainage channels that outfall within the Creek, viz. Keyingham Drain, Cherry Cobb Sands Drain, Ottringham Drain and Sunk Island Drain (Figure 36.1 of the ES).

35.4 Dredging of the Creek has been undertaken in recent times by the Environment Agency. The local Internal Drainage Boards have recently taken over responsibility for a temporary dredging programme, part funded for 5 years by the EA and ERYC to alleviate the problems currently caused by siltation. The **Drainage Board's proposal that the applicant becomes solely** responsible for the maintenance of a clear drainage channel from Stone Creek is therefore clearly inequitable as the channel is not maintenance free at the moment and their proposal amounts to significant enhancement.



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- 35.5 Notwithstanding the above, the applicant does accept that the project must not exacerbate the existing extent and frequency of maintenance dredging that is undertaken to mitigate the impact of sedimentation on the drainage outfalls. Accordingly, the applicant proposes to undertake monitoring of sedimentation within the Creek and its channels over the long term and where such monitoring shows sedimentation patterns to be demonstrably outside any established natural variation, and likely to have been caused by the development, then the applicant would make a contribution towards any additional maintenance costs incurred.
- 35.6 The applicant does not believe there is any justification for relieving adjacent riparian owners of their existing legal obligation to maintain shared ditches on an equal basis.

36. **REPRESENTATION No. 41 – Ottringham Internal Drainage Board**

Relevant Representation

36.1 The following representation was received by the Infrastructure Planning Commission from Ottringham Drainage Board on 29th March 2012.

'My Board is an Internal Drainage Board under the Land Drainage Act 1991. My Board's interest is purely in the environmental flood mitigation land at Cherry Cob Sands and Old Little Humber Farm. My Board have significant reservations in principle to the flooding of good agricultural land for environmental mitigations. However my Board are concerned with 3 main points which will affect Land Drainage:-

- 1. The probable silting up of Stone Creek outfall due to the effect on the River Humber's current. The applicants believe there could be an increase in the build up of silt. We propose that a planning condition should be imposed on the applicants in order for them to be responsible for the maintenance of a clear drainage channel to this Board's satisfaction.*
- 2. The Board is concerned that the height of the bank may not be sufficient and there should be a planning condition imposing long term maintenance liability and a liability for the future lifting of these banks if they prove of insufficient height.*
- 3. At Cherry Cob Sands and at Old Little Humber the boundary ditches of the site could cause flooding of neighbouring land either directly or indirectly. We ask a planning condition is imposed making the applicants liable to maintain these ditches for the benefit of the adjoining riparian owners. Mr Ralph Ward'*

Applicant's Comments

36.2 Refer to comments on Representation No. 40.

37. **REPRESENTATION No. 42 – Thorngumbald Internal Drainage Board**

Relevant Representation

37.1 The following representation was received by the Infrastructure Planning Commission from Thorngumbald Internal Drainage Board on 29th March 2012.

'My Board is an Internal Drainage Board under the Land Drainage Act 1991. My Board's interest is purely in the environmental flood mitigation land at Cherry Cob Sands and Old Little Humber Farm. My Board have significant reservations in principle to the flooding of good agricultural land for environmental mitigations. However my Board are concerned with 3 main points which will affect Land Drainage:-

1. The probable silting up of Stone Creek outfall due to the effect on the River Humber's current. The applicants believe there could be an increase in the build up of silt. We propose that a planning condition should be imposed on the applicants in order for them to be responsible for the maintenance of a clear drainage channel to this Board's satisfaction.

2. The Board is concerned that the height of the bank may not be sufficient and there should be a planning condition imposing long term maintenance liability and a liability for the future lifting of these banks if they prove of insufficient height.

3. At Cherry Cob Sands and at Old Little Humber the boundary ditches of the site could cause flooding of neighbouring land either directly or indirectly. We ask a planning condition is imposed making the applicants liable to maintain these ditches for the benefit of the adjoining riparian owners. Mr Ralph Ward '

Applicant's Comments

37.2 Refer to comments on Representation No. 40.

38. **REPRESENTATION No. 43 – Ms Annette Roberts on behalf of The Oil & Pipeline Agency**

Relevant Representation

38.1 The following representation was received by the Infrastructure Planning Commission from Ms Annette Roberts on behalf of The Oil & Pipeline Agency on 29th March 2012.

The Oil and Pipelines Agency acts as the managing agent for HM Government's Oil Pipelines and Storage System (GPSS) under the Oil and Pipelines Act 1985. The GPSS includes the South Killingholme Jetty (SKJ) situated on the River Humber. The SKJ is of significant strategic importance as the only direct marine access controlled by the Secretary of State for Defence into the north east of the GPSS. The supply of aviation fuel to inland UK consumption points will increasingly depend on ports and the size of cargoes and vessels will continue to be driven upwards. It is necessary to ensure that these changes are met and for the GPSS to continue to meet its strategic remit. Our particular concerns and objections arise both in respect of the construction /development stage and thereafter the operation of the marine energy park and its impact on the SKJ and in brief are:

that dredging by the Applicant may result in the deposit of silt materially interfering with the operation of the SKJ and there is also a risk of landslip to the jetty structure

that the introduction of a new harbour authority as envisaged by the Applicant, could impact materially on the safe passage of vessels on the river and their safe access to and from the SKJ arising from different policies between ABP and the Applicant

the two installations would be so proximate that an adverse impact on the efficient operation of the SKJ is highly possible

that the draft DCO provides for rights to improve, develop and alter the designated harbour

that it should be amply demonstrated that the Applicant will be capable of meeting its potential liabilities under the DCO Were we to withdraw our objections we would seek assurances that:

the DCO records that the future actions of the Applicant including when acting as a new harbour authority and/or the owners and successors in title of the new harbour authority should not engage in any action with respect to any land or facilities that are in proximity to the SKJ without accepting and recognising the strategic nature of the SKJ and its need to develop

the DCO records that the future actions of the Applicant as the new harbour authority would be neutral in all respects with regard to the efficient and economic future access to and use of the SKJ by vessels

should our client (or a third party) wish to cross the land to be compulsorily acquired with a new pipeline connection to the GPSS that the Applicant would grant rights in such land for such pipelines on reasonable terms which would need to be defined now to deal with any future conflict of (landowner) interests ? our client's pipelines and access to them must be protected

there will be no material interference with the operation of the SKJ assets during the construction of the development The objections and reasons stated herein are not exhaustive and the right is reserved to state further objections and give further reasons.

Applicant's Comments

- 38.2 The applicant has assessed the potential for additional sediment to accumulate within South Killingholme Oil Jetty (SKJ) berthing pocket and this is included in Annex 8.3 of the ES.
- 38.3 At its nearest point, SKJ lies approximately 135 m from the edge of the proposed berthing pocket for AMEP. That berthing pocket is to be dredged to a maintained depth of -11 mCD. Given that SKJ has a maintained berthing pocket of -12.5 mCD immediately adjacent to it, there is no credible risk that the jetty will slip into a shallower berthing pocket 135m away, refer to Figure 38.1.
- 38.4 The applicant has employed a suitably qualified and experienced consultant to undertake a navigational risk assessment and this is included in Annex 14.2 of the ES.
- 38.5 The representation asserts that, *'the introduction of a new harbour authority as envisaged by the Applicant, could impact materially on the safe passage of vessels on the river and their safe access to and from the SKJ arising from different policies between ABP and the Applicant'*, and that, *'the two installations would be so proximate that an adverse impact on the efficient operation of the SKJ is highly possible'*. Ultimately it is a matter for the Harbour Master, through the VTS, to manage the routing of vessels within the Humber Estuary and the timing of their approach and departure.
- 38.6 The applicant has undertaken two navigation simulation studies at the South Tyneside Marine College; the Harbour Master attended both. Simulations undertaken in November 2010 are reported in Annex 14.3 of the ES. Further simulations undertaken in March 2012 are reported in Supplementary Report (EX 14.4) included in the volume of supplementary environmental information accompanying these comments.
- 38.7 Article 8 of the draft DCO provides that:
- 'The undertaker may at any time maintain the authorised development and within the limits of the harbour, from time to time enlarge, relay or extend temporarily or permanently the authorized development, except to the extent that this Order or an agreement made under it provides otherwise.'*

This article is identical to the model provisions article within Schedule 3 of The



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Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, except that '*authorised development*' is used for '*authorised project*', as elsewhere, and since the definition of maintenance includes '*alter*', '*replace*' and '*reconstruct*' these words have been omitted from the article.

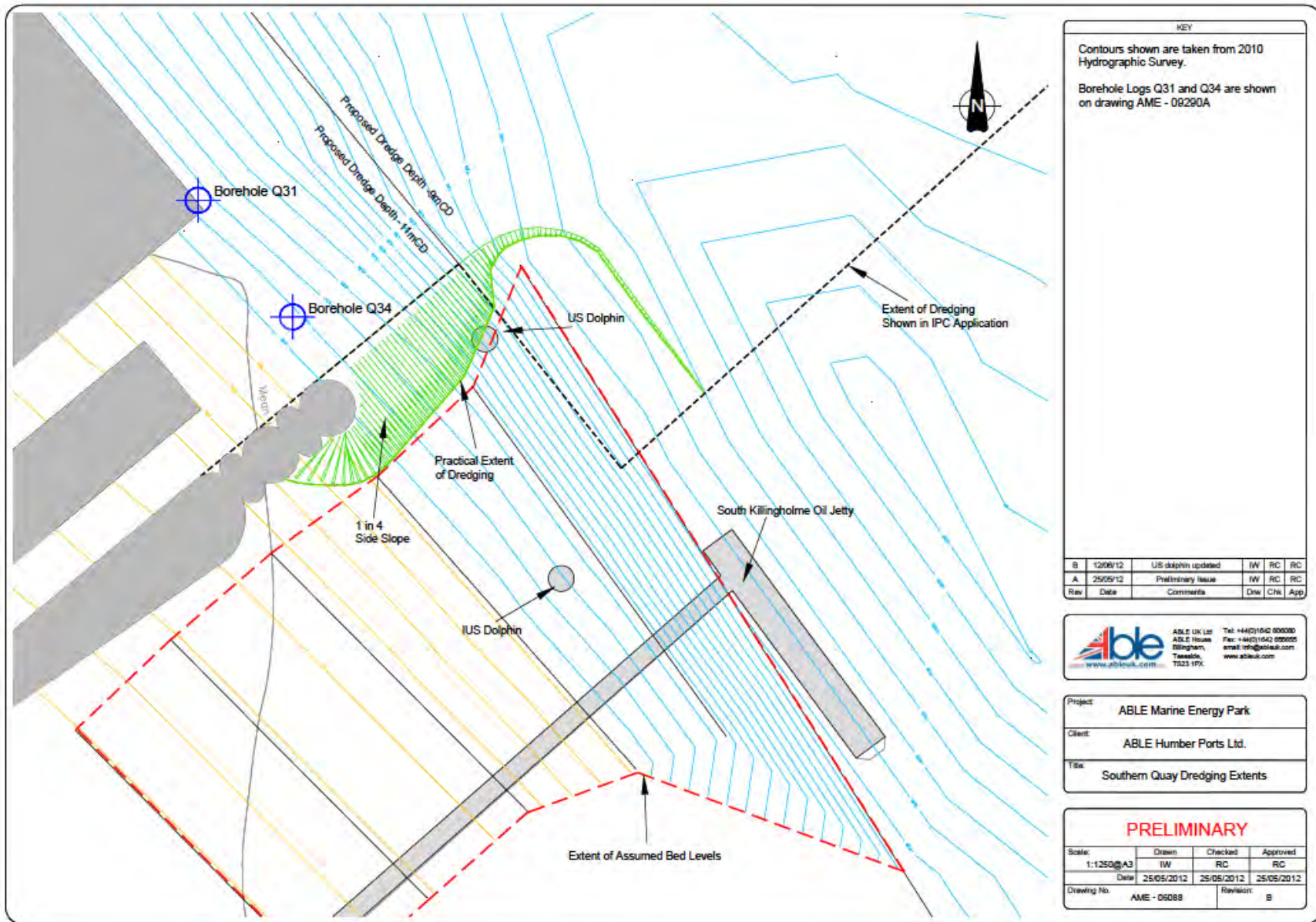


Figure 38.1: Plan on South Killingholme Oil Jetty, its associated Dolphins and the AMEP Berthing Pocket

39. **REPRESENTATION No. 44– Tudor Williams**

Relevant Representation

39.1 The following representation was received by the Infrastructure Planning Commission from Tudor Williams on 29th March 2012.

Regarding the intended creation of Wetland Area on Cherry Cob Sands. I feel I must object to the works on the following grounds:

- 1. I would like to know why land is being given up on the North Bank so as to allow works to be carried out on the South Bank, where they have similar areas where wetlands could be created.*
- 2. With the well documented rise in world population and the need to produce more food, to feed these growing numbers. We as farmers are being asked to produce more foods, so taking more high quality land out of production will certainly put pressure on future ability to meet these demands.*
- 3. In 2007 there was widespread flooding in the Holderness area, as well as farmland a number of properties in the village of Ottringham were flooded. The village which is 4 miles from the Stone Creek outlet is drained by Ottringham level drain into the Humber. The area between the outlets and main channel in the Humber had a build up of silt which restricted the flow of water so this made everyone aware of the importance of keeping the area clear of silt. So, I do have concerns that you works could affect our drainage system by way of silting up our outlet into the main channel.*
- 4. Lastly it seems there is more concern over the habitat of wading birds, rather than of human inhabitants. This concern is not held by many of the local population so it is on these grounds that I feel I must object.*

Applicant's Comments

39.2 The need for the development of compensatory intertidal habitat and the choice of site are explained in Chapters 29 and 30 of the ES.

39.3 The loss of agricultural land is acknowledged and has been assessed within the Environmental Statement which states that the,

'(c)reation of the Compensation Site will result in the loss of approximately 115 ha of Grade 2 agricultural land at Cherry Cobb Sands and 38ha of Grade 2 agricultural land at Old Little Humber Farm. This loss equates to 0.009 percent of the total agricultural land available in the Yorkshire and Humber region and therefore considering the local, regional and national extent of Grade 2 land, loss of this potential food resource is assessed as being of low magnitude. The sensitivity of the food resource being low as the area of arable farmland being lost is small in comparison to regional and national land resources and it is not currently supporting specialist crops (such as organic produce). The resulting overall effect is a permanent negative impact of minor significance', (paragraph 42.6.13).

39.4 With regard to the potential impacts on Stone Creek, refer to comments on Representation No. 40.

40. **REPRESENTATION No. 45 – Iain Butterworth on behalf of Humber Work Boats Limited**

Relevant Representation

40.1 The following representation was received by the Infrastructure Planning Commission from Iain Butterworth on behalf of Humber Work Boats Limited on 29th March 2012.

'Humber Work Boats Limited is a company providing dredging, construction and related services worldwide and across the Humber Estuary. The nature of this work makes it difficult to predict in advance the requirements of its customers and the vessels used for the service are therefore required to be in a near-constant state of readiness. From the HWB head office (North Killingholme Haven, Grimsby, DN40 3LX) HWB operate a berth for the docking of their vessels and loading of crew and equipment. This berthing facility is fundamental to the operations of the company. Although the presence of the AMEP development could potentially benefit HWB, given the proximity of the HWB berthing facility to the proposed development, HWB have genuine concerns about the AMEP which, as set out below, it has not yet been given the opportunity to express. Due to spatial constraints this representation is limited to outlining the various concerns that HWB have. These concerns will be fully addressed at the appropriate stage in the consultation process. HWB reserve their right to raise further concerns and objections where necessary and to rely on evidence either not yet obtained or identified in relation to the AMEP and the application process relating to the same.

Consultation

HWB operate the nearest berth to the North of the proposed AMEP. HWB also use the Humber Estuary extensively for their operations, and are therefore inherently interested in matters concerning estuary developments that have a potential significant impact on HWB's operations. At no stage in the application process have HWB been invited to take part in any consultation process by the proposers, Able UK. This is despite concerns being raised directly with representatives of Able UK as early as January 2011 regarding the lack of any consultation with HWB. This lack of consideration has prevented HWB from contributing valuable information which may be relevant to the AMEP. In particular HWB are in the process of developing their berth and have not been given the opportunity to have this development taken into account in the AMEP plans. The sedimentary and Geomorphologic regime HWB are concerned that the AMEP will increase deposition of sediment around their berth. The necessity to remove the deposits will result in maintenance dredging costs. No maintenance dredging is currently required. Left unchecked an increase in deposits at the berth will have a significant impact upon HWB's ability to operate vessels from the berth. Able UK's evidence relating to this aspect of the AMEP is contained in s.8 of the Environmental Statement and the annexes (8.1-8.4). HWB submit that the conclusions drawn in those reports must be questioned for the following reasons:-

- Much of the modelling conducted relates to previous project designs;*
- The reports draw inferences from observations relating to the construction of the HIT development, which is significantly different from the AMEP;*

- Assumptions that reducing the size of the project will proportionately reduce its impact are unsound;

- The long term impacts of the AMEP are modelled for a period of 24 weeks after its completion. The sedimentary regime can take up to 10 years to reach equilibrium. The impact of the project cannot be considered properly without modelling over a longer period. Aside from reducing the size of the AMEP, there are no mitigation measures in place to prevent or reduce sedimentation of the HWB berths. This is despite recognition that increased deposition will likely occur over an area of around 12Ha to the north of the AMEP, which is likely (based upon evidence from previous estuary developments) to encompass the HWB berth. Protective provisions should be included in any planning decision to deal with deposition at the HWB berth.

Other issues

Other subsidiary concerns HWB have include, but may not be limited to:-

- Land-based traffic congestion caused by the project; and

- Increased Estuary-based traffic in the vicinity of HWB's berth during the construction and operation phases of the project. Summary Due to a lack of consultation, HWB have been unable to protect their position to the extent desired. HWB have no objection to the AMEP proposal in principle, but strongly resist any planning decision being made on the basis of the evidence submitted to date and require any decision be deferred pending the provision of accurate and relevant supporting evidence.'

Applicant's Comments

- 40.2 Whilst the representation correctly records that the applicant had not, at the time of the relevant representation, met HWB with regard to the proposal, the applicant has since done so.
- 40.3 HWB has clarified that the concerns raised in January 2011 were those communicated to the applicant at the navigation workshop held on 25 January 2011 by a third party; minutes are included in Annex 14.1 of the ES. The minutes record that BMT Isis should contact Humber Work Boats but it would appear that contact was not made. Nevertheless, the applicant has now explained to HWB that a simulation exercise held on 22 March 2012 at South Tyneside Marine College demonstrated that vessels can enter and leave the Humber Sea Terminal berths without significant difficulty if AMEP is constructed. Given that evidence, and the location of HWB berths in relation to CPK, no increased difficulty would be expected for berthing at HWB. A report on the simulation exercise is included in a Supplementary Report (EX 14.4) included in Annex B of this report.
- 40.4 The applicant agrees with HWB that the potential for sediment to accrete at the HWB berth cannot be excluded and proposes to enter into a legal agreement with HWB to compensate for any future requirement for maintenance dredging that is attributable to AMEP.
- 40.5 The impact of increased traffic generated by the project has been assessed within the navigational risk assessment which is reported in Annex 14.2 of the ES.

41. **REPRESENTATION No. 46 – Associated British Ports**

Relevant Representation

41.1 The following representation was received by the Infrastructure Planning Commission from Associated British Ports on 30th March 2012.

My submission regarding the Able Marine Energy Park (AMEP) application is made in my 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 Humber. I am also responsible for ABP's discharge of its functions as a competent authority under the Habitats Regulations. My comments relate to matters concerning safety of navigation, conservancy, and associated environmental matters and are separate and distinct from any response you may receive from Associated British Ports as a port operator within the Humber. During the consultation process I have met Able's representatives on a number of occasions and have attended a number of their workshop meetings for consultees. While I hope that agreement can be reached on all my concerns, a number of issues relating to the application remain unclear or unresolved, all of which could have an adverse impact on harbour operations or my statutory functions. I am therefore compelled to object to the application. I must also draw to the IPC's attention that the Hydrodynamic and Sedimentary Regime Report at section 8 of the ES is seriously defective so that the ES is not compliant with the requirements of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Concerns regarding sedimentation and flow regimes

The effects of the works on sedimentation remain uncertain. This is a concern to me and also to existing harbour users/operators such as Humber Sea Terminal, Humber Work Boats, EOn, Centrica and ABP's ports of Immingham and Grimsby. All these have expressed reservations to me with regard to the reliability of the Hydrodynamic and Sedimentary Regime Report at section 8 of the ES. In particular, the conclusions of the HR Wallingford 2011 3D mud modelling report conveniently dispel the earlier predictions of significant accretion upstream of the AMEP berth contained within the JBA reports. This improved situation is based on assumptions related to the final berth design iteration being some 80 metres inshore of the original design. However, there is no clear evidence of HR Wallingford having conducted a new and comprehensive modelled analysis based on the final design of the berth. The HR Wallingford conclusions must be supported by a definitive report based on proper analysis of the predicted effects of the finalised design, not purely on assumptions. The analysis should establish baseline information which includes all existing river berths, including Immingham Outer Harbour. The analysis should then consider the AMEP development, including the proposed breach and managed realignment of Cherry Cobb Sands. Additionally, the modelled analysis should consider the effects of the AMEP development (and breach) in combination with the IOT Approach deepening project, Grimsby RoRo, HRBT and Green Port Hull (i.e. schemes already consented or in the public domain). I note, incidentally, that Humber Work Boats, who are potentially adversely affected by siltation resulting from the AMEP berth, are not listed as a consultee at all and have not to my knowledge

been consulted. The Major Infrastructure Projects Unit (as successor to the IPC) will need to be satisfied that these stakeholders have been properly consulted. As the current modelling report lacks this essential analysis I consider it to be flawed and inadequate to properly assess the impact of the proposed new marine structure on sedimentation and flow regime both upstream and downstream of the proposed development. I recognise the possibility that the necessary analysis may allay all my concerns. However, until this work has been done I can only know that the works could have seriously adverse sedimentation and flow impacts. This leaves me no option but to object to the application as presently put forward.

AMEP berth approach channel

The approach channel which Able propose to dredge to and maintain at -9.0metres Chart Datum partially overlaps the pre-existing approach channel to the upstream Humber Sea Terminal (HST). The channels in the river and their maintenance are within my responsibility for navigation and the conservancy of the Humber. Approach channels to individual terminals in the river are maintained by the owners or occupiers of those facilities. In this case, therefore, I need to see a clear division of responsibility between Able and the neighbouring Humber Sea Terminal. At present this has not been resolved. Unless there is legally binding agreement between the parties for a workable solution, the Order must make appropriate provision.

Sub lease of riverbed

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 and which is part of the operational land for which I am responsible. This is unacceptable and unnecessary and I object to it. In discussion with Able I was assured that they would be content to take a sub-lease from ABP, but Able has not approached ABP about this and I have no indication that the net effect would be any more acceptable than outright acquisition.

Able's limits of jurisdiction as a harbour authority

The Order establishes Able as a new harbour authority whose area of jurisdiction will extend 200 metres riverward from the new berth. This is an unjustified intrusion into the river for which I am responsible and I object to it. Recently constructed facilities on the Humber (such as HST) have a 100m limit of jurisdiction from the berth face, which is all that any operator requires for its own purposes. A 100m limit should also apply to Able. Additionally I object to the inclusion in the proposed limits of jurisdiction of an area at the southern inner extremity of the proposed berth (where the return wall meets the river bank) which seems to serve no purpose in terms of harbour authority powers. If (as I suspect) this area is needed for only limited purposes, then Able should have only those limited powers over it.

Dredging and disposal of arisings

The Order provides that dredging and the disposal of arisings will be carried out in accordance with works schedules agreed with the MMO. The ES suggests the

annual dredging requirement for maintenance dredging may be up to 2.5 million wet tonnes. Maintenance dredging is a vital operation. It will therefore be essential that Able has provided for the disposal of the dredged material, but this has not been demonstrated in the application. I question whether there is sufficient capacity in the deposit grounds listed in Part 5 of Schedule 8 to the draft Order. Able should demonstrate that sufficient capacity exists and that no detrimental or lasting effects should result from the original deposition. Non-erodible arisings from the capital dredge are, according to the application, to be deposited in HU081, 082, and 083 deposit sites to the north of the Sunk Dredged Channel. There is no evidence that any formal assessment has been undertaken into the effects of such deposition on the flow regime of the Sunk Dredge Channel. There is the potential for significant adverse impacts. Until I can be satisfied on both these matters I object to the dredging proposals.

Protective Provisions

Part 2 of Schedule 9 to the draft DCO contains provision, inter alia, for Able to be required to remedy any detrimental effects of accretion/erosion within my harbour area resulting from the tidal works. This protection would not appear to extend to the breach and managed realignment at Cherry Cobb Sands related to this project. That aspect of the project also poses an accretion/erosion risk and I therefore require protective provision for this, too.

Applicant's Comments

- 41.2 The representation states that, *'I note, incidentally, that Humber Work Boats, who are potentially adversely affected by siltation resulting from the AMEP berth, are not listed as a consultee at all and have not to my knowledge been consulted'*. Refer to comments on Representation No. 45. Humber Work Boats are not a statutory consultee, as defined within The Planning Act 2008.
- 41.3 The representation states that, *'the conclusions of the HR Wallingford 2011 3D mud modelling report conveniently dispel the earlier predictions of significant accretion upstream of the AMEP berth contained within the JBA reports'*. This is a somewhat disingenuous comment given that engineering design is an iterative process and the point of EIA is to seek to identify and mitigate the likely significant effects of a proposed project. To this end, the broad process of design development for the quay is clearly set out in Annex 4.4 of the ES. It is therefore demonstrably not *'convenient'* that the applicant has been able to mitigate the impacts on adjacent port operators; it is the result of a robust and thorough design process.
- 41.4 The representation states that, *'there is no clear evidence of HR Wallingford having conducted a new and comprehensive modelled analysis based on the final design of the berth'*. Contrary to this assertion, Annex 8.3 presents the results of fine sediment modelling based on the final quay design and contains a prediction of changes to existing maintenance dredging in the vicinity of the proposed quay. In addition, Annex 8.3 provides the results of long term morphological modelling of an earlier iteration of the final quay layout. In this case the report explains that, *'to infer longer term changes for a 50m setback, data was extracted from the model at 4 points located 50m seawards of the intakes and*

outfalls'. This modelling has since been re-done for the final quay layout and is reported in, '*AMEP Update to Longer term Morphology Predictions in the Region of the Centrica and E.ON Intakes and Outfalls'*, (HR Wallingford, 2012), included as a Supplementary Report (EX 8.8) in the Volume of Supplementary Environmental Information (SEI) accompanying these comments. The conclusions of the updated reports show that the long term morphology modelling presented in Annex 8.3 to be slightly conservative in terms of the impacts to the north of the quay.

- 41.5 The representation states that, '*(t)he analysis should .. consider the AMEP development, including the proposed breach and managed realignment of Cherry Cobb Sands. Additionally, the modelled analysis should consider the effects of the AMEP development (and breach) in combination with the IOT Approach deepening project, Grimsby RoRo, HRBT and Green Port Hull (i.e. schemes already consented or in the public domain)*'. Annex 8.1 contains an assessment of the in-combination effects of all of these projects on an estuary wide basis and shows the wider effects to be non-significant. With regard to Green Port Hull, the applicant sought details of that project from ABP during the EIA process but they refused to provide the applicant with any information that was not already in the public domain. As a result, the applicant could only use the publicly available information for the consented Quay 2005 project.
- 41.6 As Annex 8.1 is based on an early iteration of the quay that had a slightly larger footprint, and as it did not have all of the information that is now available in relation to Green Port Hull, the applicant has commissioned supplementary modelling to verify the estuary wide effects reported in the ES. This is notwithstanding the fact that the applicant considered the original report to adequately assess the likely significant effects of the project. The additional modelling is included in a Supplementary Report (EX 8.7) in the Volume of SEI accompanying this report.
- 41.7 The applicant agrees that the AMEP Approach Channel overlaps with the consented approach channel for HST, refer to Figure 41.1. The applicant is seeking to reach agreement with HST over the management of the overlapping area.
- 41.8 With regard to the sublease of the river bed, the applicant is content to agree a sub-lease of the estuary bed that will be reclaimed by the construction of AMEP.
- 41.9 With regard to the limits of the Able harbour authority, the applicant would be willing to accept the Harbour **Master's proposal, if the application can continue** with this change.
- 41.10 With regard to the capacity of the deposit grounds for inerodible deposits, the applicant received correspondence from the MMO before submitting the application confirming that the sites had adequate capacity, refer to correspondence included in Appendix 5 of Annex 7.6 of the ES. The correspondence is reproduced in part below:

'6 Disposal sites

The (Dredging Strategy) document states that 981,150 m3 of material will be

disposed of to HU080, Humber 1A and goes on to compare this figure to previous tonnages received at the site. However, the table referenced states tonnages to the Sunk Dredge Channel and not specifically to HU080. I am content that silty erodible material is deposited at HU080.

*The remainder of the material (954,350m³) is glacial in origin and is proposed to be split across three sites; HU081, HU082 and HU083, however this quantity is not compared to the amounts the sites have received in previous years. Looking at the data for disposal sites HU081, HU082 and HU083, only 463,028 tonnes of material has been deposited to HU081 (all in 1995). However these sites have been used for beneficial use under construction licences, which unfortunately means that no returns are required to be provided and therefore there is no record of how much material has previously been disposed of at these sites. Approximately 1.9M m³ of material from all proposals, including the licensed Immingham Oil Terminal (375,000 m³), are proposed to be deposited at these three sites. Looking at the areas of the disposal sites and the bathymetry data included in the dredging protocol, **the sites have the capacity to take this quantity of material.** Therefore I am content that stiff glacial material can be deposited at sites HU081, HU082 and HU083. If you intend to refer to this document in the deemed marine licences, the document should also provide the full coordinates of all of the dredge and disposal sites to be used', (emphasis added).*

41.11 With regard to the annual quantity of maintenance dredge arisings, it is not clear where in the ES **the Harbour Master has read the figure of '2.5 million wet tonnes'**. Table 8.2 of the ES and Annex 7.6 both quote the same estimate of maintenance dredge arisings in cubic metres, *viz.* 502 000 – 1 254 000 m³. Allowing for the dredged material to have a density of 1.3T/m³, then the annual dredging requirement lies in the range 652 600 – 1 630 200 wet tonnes. However this new disposal requirement is expected to be partly offset by reduced maintenance dredging in adjacent berths. A revised (lower) estimate of maintenance dredging variability is included in a new report (EX8.6) included in the volume of SEI accompanying these comments.

41.12 As explained in the ES and in Annex 7.6, maintenance dredging requirements are known to be highly variable and the applicant has consulted with the MMO **on suitable disposal sites for the maintenance dredge arisings.** MMO's representation contains the following comment:

'HU080 has taken large quantities of material in the past and, given the dispersive nature of the Humber, the MMO considers that the disposal site has capacity to take the material as currently described in the DCO Application. However, the site will need to be monitored to ensure the material is dispersing as predicted and the MMO will require this to be a condition on the deemed marine licence with the Applicant required to agree the scope of the monitoring with the MMO prior to commencement', (paragraph 7.22).

41.13 The applicant confirms that no *'formal assessment has been undertaken into the effects of such deposition on the flow regime of the Sunk Dredge Channel'*. There are three licensed deposit sites in the Humber Estuary for the disposal of inerodible deposits: HU081; HU082 and HU083 where the estuary bed is uneven.



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Deposits at these sites have been permitted as they were deemed to be beneficial in removing irregularities and thereby improving the current flow.

- 41.14 Notwithstanding the above, supplementary modelling has been commissioned by the applicant and is reported in EX8.7 included in the volume of SEI accompanying these comments.
- 41.15 Following the completion of an extensive and detailed marine ground investigation the applicant is also exploring alternative beneficial uses for the non-erodible deposits including the deposition of the glacial clays onto the completed quay and using that material as a bulk fill material within the terrestrial areas of the AMEP site.

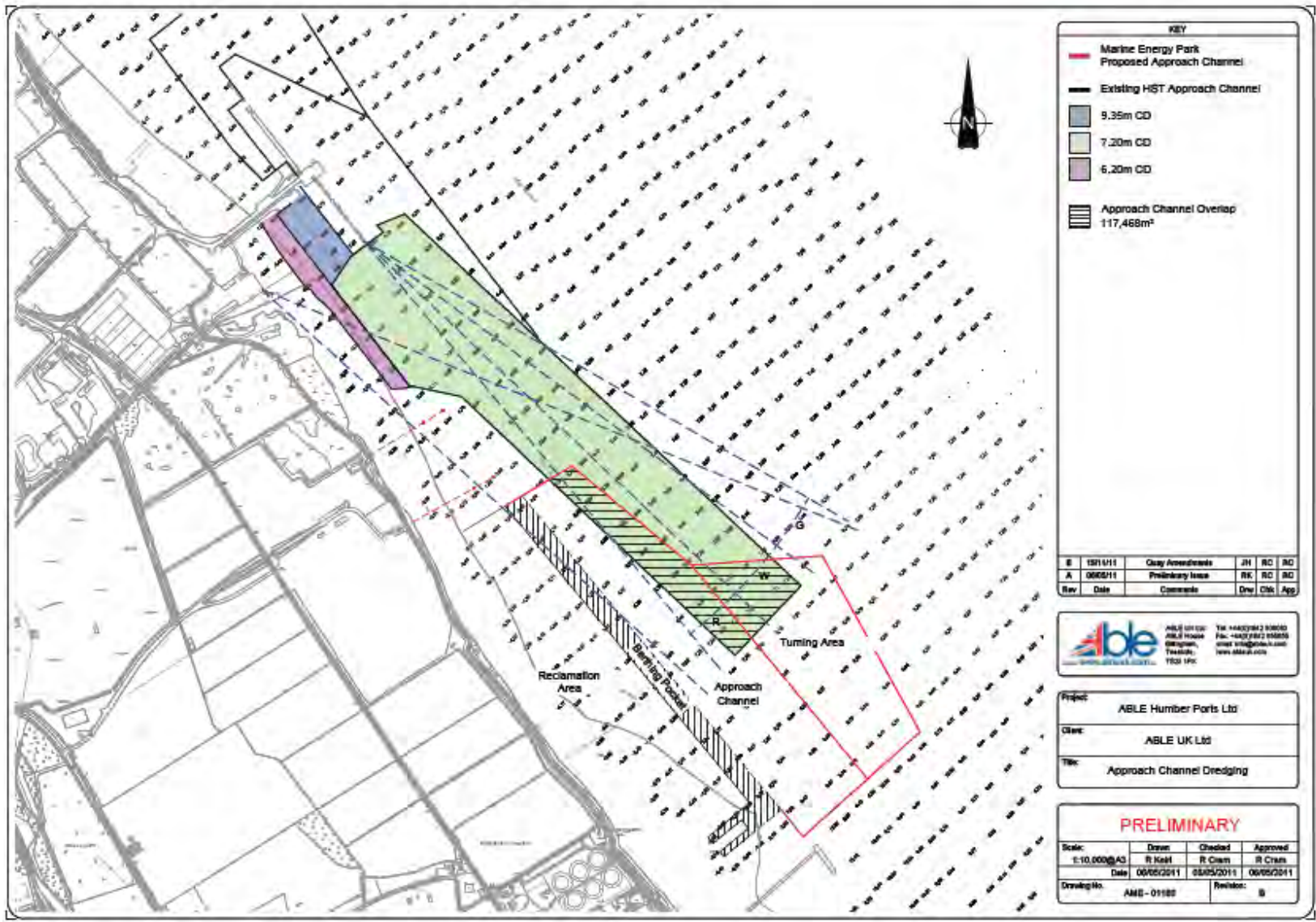


Figure 41.1 : Overlap of Approach Channel to HST with AMEP

42. **REPRESENTATION No. 47 – Brian Greenwood on behalf of Associated British Ports**

Relevant Representation

42.1 The following representation was received by the Infrastructure Planning Commission from Brian Greenwood on behalf of Associated British Ports on 30th March 2012.

1. Introduction

1.1 The following interim representations are submitted, as objections, by Associated British Ports (ABP) in its capacity as an adjacent port operator, statutory undertaker for the Ports of Immingham, Grimsby and Hull and as an affected landowner. For the avoidance of doubt, any representations that may be submitted by the Harbour Master, Humber, which is a separate statutory consultee, will be submitted entirely separately from these submitted on behalf of ABP.

1.2 ABP has identified a number of issues which require consideration by the IPC at issue specific hearings.

1.3 In addition, ABP registers its objection to Able's proposed compulsory purchase of land in ABP's freehold ownership and land over which it enjoys a leasehold title.

1.4 In summary, the issues identified to date include the following:-

2. The proposed Nationally Significant infrastructure Project (NSIP)

2.1 The application is invalid and could not lead to the lawful grant of the DCO sought, nor indeed any DCO. Indeed, the application as submitted would be susceptible to legal challenge at this stage were it not for the preclusive provisions of the Planning Act 2008 which require any challenge to be made at a later date in the process.

2.2 A wind turbine manufacturing facility, as assessed by the applicant in its environmental statement, does not constitute a NSIP as defined in the Planning Act 2008 in terms of the thresholds set out in section 24 of the Act.

2.3 The manufacture of large wind turbines does not constitute 'associated development' for a new harbour facility.

3. Draft Development Consent Order (DCO)

3.1 The draft DCO is deficient in a number of areas by failing to define and incorporate sufficient controls over the proposed use of the new quay and back-land/associated development. Defects identified to date include the following, namely –

3.2 It does not appear to have –

(a) Identified with sufficient clarity the intended use for the proposed new quay;
(b) Clarified the purpose and extent of the "associated development" in terms of use and assessment;

(c) Justified an extended period for the completion of the works, in conflict with the model Order;

(d) Explained the need for and use of the general works that can be provided and operated in the proposed harbour, nor assessed such works;

(e) Justified the requirement for powers of compulsory purchase;

(f) Dealt comprehensively with the requirement to restore the site once the permitted use of the quay as a wind turbine manufacturing facility has ceased;
(g) Accurately identified the boundary of the proposed DCO.
(h) Given full consideration to the potential need for protective provisions required by ABP as operator of the Ports of Immingham and Grimsby.

3.3 No adequate justification has been advanced for the disapplication of section 33 of the Harbours, Docks and Piers Clauses Act, thereby not creating a public facility.

3.4 The Order does not properly define and describe the works as it is required to do. For example, the description of the works does not appear to have been properly tied to the works plans and there does not even appear to be an obligation to construct the works within the limits of deviation for each work. What it does appear to do is grant the developer the ability to construct the development in accordance with the design drawings unless the relevant planning authority decides otherwise - which effectively means that the developer can simply return to the planning authority to obtain approval for an entirely different proposal - with no obligation to seek the approval of the Secretary of State. The DCO appears to be authorising a NSIP without clarity as to even the general parameters of what is actually being authorised.

3.5 Further concerns with regard to the draft Order will be provided at a later date following detailed consideration.

4. "The Project"

4.1 It is not possible to reconcile the project as described in the applicant's environmental statement, namely a - "new quay together with facilities for the manufacture of marine energy components, including off-shore wind turbines" with the project as defined in the draft Development Consent Order.

4.2 Whilst the ES assesses the construction of a new port for use as an off-shore wind turbine manufacturing facility, the "authorised development" as defined in Schedule 1 of the draft Order makes no reference whatsoever to such a use and indeed seems to contemplate the construction of a new port, entirely unrestricted as to use, cargo type and cargo throughput.

4.3 If the project now being proposed by the applicant is a new port unrestricted as to use and capable of handling any cargo, then it follows that a project in such terms should have been assessed in the accompanying ES. This is not the case in this instance, in that a new port facility unrestricted as to use and capable of handling any cargo has clearly not been assessed in terms of either marine or land based environmental impact.

4.4 If on the other hand the applicant is genuinely seeking consent for a port facility for the manufacture of off-shore wind turbines, then - subject to the representations made in para 2 above to the effect that such a project does not in any case qualify as a NSIP - the draft DCO is fundamentally defective in that there is little or no reference to such a use, which would be essential for such a project. Such a proposal must be viewed as extremely sensitive bearing in mind the national and European nature conservation sites upon which it is bound to have a significant adverse effect.

4.5 Furthermore, the impact of the proposal on the day-to-day operations of adjacent port operators and landowners, such as ABP, simply cannot be assessed - clearly the impact of an offshore wind turbine manufacturing facility on road, rail and vessel movements amongst other things, would be very different to the impact of a general cargo port.

5. Planning Policy

5.1 The AMEP proposal, as assessed in the environmental statement, does not demonstrate that the proposed development would comply with extant and proposed national and local planning policy.

5.2 More specifically –

(a) The approach taken to policy matters in the ES seems to be bare general assertion - without detailed analysis of how the proposal performs against the policies cited;

(b) Policy, particularly at a local level, plays a key role in helping to identify the significant impacts of any given development and needs, therefore, to be comprehensively discussed in the environmental statement if the examiner and/or decision maker is to understand whether the benefits of the development would outweigh its adverse effects.

6. Terrestrial and Marine Ecology

6.1 The assessment of the impacts of the AMEP application on ecological features is inadequate. In this respect, the IPC would need further information on a number of issues.

6.2 These include –

(a) Comprehensive baseline data for European protected species (bats) against BCT guidelines and correct interpretation of results;

(b) Terrestrial invertebrate data;

(c) Up-to-date vascular plant data;

(d) Systematic evaluation of the ecological baseline value of the development site;

(e) Systematic assessment of ecological impacts.

6.3 The ecological assessment of the terrestrial and the marine ecological impacts does not comply with the requirements of the EIA Regulations or the Conservation Regulations, or the underlying European Directives.

7. Marine Impact

7.1 The potential marine impact for the proposed new port is clearly a matter of considerable concern to ABP as the statutory undertaker and operator of two adjacent ports, namely the Ports of Immingham and Grimsby.

7.2 Detailed information about the development actually being proposed was only provided at the time of, and in the documentation accompanying, the application on 13 January 2012. Initial concerns include the following: -

(a) There is serious inconsistency in the description of the berth works throughout the EIA which has a bearing on what should be assessed in the EIA. This makes it impossible to assess the actual impacts that will arise should the development be undertaken.

(b) It follows, from the above, that the works to be undertaken have not been correctly reflected in the EIA nor properly assessed.

(c) In addition, modelling does not appear to have been undertaken on the final proposed scheme for all component processes. Particularly, in this context, it is noted that the analysis of the models does not appear to include Immingham Outer Harbour, (built in 2006 and currently handling some 1,000 vessel movements a year), which clearly raises issues in the context of the integrity of the EIA exercise.

(d) The EIA seems to be deficient in the information provided in relation to the analysis of aquatic ecological impacts.

(e) The work undertaken in relation to fish lacks necessary detail.

7.3 Overall we believe that there are serious omissions and defects in data and consequent modelling which prevent proper consideration by the Commission - and also by adjacent port operators.

8. Highways and Road Transport

8.1 The AMEP proposals as presently drafted raise a number of concerns in relation to highways, access points, traffic movements and road transport. Further information is required from the applicant in the context of the actual proposal, its size, use and proposed duration which will in turn inform the assessment of consequent highways impact.

8.2 Specific concerns identified at this stage include -

(a) Without adequate mitigation, which has not been detailed to date, the scheme raises clear, significant and adverse impacts on key road access to ABP's Port of Immingham.

(b) The transport assessment and the transportation chapter in the EIA include numerous inconsistencies and mathematical errors. At the present time, no weight can, therefore, be placed on its findings or proposed mitigation measures.

(c) The traffic modelling appears to be deficient in that it does not adequately assess the future growth of the Port of Immingham.

8.3 These points might be capable of solution with a commitment from the applicant to first identify and then provide the necessary off-site works with appropriate conditioning imposed by the IPC. These are issues, however, that have not been properly defined at this stage and warrant significant further discussion before a decision on the scale and form of off-site works can be agreed. In the absence of resolution of these outstanding points, it follows that the implementation of the scheme will act to the serious detriment of ABP as an adjacent landowner and commercial operator and it is essential that these issues constitute a topic that should be tested at a hearing.

9. Railway Transport

9.1 Further information is required from the applicant in connection with its proposals for railway use. The assessment as presently presented is vague and ambiguous, giving little indication as to what is actually proposed and why. This is an issue of particular importance to ABP bearing in mind the Port of Immingham's already established use of the existing railway network, historically contributing some 25% of the UK's rail freight and likely to increase with the onset of new cargo movements.

9.2 Particular concerns include:-

(a) The proposed compulsory acquisition of part of the railway track within the ownership of Network Rail would restrict the future passage of commercial rail traffic serving the local industrial community. The CPO would physically frustrate the completion of the "Killingholme Loop".

(b) The proposed compulsory purchase would impact upon ABP's current proposals, under negotiation with Network Rail, in the context of use of its existing track serving the Port of Immingham;

(c) No consideration appears to have been given to potential future rail use and the detrimental impact that will be placed upon ABP's, and indeed other users, rail operations.

9.3 Generally, there is a serious lack of detail relating to the use of rail in support of the project. This is important and exacerbated by the poor definition and ambiguous scope of the project itself. It is impossible to identify with the necessary clarity either the proposed use of the new port or its consequent likely impact upon the existing rail infrastructure.

10. Consultation

10.1 Deficiencies in the consultation undertaken by Able with ABP exacerbates the difficulties that ABP is now experiencing in assessing the project.

11. Compulsory Acquisition of Land

11.1 ABP owns the freehold of part of the land identified on the published Land Plan as being subject to compulsory acquisition. ABP objects to the proposed compulsory acquisition of this land, which was acquired for port use by the port operator and is required for port use as part of ABP's statutory undertaking, with direct access to the Humber.

11.2 ABP further objects to the proposed compulsory acquisition of its leasehold interest, the freehold of which is held by the Crown Estate.

11.3 In addition, ABP also objects to the proposed compulsory acquisition of land and railway track currently in the ownership of Network Rail which affects its property.

11.4 ABP calls for a compulsory purchase hearing, to which it is entitled pursuant to section 92 of the Planning Act 2008.

12. Further Representations

12.1 ABP reserves the right to expand, add to or amend this summary and any further representations that it may make."

Applicant's Comments

42.2 This is a broad ranging representation that, in simple terms, seeks to challenge the legality of the application itself and the soundness of the accompanying documentation, principally the ES.

- 42.3 In the first instance it is necessary to understand the context of this representation; it is submitted on behalf of Associated British Ports (ABP). ABP evolved from the British Transport Docks Board (BTDB); under the Transport Act 1981, BTDB was reconstituted and became Associated British Ports on 31 December 1982. ABP claims to be the UK's leading ports group, owning and operating 21 ports around the UK and handling approximately a quarter of the country's seaborne trade. Its ports are: Ayr, Barrow, Barry, Cardiff, Fleetwood, Garston, Goole, Grimsby, Hull, Immingham, Ipswich, King's Lynn, Lowestoft, Newport, Plymouth, Port Talbot, Silloth, Southampton, Swansea, Teignmouth and Troon.
- 42.4 ABP is itself seeking to attract offshore energy business to a number of its ports. On the Humber Estuary, ABP is the harbour authority and also operates a near monopoly on port services with facilities at Grimsby, Immingham, Hull and Goole. As a result, any business wishing to import any significant quantity of goods through the Humber must currently use an ABP port.
- 42.5 ABP is currently planning to develop the Port of Hull as a turbine manufacturing facility with a new 600 m quay. The company has further aspirations to develop an 81 ha plot of land at Paull, near to the Port of Hull, for the offshore wind sector (*'UK Offshore Wind Ports Prospectus'*, (DECC, September 2009)). A Consultation Draft Masterplan for the Port of Immingham covering the period 2010-2030, also states that:
- 'The Port sees itself as a key partner in supporting the offshore wind sector. With considerable levels of development planned for North Sea locations within proximity of Immingham, significant opportunity exists for the creation of a new offshore service supply industry centred on the Port'*, (paragraph 5.99)
- 42.6 Accordingly, ABP has a clear commercial interest in opposing the development of AMEP despite the fact that other port sites will also be needed to support offshore wind development, even if AMEP is consented.
- 42.7 Notwithstanding the above context, the issues raised in the representation are addressed below on an objective basis.

General

- 42.8 Whilst a relevant representation is essentially a summary of a registered persons case, a recurring feature of this representation is the sweeping statement. For example, there is reference to the *'ambiguous scope of the project'*, without any substantiation as to the ambiguity that is being held to exist. Alternatively, *'further information'* is said to be required without a description of the information that is actually required or what purpose it would serve the EIA process or help the decision-maker. Similarly, assessments are described as simply being, *'inadequate'*.
- 42.9 Whilst the EIA process is broadly defined within legislation, specific approaches, methodologies and examples of good practice have evolved as the practice has become more widespread. Some assessments rely in part, or indeed in whole, on professional judgement. The decision as to what information is actually required is, ultimately, also a matter of judgement for the decision-maker. In

R(Bedford and Clare) v Islington LBC [2002] EHC 2044 (Admin), where objections as to ES content were tested in Court, Ouseley J observed that,

'(i)t is inevitable that those who are opposed to the development will disagree with, and criticise, the appraisal, and find topics which matter to them or which can be said to matter, which have been omitted or to some minds inadequately dealt with. Some or all of the criticism may have force on the planning merits. But that does not come close to showing that there is an error of law on the local planning authority's part in treating the document as an Environmental Statement or that there was a breach of duty in Regulation 3(2) on the local authority's part in granting planning permission on the basis of that Environmental Statement', (paragraph 203).

Issue 1 – NSIP?

42.10 With respect to the legal challenge on whether the project qualifies as an NSIP project; the argument put forward in the representation is a reformulation of one that ABP twice put before the IPC in correspondence dated 4 and 25 February 2011. It is a matter of public record that **the IPC had regard to ABP's representations on this matter before accepting the application in January 2012.**

42.11 Section 24 of the Planning Act 2008 is clear on the definition of a harbour that comprises a NSIP and the application complies by virtue of satisfying the conditions of 24 (1)(a) and 24(3)(c) as reproduced below (emphasis added).

'(1) The construction of harbour facilities is within section 14(1)(j) only if (when constructed) the harbour facilities—

(a) will be in England or Wales or in waters adjacent to England or Wales up to the seaward limits of the territorial sea, and

*(b) are expected to be **capable** of handling the embarkation or disembarkation of at least the **relevant quantity** of material per year.*

(3) "The relevant quantity" is—

(a) in the case of facilities for container ships, 500,000 TEU;

(b) in the case of facilities for ro-ro ships, 250,000 units;

*(c) **in the case of facilities for cargo ships of any other description, 5 million tonnes;***

(d) in the case of facilities for more than one of the types of ships mentioned in paragraphs (a) to (c), an equivalent quantity of material.'

42.12 As AMEP is neither a container terminal nor a ro-ro facility, the legal test for AMEP to be an NSIP reduces to:

- is it a harbour facility;
- is it in England or Wales; and,
- is it *'capable of handling the embarkation or disembarkation'* of 5 million tonnes of cargo per year.

Handling capability is, in effect, a theoretical concept and so, since the method for determining the handling capability is not defined in law, becomes a matter

of judgment for the decision-maker (following some form of reasonable assessment). On this basis, the applicant submitted with the application, an assessment that demonstrates that the facility is *'capable of handling'* in excess of the *'relevant quantity'*. Actual use of a harbor facility will vary over its lifetime but there can be no reasonable doubt that AMEP has the capability to handle the *'relevant quantity'*. The applicant is therefore satisfied that AMEP is an NSIP in law.

42.13 DCLG issued guidance in September 2009. At Annex A, the following examples are provided for harbour development

- *'works for the accommodation or convenience of vessels (including dolphins and pontoons)*
- *lights on tidal works during construction*
- *construction of a viewing platform or other such public amenity*
- *relocation of apparatus of statutory undertakers (mains, sewers, drains, pipes, cables, pylons etc.)*
- *supplementary harbour works for the benefit of third parties/to assist the Environment Agency*
- ***creation or enhancement of a logistics or distribution centre***
- ***development of nearby port-related process facilities***
- *off-site facilities for vehicle safety or security controls*
- *off-site coast protection works required because of expected changes in wave energy propagation consequent on the main development*
- *provision of compensatory facilities for commercial or leisure fishing*
- *development associated with the use or disposal on land of dredged arisings', (emphasis added).*

42.14 A revised draft of the guidance was reissued for consultation in April 2012, but the relevant text above has not changed.

42.15 It is therefore evident that port related industry is associated development in relation to harbours and therefore that the manufacturing facilities associated with AMEP have been correctly identified as such in the application.

Issue 2 - DCO

42.16 Most of the criticisms made in paragraphs 3.2(a) to (h) are misdirected if they are intended to be criticisms of the Development Consent Order rather than the application as a whole. The DCO is merely the legal instrument by which the project is authorised. The justifications for the powers it contains and the assessments of its effects are contained in other application documents for the aid of the examining authority and decision-maker.

3.2(a) Development Consent Orders for harbours are based on their predecessors Harbour Empowerment/Revision Orders (which still apply to below-threshold projects), and these do not generally prescribe a use to which harbour facilities may be put. Restrictions may be imposed on cargo that would otherwise have unacceptable environmental effects, such as relating to heights, dust emissions and stacking, but there is generally no prescribed use for the harbour set out in the consenting instrument, and we see no reason to depart from that.

- 3.2(b) The application document that sets out the purpose and extent of associated development is document TR030001/APP/7 and the environmental statement (document TR030001/APP/14b) assesses the associated development's impacts along with that of the quay, the nationally significant infrastructure project.
- 3.2(c) The justification is contained in the explanatory memorandum (document TR030001/APP/10) at paragraph 6.2. In essence it is because larger projects take a longer time to be completed, and Felixstowe and Bathside Bay are given as comparables, which both have the same limit of ten years.
- 3.2(d) The reference to general works is likely to be to article 10 of the order. This is explained in the explanatory memorandum at paragraphs 6.8-6.11. It is one of the model provisions for harbours but slightly tailored to reflect this particular project. The works have been assessed as part of the overall project assessment in the environmental statement - it would be unusual if not unprecedented for this general works provision, which appears in all recent harbour works orders, to be singled out for special treatment in the corresponding environmental statement.
- 3.2(e) Compulsory purchase powers are justified in the statement of reasons (document TR030001/APP/13a), which takes five pages specifically to justify the powers of compulsory purchase at section 5.
- 3.2(f) As has been stated elsewhere it is not intended that the harbour will be restored even if the permitted use of the facility ceases, as it will form part of the flood and sea defence for the south Humber bank.
- 3.2(g) This refers to the boundary of the DCO. According to the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, the works plan should identify the proposed location of the development and works and the limits within which the development and works may be carried out and any limits of deviation provided for in the draft order. The works plan key clearly indicates that a blue dashed line corresponds to the 'limit within which the development and works may be carried out', which is carried over into the DCO via the phrase 'the order limits'.
- 3.2(h) It is correct that the DCO does not contain any provisions for the protection of ABP in its role as operator of Grimsby and Immingham harbours, although there are extensive provisions for the protection of ABP in its role as Humber harbourmaster. That does not mean, however, that no suggestions for protective provisions would be entertained. Able's principle for including protective provisions in the order was that they were to protect organisations with a regulatory function that might be impacted by the Able Marine Energy Park. Able did not consider that ABP in its role as operator of Grimsby and Immingham harbours would need provisions of that type, but Able would be pleased to consider any that were put forward.
- 3.3 The justification for section 33 of the Harbours, Docks and Piers Clauses Act 1847 not being incorporated in the DCO is given in paragraph 5.7 of the explanatory memorandum. AMEP is similar to the recent London

Gateway Port project that involved a Harbour Empowerment Order, which did not incorporate that clause either.

- 3.4 The works in Schedule 1 to the order are restricted to the order limits, which in turn are defined by reference to the works plan. It is however correct that the works do not refer to the limits of deviation and this will be corrected. In response to a question from the examining authority, requirement 4 about the design drawings will be circumscribed in a similar way to the final Rookery South DCO so that any variation cannot go outside that which was environmentally assessed.

Issue 3 - The Project

- 42.17 It is intended, as set out in the ES, that the harbour is used as a base for manufacturing marine energy components, their subsequent storage, their handling and for associated vessels to import goods and export products. That intention is fully in line with current national and European policy as explained in Chapter 5 of the ES.
- 42.18 Policy is however subject to change, particularly because the roots of all policy are essentially political. Consequently, the intended use of the facility cannot be guaranteed with a level of certainty that is beyond doubt. If government energy policy changes in the future then use of the quay will have to change; it cannot simply become a facility having no lawful use. Given the significant investment required to construct facilities in response to Government policy, it would be inequitable for the use of the quay to be restricted too narrowly and any restriction is bound to influence any post-consent funding decision.
- 42.19 Notwithstanding the above, it is accepted that where a change in use occurs, that this might be subject to further application and consenting processes.

Issue 4 - Planning Policy

- 42.20 The application provides a review of current local planning policy, and European policy and demonstrates compliance with both. National planning policy has changed significantly since the application was submitted, having been considerably simplified by the publication of the National Planning Policy Framework (NPPF) and the simultaneous revocation of, inter alia, all previous Planning Policy Statements.

Issue 5 - Marine and Terrestrial Ecology

- 42.21 ABP make submissions on the content of the ES, the absence of baseline data with respect to invertebrates and vascular plants as well as the assessment process itself.
- 42.22 The applicant has employed a team of suitably qualified and experienced consultants who are regularly engaged in the process of environmental impact assessment, and has consulted widely on the likely significant effects of the project. In this respect it is noted that an ES does not have to describe **every** environmental effect, merely the main effects or likely significant effects (R v Rochdale Ex p Milne [2001] Env L.R.22, paragraph 113). This point is also

emphasised in paragraph 82 of Circular 2/99 which goes on to stress that an ES *'should be prepared on a realistic basis and without unnecessary elaboration'*.

- 42.23 With regard to bats, the applicant employed competent ecologists to survey the development site on the south bank for foraging activity and also for any potential roosts. The Bat Conservation Trust guidance that was published at the **time of the EIA was, 'Bat Surveys Good Practice Guidelines'**, (First Edition 2007). The guidelines note throughout that survey effort and coverage should be proportionate to the quality of the habitat and the risk of roosts being present. Walkover surveys and emergence surveys were undertaken using automated bat detectors as necessary and individual trees within the site were also surveyed; refer to Annex 8.3 and Annex 11.8. An overview of the surveys is presented in Explanatory Note EX 11.19 included in the Volume of SEI accompanying this report.
- 42.24 The applicant has agreed with NE that the surveys are sufficient to obtain a reasonable understanding of the value of the site to foraging and roosting bats. The conclusion of these surveys is that the existing habitat is of low value to foraging bats and that there is no likelihood of a significant roost being present at the time of the surveys. Nevertheless individual roosts cannot be excluded in the future and precautionary surveys will need to be undertaken prior to any tree felling.
- 42.25 With regard to vascular plants, the ES does consider them, refer to paragraph 11.3.28. It is however noted that the ES refers to a Phase 2 habitat survey that was undertaken in 2006, but that is not included in the application. For completeness it is included as a Supplementary Report (EX11.27) included in the Volume of SEI accompanying this report. The EIA had due regard to this information, refer for example to paragraph 11.5.25 of the ES.
- 42.26 Comparison of the Phase 1 habitat surveys undertaken in 2006 by Just Ecology (Annex 11.1 of the ES), and in 2010 by Applied Ecology (Annexes 11.2 and 11.2.1 of the ES) show similar habitat within the application site. The exception to this is that by 2010, a greater part of the site had been developed from arable land into paved storage. As such, there was no reasonable justification for further plant survey work following the 2010 survey.
- 42.27 With regard to terrestrial invertebrates, there is no indication as to why ABP consider impacts on these species to be a main or likely significant effect of the project. The ES had regard to terrestrial invertebrates but Chapter 11 noted that no surveys had been undertaken, refer to paragraph 11.3.28 of the ES and this was because the habitat within the development areas is clearly of low value to invertebrates.
- 42.28 On the south bank, Phase 1 Habitat Surveys were undertaken in 2006 (Annex 11.1 of the ES) and repeated in 2010 (Annex 11.2 of the ES). The AMEP site is dominated by arable land and improved and semi-improved pasture, areas that are clearly of low value to invertebrates. There is a wooded copse on the site that is dominated by Ash, but also containing Oak, Sycamore, Hawthorn, Maple and elder; there is ground flora of fern and cleaver. This is only likely to be of local value. Indeed, the 2006 survey only noted the significant potential for invertebrates at two locations, neither of them on the AMEP site. On the north

bank, again the habitat is almost exclusively arable land with only low value to invertebrates.

- 42.29 An Entomological Consultant undertook an invertebrate survey of similar habitat to the north of the application site, on Halton Marshes, in 2007. The surveyor concluded that:

'The invertebrate value of the arable land, pasture at the former Chase Hill Farm, sea-wall, ditches, hedgerows and the small copse just south of East Halton Skitter must be considered low. Because of the absence of areas of potential invertebrate value within the development site, sampling was not considered important and the samples collected have not been identified', (refer to Supplementary Report EX11.31) included in the Volume of SEI accompanying this report.

- 42.30 Consultation with Natural England has confirmed that impacts on terrestrial invertebrates are not likely to be a significant of the AMEP project.
- 42.31 **ABP's comment that '(t)he ecological assessment of the terrestrial and the marine ecological impacts does not comply with the requirements of the EIA Regulations or the Conservation Regulations, or the underlying European Directives',** is somewhat vague. Only the need for an assessment and its minimum contents are covered by legislation; the process itself is not.

Issue 6 – Marine Impact

- 42.32 The applicant cannot respond to vague allegations of inconsistencies or deficiencies in the assessment process.
- 42.33 **It is misleading for ABP to assert that, '(d)etailed information about the development actually being proposed was only provided at the time of, and in the documentation accompanying, the application on 13 January 2012'.** Details of the consultation undertaken with ABP are set out in the response to Issue 9 below.
- 42.34 It is evident from the annual reports of the Harbour Master that IOH, which comprises two Ro-Ro berths, requires extensive maintenance dredging to enable it to operate. Indeed, it accounts for half of all maintenance dredging undertaken **for the benefit of ABP's ports on the Humber in 2010 and 2011. The applicant therefore understands ABP's concern.**
- 42.35 Whilst the change to sedimentation at IOH is not reported in Annex 8.3, sedimentation is reported to be reduced at berths nearer to the development, refer to Table 6 of the Annex. Accordingly there can be no credible expectation that sedimentation will actually increase at locations that are even more remote. This is confirmed in the Supplementary Report EX8.7, included in the Volume of SEI accompanying this report.
- 42.36 With regard to impacts on fish species, refer to the comments on Representation No. 8.

Issue 7 – Highways and Road Transport

- 42.37 The ES contains a detailed Transport Assessment (TA) at Annex 15.1. The assessment was undertaken by a suitably qualified and experienced company with significant expertise in this field.
- 42.38 With regard to the assertion that the traffic modelling, *'does not adequately assess the future growth of the Port of Immingham'*, it was agreed with the relevant highway authorities that since a large number of committed developments (some of which have not yet gained planning approval) are included in the assessment, no traffic growth would be applied to the baseline traffic counts and no future year assessments undertaken (ES paragraph 15.10.6). In effect, the potential for industrial growth in the area is already accounted for by including so many consented (but not implemented) development projects.
- 42.39 The roads on the approach to the Port of Immingham are already congested. It would clearly be an inequitable situation for the Port of Immingham to expect other developers in the area to relieve existing road congestion, the normal principal applied to a developer is **'no detriment'**.
- 42.40 To address the potential for significant traffic growth from the Port of Immingham and anticipated development of the South Humber Bank, the Highways Agency has proposed a scheme to upgrade the A160 trunk road on the approach to the site. The Highways Agency estimated the cost of the scheme to be £108M in December 2010, refer to Figure 42.1, and its implementation would have significant benefit to the economy as a whole. On 11 May 2012, the Roads Minister announced development work would recommence on this scheme to **enable it to 'be in a good position to be considered for delivery in the early years of the next spend review period (post 2015)'**. Accordingly, the delivery of the significant highway improvements necessary for the expansion of the Port of Immingham and to enable development of South Humber Bank as a whole justifies, and must equitably rely on, public investment.
- 42.41 Due to uncertainty, the TA undertaken by the applicant assumed that the HA scheme would not be implemented.
- 42.42 The TA was widely consulted upon with the relevant highway authorities and mitigation is proposed at 3 junctions as detailed in Appendix Q of the TA and also in paragraph 15.10.8 of the ES. The applicant will also be responsible for implementing other committed developments on the A160 trunk road as listed in Schedule 9 Part 4 of the DCO.
- 42.43 The applicant cannot comment upon unsubstantiated claims in relation *'inconsistencies and mathematical errors'* that are simply undisclosed.

Issue 8 – Rail Transport

- 42.44 Refer to the applicant's comments on Representation No. 35.
- 42.45 The applicant's proposals for converting the existing rail line within the site into a private siding are set out in chapter 4 of the ES at paragraphs 4.4.47 to 4.4.48.

42.46 The maximum use of the rail proposed by the applicant is set out in Chapter 15 of the ES at paragraphs 15.5.12 to 15.5.13.

Issue 9 - Consultation

42.47 The applicant is satisfied that the consultation undertaken with ABP was more than sufficient. In contrast, **ABP's own consultation on Green Port Hull did not** include any direct contact with the applicant at all.

42.48 As evidence that the consultation and pre-application information were adequate, ABP found the material that was available to them sufficient enough to undertake an in-combination assessment of AMEP with Green Port Hull without requesting any further information from the applicant.

42.49 In terms of available information, as long ago as July 2010, the applicant issued an informal pre-application consultation document to ABP that provided an overview of the scale and form of the proposed quay structure. In addition, the Scoping Report that we issued to the IPC, and that has been available on their **(or lately NID's)** website since October 2010, also provides a description of the quay. Furthermore, the same information, along with wider details of the **applicant's** development plans have been available for public access on the developments dedicated web site (www.amep.co.uk) since January 2011. Indeed, it is clear from their **solicitor's response to the IPC dated 15th October 2010** that ABP fully understood the scale of the proposal.

42.50 On 14 December 2010, the applicant met with the Port Director for ABP Immingham and Grimsby and explained to him the form of structure proposed and the construction methodology for the quay. On 25 January 2011 the applicant held a navigation workshop at the Ashbourne Hotel, Killingholme, that was attended by the Harbour Master, a senior Humber Pilot, Simon Ports, the Oil and Pipelines Agency, Greystar and Capt. Martin Gough, ABP Dock Master at the Port of Immingham. Again, the form and scale of the development and its method of construction were clearly explained to everybody attending. On 9 February a draft Hazard Log was issued to Capt. Martin Gough for comment and his comments were received on 22 February.

42.51 On 31 January 2011, the applicant published all the preliminary environmental information relevant to its AMEP proposal. The documents included a detailed description of the proposed scheme with preliminary engineering drawings. A complete electronic copy of the information was sent to ABP who responded to on 18 March 2011. In developing our final proposals we have had regard to that correspondence.

42.52 During February 2011, ABLE also held five public meetings in and around Immingham; two of these were at Immingham Civic Centre, and appropriately qualified staff were available to address any issues raised or to respond later if necessary.

42.53 On 18 May 2011, the applicant met again with the Port Director and **ABP's** Sustainable Development Manager to consult further; again the form and scale of the marine structures were clearly explained. The form of construction and the

construction methodology has not changed since the above consultation meetings took place. The scale of the development has changed in that it is slightly smaller than it was when the scheme was previously explained to ABP.

- 42.54 It is therefore demonstrably not the case that the consultation with ABP has been inadequate.

Issue 10 – Compulsory Acquisition of Land

- 42.55 The parcels of land identified by numbers 03020 and 03021 on Land Plan Sheet No. 3 are presently owned by ABP and are needed for the AMEP development to proceed. The British Transport Docks Board, the predecessor of ABP, acquired the land in April 1967. Despite this, the site has seen no meaningful activity or investment in the intervening 45 years. Now, however, it is now claimed to be essential to the development of the Port of Immingham.
- 42.56 The landholding is identified within *ABP's 'Port of Immingham – Master Plan 2010 – 2030 – Consultation Draft Document'* as having *"potential for a further deep-water river jetty"*. It goes on to say that *"this opportunity to construct a new facility will be driven by future market demand"*, and concludes, *"it is envisaged that the development will be required between 2020 and 2030"*.
- 42.57 The applicant's solicitors wrote to ABP offering to purchase the land on 29 October 2010. ABP responded on 9 November 2010, unequivocally stating that the land *"...is not for sale and any proposal to compulsorily acquire this land will be vigorously opposed.....It is frankly preposterous that your client should threaten ABP with CPO procedure's for your clients highly speculative and as yet unconsented development.....We, therefore, wish to make absolutely clear that no ABP land held either freehold or leasehold is available for sale to your client"*.
- 42.58 Having considered the matter carefully, the applicant is of the view that if any special value is attributable to this relatively small plot of land, it only arises because of its location on the river frontage. However, that special value only exists so long as the frontage is also developable, in other words, so long as the frontage remains unobstructed by any other development. Thus, it is transparent that ABP must also object to any marine development that would obstruct their **land's** frontage; in this case the proposed AMEP quay. However, configuring AMEP to enable a rather nebulous (and arguably far less credible scheme) to **come forward at some time in the future, subject to 'market demand'**, would significantly reduce the potential benefits of AMEP as a cluster; the quay would reduce significantly in length and with it the associated industrial development that it could support. The socio-economic benefit of development to this relatively deprived area would be reduced since, intuitively, the benefit of two small schemes (assuming both were still viable) would not match the benefit of a significant marine energy park and thus the public benefit would be diminished.
- 42.59 Also relevant to this matter is that as the ABP parcel of land appears too small to enable any marine development in itself, it must be expected that ABP would need to CPO **the applicant's land in order to submit** a viable development proposal of its own in the future. Thus for either development to proceed at all on this particular frontage, CPO powers will need to be exercised either by the

applicant or ABP, who will each need to exercise them on the other. Indeed ABP's own Draft Masterplan 2010 records that,

'(i)t is anticipated that all suitable development areas within the traditional boundaries of the Port will ultimately be used and the Port will therefore eventually have to link to the adjacent strategic land banks located to the east, south and west. These areas have been recognised by local and regional planning bodies as land for Port related use and as such form an important future resource to assist the growth of the Port and related economies', (paragraph 7.9).

- 42.60 On this basis, it seems that ABP are simply seeking a reinforcement of their monopoly on port development along the South Humber Bank.
- 42.61 Currently, ABPs stance, in refusing to offer its minority landholding on Killingholme Marshes for sale (seemingly at any price) simply serves to thwart economic development of the South Humber Bank for the foreseeable future.
- 42.62 The application is accompanied by a Statement of Reasons that sets out the legal case for the compulsory acquisition of land should the applicant be unable to reach agreement with any landowner for the sale of the land identified within the Order. The applicant is satisfied that the case for compulsory purchase is sound.
- 42.63 On 26 March 2012 the applicant sought a certificate from the Secretary of State for Transport in accordance with s127 of the Planning Act 2008 for confirmation **that the land could be acquired without serious detriment to ABP's undertaking.**

Scheme Name:	A160/A180 Immingham		Scheme Location	
Spending Review Status:	Future			
Scheme Description:	Upgrade to Dual 2 Lane All Purpose Road with associated junction improvements.			
Derivation of Business Case Information				
NPV¹/£ Analysis			Multi-Criteria Analysis (MCA)	
				Description
Latest NPV:	£316m	NPV/£	NPV/£ is 5.6	
Adjusted ² NPV:	£603m	Deliverability	Scheme is at Stage 3 of the Project Control Framework – preliminary design & preparation	
Capital Cost ³ :	£108m	Strategic Fit	Scheme forms part of a strategic national corridor. Proposed scheme would extend the provision of dual two lane carriageway. Limited delays (2,500 to 16,000 hrs/km/yr) predicted on this stretch in 2025.	
NPV/£ ⁴ :	5.6	Non-monetised Impacts	Beneficial impacts, including journey ambience, transport interchange and security, offset by adverse impacts, including townscape, heritage of historical resources and biodiversity	

¹ Net Present Value

² Adjustments to account for reliability, landscape, updated price of carbon and rebased from 2002 to 2010 prices

³ Capital Cost is the total of all future capital and excludes historic costs

⁴ Adjusted NPV divided by Capital Costs

Figure 42.1 : Highways Agency’s Business Case for the A160 Port of Immingham Improvements Scheme

43 **REPRESENTATION No. 48 – Garry Lyon on behalf of Stone Creek Boat Club**

Relevant Representation

43.1 The following representation was received by the Infrastructure Planning Commission from Garry Lyon on behalf of Stone Creek Boat Club on 30th March 2012.

'We have no objections and support the development at Killingholme. Our concerns relate to the compensation site on the North bank.

In the developers documents it suggests there will be silting up of Stone Creek. It also suggests silting of the exit channel into the Humber. If either of these two were to happen this would end navigation and access to the river for boats and club members using Stone Creek. The developers proposals as presented effectively means the end of the Stone Creek Boat Club which has existed for 50 + years.

Silting up of Stone Creek will also considerable increase flood risk. In the developers section on Navigation, SCBC is not considered. The developer has not made any approach to the SCBC'

Applicant's Comments

43.2 Refer to the comments on Representation No. 34 which is also on behalf of Stone Creek Club.

43.3 Chapter 14 of the ES had regard to the impacts on Stone Creek Boat Club, refer to paragraph 14.6.23, directing the reader to Volume 2 of the ES. Changes to water flows in and around Stone Creek are assessed in Chapter 32.

44 REPRESENTATION No. 49 – Julia Dixon on behalf of E.ON UK plc

Relevant Representation

44.1 The following representation was received by the Infrastructure Planning Commission from Julia Dixon on behalf of E.ON UK plc on 30th March 2012.

E.ON UK plc is the owner and operator of Killingholme Power Station. The power station is adjacent to the site of the proposed Able Marine Energy Park (AMEP"). E.ON is a statutory undertaker for the purposes of this application. Able's application seeks the compulsory acquisition of part of E.ON's landholding with a proposal to grant a further easement back to E.ON for its existing intake and outfall cooling water pipes from the Humber to the power station. E.ON wishes to register its objection to the proposed AMEP application. This objection is submitted due to outstanding information being required to address concerns regarding the effect that the proposed development could have on the operation of the power station. The key issues which are of concern to E.ON are:

(1) Land Acquisition and the extent of the proposed Easement Corridor Able propose to compulsorily acquire a number of parcels of land from E.ON including an easement strip through which E.ON's intake and outfall pipelines and associated services pass. The pipelines enable the transfer of water between Killingholme Power Station and the Humber - an integral part of the operation of the plant. The current easement strip (granted by a Deed of Grant of Easement entered into on 9 July 2004 between Able and E.ON) is estimated to be 130m wide (at its widest point) and 50m wide (at its narrowest point). Able are proposing to compulsorily acquire the full extent of E.ON's existing easement and simultaneously grant E.ON a new easement comprising a strip 6m wide which they contend is the minimum needed to contain, access and maintain the pipeline. The 6m easement is inadequate. E.ON require an easement strip of circa 23m (minimum) to enable the safe and efficient repair of E.ON's existing buried assets without which there could be a serious detriment to the operation of the plant. In the absence of an agreed solution, it is noted that Able will need to make an application for a certificate in accordance with s.127 Planning Act 2008. Able also propose to acquire land to the east of the Killingholme pump house (Plot 05041 - Land Plan Sheets 4 & 5 of 14). This is operational land and is required for vehicular access to the pumping station.

(2) The impact of construction activities on the operation of the power station E.ON notes that Able proposes to raise the ground levels over and along parts of the length of the E.ON intake and outfall pipelines and then to erect a number of buildings along the length of the proposed 6m wide easement. This raises significant concerns as to the loading that may arise on the pipeline due to both short-term construction activities and future long-term operational use. For example, Able propose to extend the existing E.ON pumphouse access road over the top of the glass-fibre reinforced plastic (GRP) pipelines in order to provide site access for construction of the quay structure (i.e. for piling operations and reclamation works). Limited consideration has been given to provision of a relieving slab over E.ON's pipelines or any other form of protective measure and any proposals to protect E.ON's pipelines only extend to the 6m easement strip.



AMEP

**APPLICANT'S COMMENTS ON THE
RELEVANT REPRESENTATIONS**

Date: June 2012

These issues must be resolved to E.ON's satisfaction otherwise the operation of the power station could be detrimentally affected.

(3) Sedimentation and its effect on the operation of E.ON's Intake and Outfall pipelines E.ON's intake and outfall pipes lie immediately adjacent to the northern return wall of the proposed quay. E.ON requires clarification of the distance between the alignment of E.ON's intake/outfall and the proposed northern return wall and confirmation that the placement of rock revetment adjacent to the northern wall (along with associated dredging work) will not compromise the physical integrity of the E.ON intake and outfall pipelines. There is considerable concern that sediment could become drawn into the pipelines reducing their efficiency or causing an operational failure. Alternatively, long term increases in suspended sediment concentration or a relatively large and sudden temporary increase in suspended sediment could cause severe damage to, and potentially failure of, the pipelines.

(4) The proposed dredging strategy it is understood that dredging is proposed during the construction stage of the development but also post-construction during the life-time of the AMEP due to predicted increases in sedimentation (ES Chapter 8 refers). E.ON requires: an assurance that the proposed piling and dredging works will not adversely affect the integrity of the E.ON pipelines or the associated river bed structures; and agreement that any Trailing Suction Hopper Dredger carrying out the dredging of alluvium at the site will not be allowed to operate with an overflow hopper; and information regarding tracking accuracy of plough vessels in order that E.ON can assess the level of risk of damage to the intake/outfall structures resulting from the proposed maintenance dredging works. Chapter 8 of the ES states that maintenance dredging will be carried out once the development is operational. E.ON requires details of how Able will be obligated to carry out this dredging, how often it will be carried out and by whom. There is no Requirement set out in Schedule 11 of the draft DCO which binds Able to a dredging strategy and no development consent order obligation has been submitted with the suite of DCO application documents."

Applicant's Comments

- 44.2 The applicant acknowledges that E.ON requires access to its apparatus that needs to be of sufficient width to enable maintenance, including renewal. The applicant is in the process of agreeing a wider easement with E.ON.
- 44.3 The applicant acknowledges that E.ON will require an easement over part of land parcels 04021 and 05041 in order to access their pumping station and maintain their pipelines.
- 44.4 **The layout of the site has had regard to E.ON's buried services passing through** it and all buildings have been sited to avoid them, refer to paragraph 4.7.19 of the ES. Final ground levels will be maintained close to existing levels over the pipes, so avoiding any increased loading. Where roads are necessarily routed over existing E.ON pipelines then paragraph 4.7.19 records that heavy duty crossing points will be constructed.

- 44.5 The relationship between AMEP and E.ON's infrastructure as it passes under the foreshore is detailed in Figure 44.1. The intake structure lies clear of the berthing face and is in an area where sedimentation is not predicted by the long term modelling presented in Annex 8.3 of the ES and updated in Supplementary Report EX8.8 included in the Volume of SEI accompanying this report. The E.ON outfall lies behind the berthing face and the same modelling reports predict accretion at the outfall. Whilst the timescales for this accretion are uncertain it appears, from an assessment of the impact of HIT (Supplementary Report EX8.9) included in the Volume of SEI accompanying this report that accretion will progress over decadal periods.
- 44.6 Overflowing during trailing suction hopper dredging is only of benefit when sands are being dredged as these settle rapidly in the hopper. By contrast alluvium will not settle rapidly and there is no benefit in allowing the hopper to overflow. Accordingly the applicant can confirm that, when dredging alluvium, the hopper will not be allowed to overflow.
- 44.7 The applicant will be responsible for monitoring the impact of tidal works on other receptors within the estuary. Schedule 9, Parts 1 and 2 of the draft DCO provide for monitoring of the estuary in relation to sediment transport and geomorphological impacts (paragraph 4) and for remedial action to be instructed by the Harbour Master (paragraph 20).

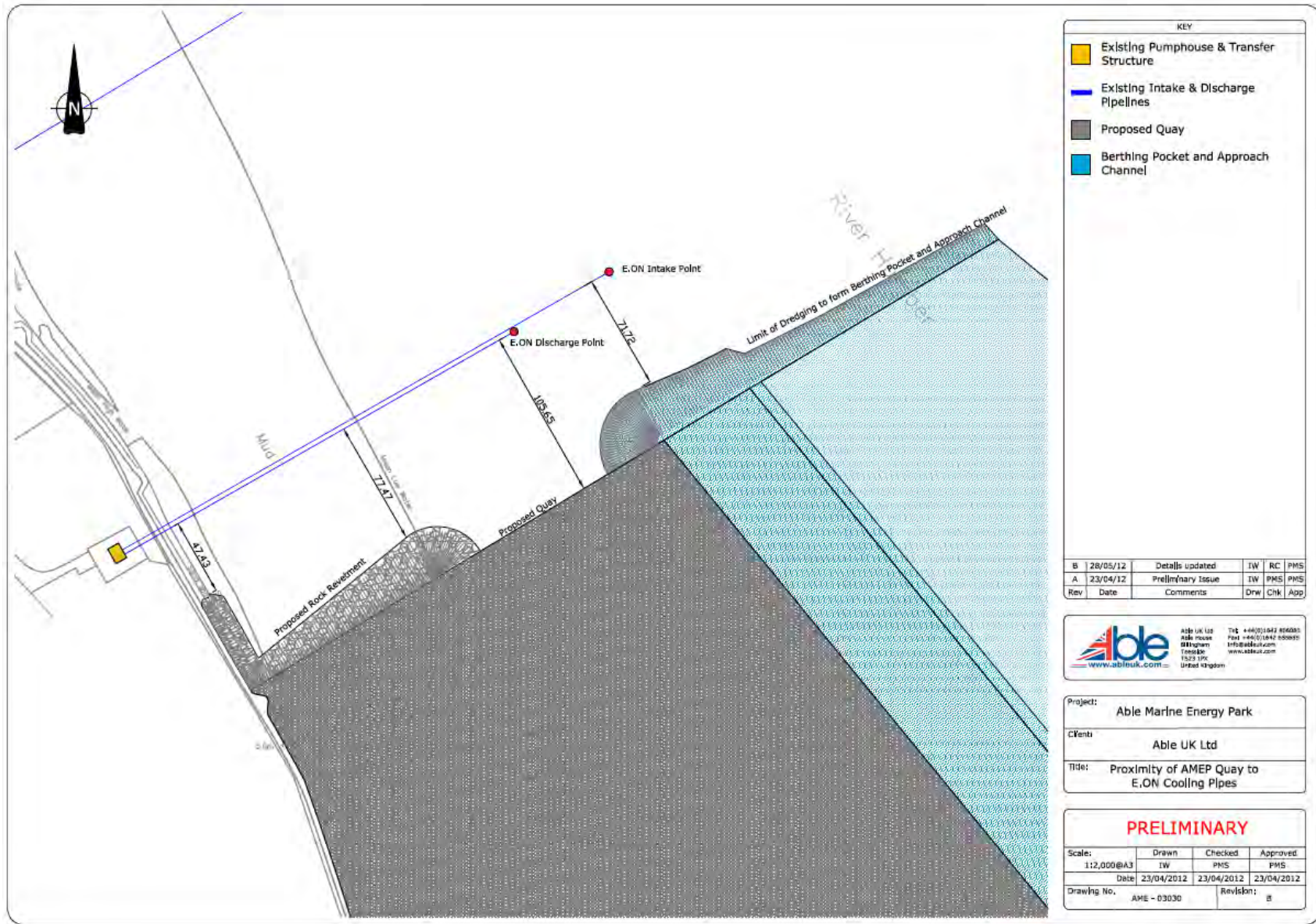


Figure 44.1 Relationship Between E.ON Infrastructure and AMEP

45 REPRESENTATION No. 50 – Sally Osgerby

Relevant Representation

45.1 The following representation was received by the Infrastructure Planning Commission from Sally Osgerby on 30th March 2012.

I object:

1. *because compensatory habitat only has to be created if there is significant damage done by the development. The River Humber is huge (about 35K ha) & the percentage of land affected by the proposed development is so small that it is not significantly significant. Therefore the creation of compensatory habitat is not legally necessary.*
2. *because the application is for more land to be used for compensatory habitat than is necessary according to the law*
3. *because the North Bank of the Humber has been chosen as land to use as compensatory habitat. This is some of the best wheat growing land in the world. In a time of impending food shortages, we should be cherishing our fertile farmland.*

Applicant's Comments

45.2 Whether or not an impact is 'significant' is not defined in law. English Nature (as was) undertook a review of planning decisions relating to the Natura 2000 sites in Britain and published a report on their findings. Entitled, '*How the scale of effects on internationally designated nature conservation sites in Britain has been considered in decision making: A review of authoritative decisions*', (EN, 2006), Table 1 of the is reproduced in Figure 45.1.

45.3 Refer to the comments on Representation No's 1, 2 and 7.

Summary Table of Authoritative Decisions Reviewed

Cases granted after it was concluded that there would not be an adverse effect on site integrity (Paragraphs where the case is referred to in the report are indicated in brackets)			Cases refused after it was concluded that there would be an adverse effect on site integrity			Cases where it was concluded that there would be an adverse effect on integrity but permissions were granted because of imperative reasons of overriding public interest		
Case	% site affected	Comments	Case	% site affected	Comments	Case	% site affected	Comments
White Horse Millenium Landmark (3.13)	0.017-0.056 (actually 0.0076 – 0.0255)	Some additional construction disturbance. The Inspector relied on unconfirmed management measures as mitigation. See comments made by the Inspector in the Dibden Bay inquiry report regarding this case.	Tideways Jetty (3.12)	0.0000774	Disturbance from boats and jet-skis may have been the main concern.	London Gateway (3.7)	0.1	In addition to the direct habitat loss, 1.24% of site would be likely to functionally change as a result of the development. Compensatory measures must be provided because it was concluded that there would be an adverse effect on integrity.
Mostyn Docks (3.9)	0.07 (actually 0.04)	Loss not considered to be significant, but the SPA boundary is now under review as a result of habitat loss. See also comments made by the Inspector in the Dibden Bay inquiry report regarding this case.	Dibden Bay (3.3)	0.76	Habitat loss was compounded by the additional loss of 86 ha supporting habitat and other off site effects.	Bathside Bay Container Terminal (3.2)	1.87	Compensatory measures must be provided because it was concluded that there would be an adverse effect on integrity.
Mawcarse Loch (3.8)	Not calculated – pollution effect	The pollution effect was so reduced by the mitigation proposed that it could be concluded that there was unlikely to be any significant effect.	Santoña Marshes, Spain (3.11)	0.5	A multitude of hydrological changes, disturbance and habitat alteration added to the effects of direct habitat loss.	Port of Hull Quay 2005 (3.10)	0.01 (actually 0.03)	Compensatory measures must be provided because it was concluded that there would be an adverse effect on integrity.
			Barksore Marshes (3.1)	1.79	Habitat loss was clearly determined to have an adverse effect on the integrity of the site.	Immingham Outer Harbour (3.5)	0.145	Compensatory measures must be provided because it was concluded that there would be an adverse effect on integrity.
			Linshaws Quarry (3.6)	0.0000153 (actually 0.00153)	The Secretary of State declined to call this case in, but the local authority still concluded that the development was likely to have a significant effect on the site.	Gilwern to Hafodyrnyys Pipeline (3.4)	0.15 AEOI 0.09 mitigated	This case provides an example of what was considered to be <i>de minimis</i> (0.09% of the site that could be restored in the short term) and what was not (0.15% of the site that could be restored only in the long term).

Figure 45.1 : Abstract from English nature Research Report R704

46 **REPRESENTATION No. 51 – North East Lincolnshire Council**

Relevant Representation

46.1 The following representation was received by the Infrastructure Planning Commission from North East Lincolnshire Council on 30th March 2012.

Further to the notice of acceptance of the application for a Development Consent Order (DCO) by the Infrastructure Planning Commission please find below the representations of North East Lincolnshire Council (NELC). NELC confirms that it wishes to be an interested party on the application and register accordingly. The initial principal issues are as follows: In terms of economic development in the area there is strong support for this development in principle given that it would strengthen the areas offer in terms of renewable off shore energy production. The development has the potential to create a significant number of jobs for North East Lincolnshire residents. It would also create opportunities for new and existing businesses involved in the supply chain. Any wind turbine manufacturing facilities developed in North Lincolnshire would positively support the growth of the operations and maintenance sector developing at Grimsby Port. The application would help to regenerate the local and wider area. However, the implications of the development on the infrastructure of the area needs to be fully considered and in particular we would seek further clarification and assessment on various matters relating to highways and transportation and the designated Immingham Air Quality Management Area. These matters are from the submitted Transport Assessment and Travel Plan documents. These initial comments are:

- 1) With regard to employee trip generation, clarification on the area per worker assumptions. This has potential to significantly alter total employee numbers.*
- 2) Clarification of shift system assumptions as any change in shift patterns would have a significant impact on the robustness of the subsequent junction capacity assessment work.*
- 3) On trip distribution, clarification regarding the process used to determine trip distribution and the large proportion of trips from a westerly direction.*
- 4) With regard to the traffic impact and junction capacity assessment, the need for an opportunity to check traffic models to ensure their results are robust. Moreover the need for Stage 1 RSA's for newly proposed accesses and highway mitigation schemes.*
- 5) In terms of the scheduled A18/A180 link road, an assessment of the impact of the development on this committed scheme.*
- 6) With regard to sustainable transport measures, the need for a robust Travel Plan so that people accessing the site from North and North East Lincolnshire are able to do so using sustainable transport. Defined responsibilities and future monitoring are required.*

7) *In terms of the A1173/Kings Road and Pelham Road Air Quality Management Area, verification of the air quality results by an environmental specialist.*

Applicant's Comments

- 46.2 Paragraphs 21.6.3 *et seq* of the ES provides an explanation of the number of employees estimated to work on the AMEP site.
- 46.3 Staggered shift systems will be enforced through tenancy agreements that will also require occupiers to comply with the Framework Travel Plan agreed for the site.
- 46.4 Trip generation is based on a gravity model, as explained in Annex 15.1 of the ES, paragraphs 6.19 *et seq*. The methodology that underpins the model is widely accepted for trip distribution. The model calculates a percentage of trips based on the car travel times from electoral wards to the site, weighted by the population of the ward. The population data was sourced from the 2001 census with the travel times being derived through a car accessibility analysis within the Accession software package. A time penalty was incorporated into the network to reflect the toll incurred when crossing via the Humber Bridge. The trips were then allocated to roads based on the expected route from ward to site.
- 46.5 A sensitivity test has been undertaken on the trip distribution used in the **assessment and is reported in the applicant's answers to the first set of Examiners questions (Question 48(a))**
- 46.6 During the preparation of the Transport Assessment, consultations were held with all the relevant highway authorities and extensive comments were received on the assessments. Minutes of meetings are included in ES Annex 15.1, Appendix A.
- 46.7 On 19 June 2012, the applicant received detailed comments from NELC's **traffic** consultant and these are currently being reviewed.
- 46.8 Stage 1 Road Safety Audits were undertaken in 2009 for the junction improvement works needed to address the adverse impacts of the Logistics Park, *viz.*
- a) A180 (T) / A160 – Merge Improvement / Westbound Entry Slip Road widening;
 - b) A160 / A1077 Ulceby Road – localised junction widening to major road to provide right-turn reservoir;
 - c) A160 / Habrough Road / Top Road Roundabout - Widening of the A160 carriageway, on the approach to and exit from the roundabout, on the western arm;
 - d) A160 Humber Road / Eastfield Road – Carriageway widening to Eastfield Road (north of A160) to provide dedicated left-turn lane into Humber Road; and

e) A160 Humber Road / Rosper Road – Installation of traffic signals on a three arm priority junction.

46.9 **The above Road Safety Audits and the Designer's Responses are** recorded in Reports EX15.3 and EX15.4 included in the Volume of SEI accompanying these comments. Of these junction improvements, (a), (b), (c) and (d) will operate **satisfactorily with the extra trips generated by AMEP and therefore those RSA's** remain valid.

46.10 The other junctions that need to be improved to accommodate the traffic from AMEP are listed below (as also listed in paragraph 15.10.8 of the ES).

f) Rosper Road / Humber Road (traffic signals);

g) Humber Road / A160 / A1173 (additional lane on one approach); and

h) A1173 / North Moss Lane / Kiln Lane (additional lane on each approach)

Of these, (f) and (g) are managed by North Lincolnshire Council and (h) is managed by **North East Lincolnshire Council. Stage 1 RSA's have** been undertaken for these junction improvement works as well and are recorded in Report EX15.5 included in the Volume of SEI accompanying these comments.

46.11 A Framework Travel Plan is included in Annex 15.2 of the ES.

47 REPRESENTATION No. 52 – Yorkshire Wildlife Trust

Relevant Representation

- 47.1 The following representation was received by the Infrastructure Planning Commission from Yorkshire Wildlife Trust on 30th March 2012.

Thank you for consulting the Yorkshire Wildlife Trust on the above application. The Yorkshire Wildlife Trust works across the Yorkshire and Humber region managing eighty reserves and with a membership of over 32,000. The YWT is the second oldest of the 47 Wildlife Trusts which work in partnership to cover the whole of the UK. The Trust's principle vision is to work for a Yorkshire rich in wildlife, valued and enjoyed by people. The development itself falls outside of our area and we would refer you to the comments made by Lincolnshire Wildlife Trust (LWT). We do however have some comments to make regarding the compensation areas. We agree with LWT that the compensation should be delivered before the development begins. This will allow time to demonstrate the habitats ability to function. We are also concerned about the creation of wet grassland on land which was previously arable land as the high nutrient levels are likely to lead to less diversity in the grassland which will mean that it is less valuable for wildlife. We would have the same concerns with adding further fertiliser to ensure the grass grows quickly. The Cherry Cob Sands site is within our Outer Humber Living Landscape (<http://www.wildlifetrusts.org/living-landscape/schemes/outer-humber>). This is an area that we have identified as an important corridor for wildlife which connects habitats and allows wildlife to move between areas. In our Living Landscape areas we hope to restore, recreate and reconnect wildlife-rich areas by working in partnership with local communities, landowners, schools and businesses. We want wildlife to thrive, to disperse and re-colonise our landscape so future generations can encounter, experience and enjoy our natural heritage. Within this Living Landscape we already have three reserves; Spurn Point, Welwick Saltmarsh and Hodgson's Fields (<http://www.ywt.org.uk/reserves>). We will also soon be taking on the management of Paull Holme Strays which is close to the Cherry Cobb Sands site. The Trust would therefore be keen to work with Able to manage both of the proposed compensation sites to help create a larger ecological network as promoted in the NPPF. Management of the Cherry Cobb Sands site could be similar to that of Paull Holme Strays to create a much larger reserve which is more valuable for wildlife and people. Our Head of Conservation for this area, Terry Smithson xxxx,xxxx, would be happy to discuss this further.

Applicant's Comments

- 47.2 The applicant has engaged consultants to undertake the detailed design of the wet grassland habitat at Old Little Humber Farm and further details of their design are set out in report EX28.2 which is included in the volume of SEI accompanying these comments.

48 REPRESENTATION No. 53 – Benjamin Dove-Seymour on behalf of C.GEN Killingholme Limited

Relevant Representation

48.1 The following representation was received by the Infrastructure Planning Commission from Benjamin Dove-Seymour on behalf of C.GEN Killingholme Limited on 30th March 2012.

1. *C.GEN Killingholme Limited (C.GEN") proposes to construct and operate a 470 MWe gas-fired electricity generating station on its - and additional - land, adjacent to the Project. This NSIP is currently at the pre-application stage and preliminary environmental information will be published shortly.*
2. *C.GEN formally objects to the Project.*
3. *Despite the findings of the IPC in its Section 55 Checklist, C.GEN has not received notice of acceptance of the application or copies of any documents, despite assurances from Able. C.GEN is surprised by Able's approach to consultation, which appears to ignore the requirements of the Planning Act 2008, etc. and remains concerned about Able's approach to engaging with bodies within section 42 of the Planning Act 2008, and its neighbours generally.*
4. *The application documents do not explain why the Project requires the compulsory acquisition and privatisation of Network Rail's railway, or why the Project cannot be constructed or operated unless the railway is acquired.*
5. *C.GEN proposes to transport solid fuel for the Project along the railway. This will involve the construction of new sidings and the relevant connection and access agreements being concluded with Network Rail. Discussions with Network Rail commenced in mid-2011 and are ongoing. Able is aware of C.GEN's proposed use of the railway. C.GEN would be directly and adversely affected by the proposed privatisation of the railway. It would not be acceptable or appropriate for part of the national railway network to be privatised to benefit one person's narrow (and as yet unexplained) private interests to the disadvantage of wider public interests. The proposed acquisition does not satisfy the conditions in section 122 of the Planning Act 2008. It is not required for the development; and there is no compelling case in the public interest for it to be acquired.*
6. *C.GEN has additional concerns, which are exacerbated by the lack of consultation:*
 - 6.1 *Drainage: there are constraints on drainage for all development sites within the Killingholme Marshes system. The Project should not be allowed to prejudice the drainage of other sites within the area;*
 - 6.2 *Navigation: C.GEN may obtain fuel /transport waste for its project via C.RO Ports Killingholme. C.GEN is concerned that there has not been*

adequate assessment of the impacts of the Project on the Port, which may prejudice C.GEN's proposals in future;

6.3 Traffic: C.GEN is considering the impacts of the Project on the road network; and

6.4 Cooling Water: C.GEN understands that Able may not have properly assessed changes to the river regime, in particular sedimentation. As well as potentially affecting the Port, C.GEN is concerned to the extent it can rely on the ES to understand the impacts of the Project on its own proposals for cooling water pipes.

7. C.GEN requests that the Commission considers these matters to be principal issues and gives C.GEN an opportunity to make additional detailed representations on them in the examination."

Applicant's Comments

- 48.2 The applicant has not ignored the requirements for consultation laid out in the Planning Act 2008.
- 48.3 The need to acquire the Network Rail land is set out in the comments on Relevant Representation No. 35.
- 48.4 With respect to surface water drainage, refer to the comments on Relevant Representation No. 30.
- 48.5 C.GEN will need to identify which aspects of the project were not, in their opinion, adequately assessed in order for the applicant to respond in appropriate detail.
- 48.6 Additional hydrodynamic modelling is detailed in Reports EX8.7 to EX8.10 which are included in the Volume of SEI accompanying these comments. The extent to which C.GEN choose to rely on technical work they have not commissioned is a matter for them, but it would be normal practice for the developer of a Power Station to commission their own engineering consultants.

49 REPRESENTATION No. 54 – Benjamin Dove-Seymour on behalf of C.RO Ports Killingholme Limited

Relevant Representation

49.1 The following representation was received by the Infrastructure Planning Commission from Benjamin Dove-Seymour on behalf of C.RO Ports Killingholme Limited on 30th March 2012.

1. *C.RO Ports Killingholme Limited (C.RO") is owner, operator and statutory harbour authority of C.RO Ports Killingholme ("CPK"), a six berth ro-ro facility handling more than 600,000 ro-ro units annually.*
2. *C.RO formally objects to the Project.*
3. *C.RO has significant concerns about the effects of the Project on the hydrodynamic regime, morphology and deposition patterns in its harbour. The environmental information is confusing: modelling has been carried out inconsistently on the basis of different quay wall designs. C.RO finds no evidence that modelling has included the existence of berths at CPK, nor of vessels moored alongside the Project's quay, resulting in an unreliable assessment of tidal flow direction/rate. The construction and operation of the Project will increase sedimentation within CPK's harbour, corroborated by C.RO's own modelling. C.RO requires protection in the Order to address the monitoring of sedimentary deposition, any additional maintenance dredging needed, and the costs of doing so, in CPK's harbour.*
4. *The application documents do not explain why the Project requires the compulsory acquisition and privatisation of Network Rail's railway, or why the Project cannot be constructed or operated unless the railway is acquired. CPK has an existing connection to the railway. Able's ES states that existing rights of access would be retained but gives no information about how this is ensured.*
5. *The acquisition would not satisfy the conditions in section 122 Planning Act 2008. It is not required for the development; and there is no compelling case in the public interest. It would not be acceptable or appropriate for part of the national railway network to be privatised to benefit one person's narrow (and as yet unexplained) private interests to the disadvantage of wider interests.*
6. *The Project will impact CPK's navigation/access, in terms of operational impacts on C.RO's port business, and navigational risk issues for it as harbour authority. Of particular concern is the very large number of vessel movements for construction of the Project. The environmental information states that traffic management procedures will be required, but information on such measures is too limited to be properly considered.*
7. *C.RO objects to the proposal to mark the extent of the quay and swinging area with lights, which overlap CPK's approach channel. CPK requires*

protection in the Order to regulate any interference with its approach channel.

- 8. C.RO objects to Article 10 of the Order. This gives Able unacceptably wide and unconstrained powers to carry out unspecified works that may affect CPK in future, which remain unassessed. The proposed works should be specified and assessed now; or the provision deleted. If included, CPK requires protection in the Order to ensure that such works cannot be constructed if they adversely affect it.*
- 9. The Project should be controlled by a requirement to only operate as a marine energy park ensuring that the environmental effects of the Project are limited to those assessed, and to protect C.RO.*
- 10. C.RO requests that the Commission treats these matters as principal issues and allows C.RO to make detailed representations on them during the examination."*

Applicant's Comments

- 49.2 Additional hydrodynamic modelling is detailed in Reports EX8.7 to EX8.10 which are included in the Volume of SEI accompanying these comments. The applicant would agree that modelling of estuarine systems is complex and the results have a degree of uncertainty. Taking this into account, the applicant has exchanged Heads of Terms with C.Ro which are drafted to ensure that they suffer no detriment in the maintenance of their existing berth if AMEP is constructed. The applicant is awaiting comments from C.Ro on these draft Heads of Terms.
- 49.3 The need to acquire the Network Rail land is set out in the comments on Relevant Representation No. 35.
- 49.4 A comprehensive navigation risk assessment has been undertaken by the applicant and is included in Annex 14.2 of the ES.
- 49.5 Proposals for navigation lighting on the facility are detailed in Figure 49.1. The proposals have been discussed with the Harbour Master Humber and agreed in principle.
- 49.6 **With respect to restricted use of the quay, refer to the applicant's answer to Examiner's Question No. 5.**



Figure 49.1 Proposed Navigation Lighting

50 REPRESENTATION No. 55 – Michael Osgerby (Agriculture) Limited

Relevant Representation

50.1 The following representation was received by the Infrastructure Planning Commission from Michael Osgerby (Agriculture) Limited on 31st March 2012.

We would like the IPC to consider:

- 1. whether the size of the proposed development is large enough to require any compensatory habitat, according to the EU regulations. The Humber Estuary is very large (about 35,000ha) & the number of hectares taken away by this development is a very small percentage of the whole estuary. This small percentage of the estuary is not statistically significant, and so it is unnecessary to find any compensatory habitat.*
- 2. how much compensatory habitat has been provided by other projects and how much was required. There should be an area of compensatory habitat in the bank" which has been laid down but not already required by EU legislation.*
- 3. exactly what area of compensatory habitat is required by this development. Is it possible to use a smaller area of land than proposed.*
- 4. the siting of the compensatory habitat onto poorer land. The recommended area is very fertile farmland which produces high yields of crops. The Sustainable Development Commission recommended that Government must "Prioritise reversing the decline in UK food production" (<http://www.foodpolicy.co.uk/?p=524>).*

Applicant's Comments

50.2 Refer to the applicant's comments on Representation No's 1, 2, 7 and 50.

51 REPRESENTATION No. 61 – English Heritage

Relevant Representation

51.1 The following representation was received by the Infrastructure Planning Commission from English Heritage on 2nd April 2012.

The development is likely to result in harm to the setting of the group of three Grade II Listed lighthouses at South Killingholme and, as a result, will have an adverse impact upon an element which contributes to the significance of these assets. Overall, we consider that this harm would amount to less than substantial harm in terms of the advice in the NPPF. On that basis, English Heritage has no objections to the proposed development subject to the following:-

- (a) Completion of the proposed archaeological investigations*
- (b) Clarification of the mitigation measures to offset the identified harm to the setting of the three Listed lighthouses.*

We have the following comments to make with respect to this proposal:-

We would concur with the assessment within the ES of the likely significant effects which this proposal might have upon designated and non-designated heritage assets in the vicinity of the development site. The ES has indicated that the proposal will have a high adverse impact" upon the setting of Killingholme North Low Lighthouse (Site 15) and upon the setting of the group of three Grade II Listed lighthouses at South Killingholme (Sites 15, 106 and 107) [Chapter 18 Table 18.9 and Annex 18.4]. We would concur with this assessment. The ES has proposed producing a Management Plan to mitigate the adverse impacts which construction might cause to Killingholme North Low Lighthouse (Site 15). However it is unclear how the Management Plan is to be implemented or tied to the Development Order. Clarification is needed about whether or not it is the intention to provide mitigation to offset the indentified harm to the setting of the three lighthouses. Paragraph 8.1 of Annex 18.4 states that mitigation is offered in respect of the setting of the lighthouses "by implementing a management plan": The ES itself [Paragraph 18.7.6 page 18-72] states that it does not propose any mitigation measures to reduce the effects upon the setting of these assets. Notwithstanding the above, further consideration should be given to the provision of compensatory measures to offset the "high adverse impact" which the development would have upon the setting of the three Listed lighthouses. This could, for example, include the development of a Management Plan together with the provision of necessary funding to ensure a sustainable future for the group of lighthouses as a whole. Overall, the archaeological investigations to date have been satisfactory. The evaluation survey work has not been completed, however, which is contrary to what was stated in the 'Environmental Scoping Report' [Paragraph 6.12.19]. Section 2.3 of the 'Framework for archaeological investigation and mitigation strategies' stated 'further clarification' post-determination would be carried out with the agreement of the North Lincolnshire Archaeological Officer (NLAO) and English heritage, which was not the case. Able's historic environment consultant has subsequently met the NLAO (13/3/12) and agreed to produce a timetable for the completion of the

outstanding surveys immediately. It is imperative that this is done without further delay."

Applicant's Comments

- 51.2 English Heritage's (EH's) representation identifies two issues:
- a) completion of the proposed archaeological investigations, and
 - b) clarification of the mitigation measures to offset the assessed adverse impact to the setting of the three Listed lighthouses.
- 51.3 Through consultation with EH and the North Lincolnshire Council subsequent to the submission of the application, and as part of the process of seeking a Statement of Common Ground, Able has discussed the timetable of ongoing archaeological works with representatives of EH, and proposes to proceed with archaeological investigations in accordance with a programme agreed with EH.
- 51.4 EH suggests that mitigation for the identified negative impact on the lighthouse is required. Able proposes that this mitigation will take the form of a management plan for North Low Lighthouse, to be secured through a requirement of the DCO, which would specify that the management plan must be prepared in consultation with, and implemented with the approval of, EH. At present, it is proposed that the lighthouse will be retained in use as residential accommodation for the use of site staff, and as such will have a use which ensures its continued and sustainable maintenance. Able will be consulting with English Heritage on the draft management plan during the Examination of the application.
- 51.5 The timetable for the completion of outstanding survey work requested by English Heritage in its RR has now been, as noted above, prepared and consulted upon, and its implementation (through the Written Scheme of Investigation) will be secured by a requirement of the DCO. It is proposed, however, that the work will be substantially undertaken prior to determination.

52 REPRESENTATION No. 62 – Anglian Water

Relevant Representation

52.1 The following representation was received by the Infrastructure Planning Commission from **Anglian Water** on 2nd April 2012.

Anglian Water supports the application in principle and we continue to work closely with the developer to enable the development within environmental limits. There are some outstanding matters regarding water and wastewater infrastructure that we consider should be resolved prior to development including, but not exclusively;

1) Any necessary reinforcement of the water supply network

2) Protection of existing assets

3) Details of a foul drainage strategy, in consultation with the Environment Agency, to ensure adequate connection, conveyance, treatment and disposal of wastewater arising from the proposal. We consider there is reasonable prospect that there will be an agreed solution to the outstanding matters and are committed to work with the developer and the Environment Agency in finalising the necessary strategies.

Applicant's Comments

52.2 The applicant continues to engage in constructive dialogue with Anglian Water with regard to all of the above matters.

53 REPRESENTATION No. 63 – Stephen Odlin on behalf of Michelle Goodwin, Company Secretary Associated Petroleum Terminals (Immingham) Limited

Relevant Representation

53.1 The following representation was received by the Infrastructure Planning Commission from Stephen Odlin on behalf of Michelle Goodwin, Company Secretary Associated Petroleum Terminals (Immingham) Limited on 2nd April 2012.

Associated Petroleum Terminals (Immingham) Limited (APT") is the operator of the jetties and terminals in the River used for both the Lindsey and Humber Oil Refineries. In principle APT has no objection to the proposals provided that its legitimate interests and operational requirements are protected and its ability to carry out its business is not impeded. Aspects of the DCO which could potentially impede APT's business interests and operational requirements are set below. Discussions are ongoing with Able Humber Ports Limited about these matters. APT is hopeful that agreement can be reached on these issues so that it is given satisfactory protection.

Whilst the Environmental Statement goes some way to assess the effects of the proposals on fine sediment deposition in the River, APT have concerns about the build-up of siltation both during the construction and post-construction phases in the area inshore of the quay wall at South Killingholme Jetty (SKJ) and Immingham Gas Jetty (IGJ). First, it may render the submerged outfall in this location inoperative, or seriously compromised. Second, increased sedimentation may restrict access to mooring dolphins, to which access is required at all stages of the tidal flow. APT request further information of the impact on SKJ & IGJ and requires mitigation of these issues to APT's satisfaction prior to the commencement of offshore works. APT wishes to ensure that it is not put to additional expense as a result of the proposals, and that the safe and efficient working of the terminals - and therefore the Refinery - is not prejudiced.

In addition, APT is concerned about the risk of flooding, as per the Flood Risk Assessment for the South Bank of the Humber Estuary as included in Annex 13.1 to the Environmental Statement.

APT is concerned about the effects of the design of the proposed jetty structure on wave formation and energy from reflected and diffused waves from the quay, which may cause dangerous conditions for small boat operations and the transfer of personnel from boats to the mooring dolphin top. APT requests further information on the impacts on wave formation/speeds and, mitigation for SKJ and IGJ to APT's satisfaction prior to the commencement of offshore works and to ensure safe and efficient working conditions.

APT also requires more information on, and for additional conditions to be included in the DCO: the arrangements to maintain communications between the harbour authority and shipping using the Humber Estuary as outlined in annex 14.2 Navigation Risk Assessment; and secondly, the management procedure for vessels berthing at the Able jetty, which is set at right angles to the tidal flows,

during ebb tides due to the close proximity to loading berths at SKJ and IGJ and the safety concerns this raises for both shipping and the jetty structure.

Subject to the DCO containing sufficient protection for APT to deal with the matters above, APT has no in-principle objection to the proposals. However, the matters set out above are important to the safe and efficient operation of the terminal and APT requires them to be addressed."

Applicant's Comments

- 53.1 The applicant has undertaken further studies of the existing accretion patterns around the APT outfall on the Killingholme Marshes foreshore, these are included in EX 8.9 included in the Volume of SEI accompanying this report.
- 53.2 **APT's outfall was originally installed in the 1980's prior to the development of HIT** at the Port of Immingham. The outfall was installed at a level of -1.1 mAOD (MLWN is at -1.3 mAOD), and is located 250m from the toe of the existing flood defence wall. At the time that the outfall was installed it extended approximately 1m above the surrounding estuary bed. Since the development of HIT, this area of foreshore has been subject to gradual accretion as a result of the change in sedimentation caused by the reclamation of the estuary upstream by ABP. Currently, based on 2010 LIDAR data the outfall is effectively buried with the surrounding bed level over 1m **above** the outfall. The historic analysis shows that accretion over the outfall has occurred gradually over the last 10 years, and that current trends indicate that it is almost certain to continue whether or not AMEP is constructed. There is therefore a pre-existing maintenance concern for APT. It is understood that, nevertheless, the outfall is still operational and this probably because its use is sufficiently frequent, and the flow sufficiently strong, to flush the outfall during each discharge.
- 53.3 The applicant has undertaken long term morphological modelling of the embayment that will be created between AMEP and HIT. However the impact of AMEP is effectively the difference between the accretion that is likely to continue to occur and the accretion that will occur by the creation of an embayment. In either case the rate of accretion over the outfall is likely to be very slow.
- 53.4 In late 2011 APT re-built their upstream dolphin so that it is closer inshore and closer to the proposed AMEP quay. The potential for accretion around the dolphins has been assessed and is reported in Report EX8.10. The impacts of wave reflection are assessed in EX8.7; both reports are included in the Volume of SEI accompanying these comments.
- 53.5 The berthing and unberthing of vessels at the specialist berth to the south of the quay will be undertaken at slack water with no ebb tide running to minimise any risk of collision with vessels berthed at SKJ
- 53.6 The applicant is continuing to consult with APT on these matters and last met with them on 21 June 2012.

54 REPRESENTATION No. 64 – East Riding of Yorkshire Council

Relevant Representation

54.1 The following representation was received by the Infrastructure Planning Commission from East Riding of Yorkshire Council on 2nd April 2012.

As a local authority with some of the proposed works occurring within our administrative boundary, the East Riding of Yorkshire Council wishes to register as an interested party. In terms of which aspects of the proposal we wish to agree or disagree to, the authority is obliged to ratify such matters at planning committee with elected members, which it has not yet had the opportunity to do, therefore these matters will be included in the Council's Local Impact Report which will be taken before the planning committee before being submitted to the IPC in due course, in line with the agreed timetable.

Applicant's Comments

54.1 No comments.

55 REPRESENTATION No. 65 – Simon Storage Limited

Relevant Representation

- 55.1 The following representation was received by the Infrastructure Planning Commission from Simon Storage Limited on 2nd April 2012.

Simon Storage Limited is concerned that this proposed development may lead to a limitation on the import of oil products at the adjacent site owned and occupied by the Oil and Pipeline Agency and over the oil jetty. Provision has to be made for adequate safety separation. Furthermore the development may limit the development of oil import facilities at the key strategic site held by ABP to the west of the OPA jetty through the compulsory purchase of land owned by ABP that may be available for the development of additional oil storage facilities. The proposed compulsory purchase of land would limit the ability of ABP or others to provide additional jetty capacity for the import of oil products required to access the national Government Pipeline and Storage System and the proposed compulsory purchase of rail line property to the east of the OPA site boundary would prevent rail access to the ABP or OPA site. Simon Storage believes that the existing land bank is adequate for the purposes of the application, that jetty facilities should be designed to enable an expansion or replacement of the oil jetty, and that rail access to the OPA and ABP sites should be secured.

Applicant's Comments

- 55.1 The Oil Pipelines Agency has submitted its own representation.
- 55.2 Refer to paragraphs 42.51 *et seq* regarding the parcels of land within the application site that is presently owned by ABP.
- 55.3 The development does not provide for the closure of the rail line and would not prevent rail access to the **OPA's site**.

56 REPRESENTATION No. 66 – TRINITY HOUSE

Relevant Representation

- 56.1 The following representation was received by the Infrastructure Planning Commission from Trinity House on 2nd April 2012.

Trinity House is the General Lighthouse Authority for England, Wales, the Channel Islands and Gibraltar with powers principally derived from the Merchant Shipping Act 1995 (as amended). The role of Trinity House as a General Lighthouse Authority under the Act includes the superintendence and management of all lighthouses, buoys and beacons within our area of jurisdiction. Our statutory role includes reviewing and giving prior consent to local lighthouse and harbour authorities to establish, alter, remove etc. any lighthouse, buoy or beacon. Trinity House may direct marking of structures with aids to navigation in such areas through powers of direction contained within relevant local harbour legislation and pursuant to the Harbours Docks and Piers Clauses Act 1847. Trinity House will engage in the process in order to ensure that the order provides for its powers, and to ensure that navigational safety in the Humber is protected. We have reviewed the draft Development Consent Order and have identified a number of issues which cause us concern, which we will set out in more detail at the appropriate time.

Applicant's Comments

- 56.1 No comments.



AMEP
APPLICANT'S COMMENTS ON THE
RELEVANT REPRESENTATIONS

Date: June 2012

57 REPRESENTATION No. 67 – Conoco Phillips Limited ("CPL")

Relevant Representation

57.1 The following representation was received by the Infrastructure Planning Commission from Conoco Phillips Limited on 2nd April 2012.

CPL wishes to make it clear that it fully supports the development of renewable energy and the benefits that such a scheme will bring; creating new business and employment and providing positive growth across the wider economic area. As an investor in this area this can only be beneficial also to CPL. It is not however acceptable to CPL that the use of any land owned by CPL and held for the future development, investment and expansion of the business should be fettered by the requirements of the proposed Energy Park. CPL therefore wish to register it's interest in any proposal being made, to request that CPL are kept fully informed of the planning dialogue and that CPL are consulted on all matters which might affect its land holdings and/or pipelines

Applicant's Comments

57.1 No comments.

58 REPRESENTATION No. 68 – Health Protection Agency

Relevant Representation

58.1 The following representation was received by the Infrastructure Planning Commission from Health Protection Agency on 2nd April 2012.

The HPA's comments below are restricted to public health impacts relating to exposure to chemicals and radiation and the response is based on the information contained within the relevant sections of the Environmental Statement (ES). The applicant has considered the storage and use of hazardous materials on-site, emissions to air, contaminated land, hazardous wastes, and contamination of water. As stated in the ES, the applicant has identified a potential source of contaminated land in the northwest corner of the Cherry Cobb Sands compensation site. Through the setting and validation of development consent conditions, the IPC should ensure that the development does not lead to adverse impacts associated with contaminated land, liaising as necessary with the Local Authority (contaminated land officer) and the Environment Agency. The HPA welcomes the inclusion of dispersion modelling to assess the air quality impacts associated with road traffic, shipping, and construction activities during the construction and operation phases of the proposed application. Whilst the scheme is likely to only have a minor negative impact on air quality in the area, the HPA would welcome confirmation that in case of alteration of planned works, air quality impacts would be reassessed by the promoter. It is noted that there are a number of other proposed developments, including a Biomass power station and an Integrated Gasification Combined Cycle power station, in the area around AMEP. Potential cumulative health impacts should be accounted for when considering these additional projects. Based on the information that is provided in the application, the HPA does not consider that the AMEP proposal is likely to lead to significant public health impacts provided that the management plans and mitigation measures identified in the ES are implemented during each phase of the project.

Applicant's Comments

58.1 No comment.

59 REPRESENTATION No. 69 – Total UK Limited - Lindsey Oil Refinery

Relevant Representation

- 59.1 The following representation was received by the Infrastructure Planning Commission from Total UK Limited - Lindsey Oil Refinery on 2nd April 2012.

Total UK Limited is the operator of the Lindsey Oil Refinery (LOR) a top tier COMAH site and in principle has no objection to the proposals provided that its legitimate interests and operational requirements are protected and its ability to carry out its business is not impeded. Aspects of the DCO which could potentially impede LOR's business interests and operational requirements are set below. Discussions are ongoing with Able Humber Ports Limited about these matters. LOR is hopeful that agreement can be reached on these issues so that it is given satisfactory protection.

Whilst the Environmental Statement goes some way to assess the effects of the proposals on flood risk, LOR have concerns about the proposed scheme for improving the surface water drainage system being prepared with North East Lindsey Drainage Board (NELDB), which may conflict with the sites COMAH Safety Reports and requirements of the Competent Authority. LOR requests further information on this matter and requires mitigation on this to LOR's satisfaction prior to the commencement of these works.

LOR wishes to ensure that it is not put to additional expense as a result of the proposals, and that the safe and efficient working of the Refinery - is not prejudiced. Subject to the DCO containing sufficient protection for LOR to deal with the matter above, LOR has no in-principle objection to the proposals. However, the matter set out above is important to the safe and efficient operation of the refinery and LOR requires this to be addressed.

Applicant's Comments

- 59.2 With respect to surface water drainage, refer to the comments on Relevant Representation No. 30.
- 59.3 The Applicant understands that the Refinery may require access to the AMEP site, and in particular the surface water drainage system, in the event of certain emergency situations arising. The Applicant has requested further details of **Total's particular requirements.**

60 REPRESENTATION No. 70 – Natural England

Relevant Representation

60.1 The following representation was received by the Infrastructure Planning Commission from Natural England on 2nd April 2012. As, in this instance, the representation is particularly long, the applicant's comments have been inserted in plain type at appropriate intervals.

1.1. *Natural England is a non-departmental public body established under the Natural Environment and Rural Communities Act 2006 ("NERC" Act). Natural England is the statutory adviser to Government on nature conservation in England and promotes the conservation of England's wildlife and natural features. Natural England's remit extends to the 12 nautical mile limit along the English coastline.*

Legislative Framework

1.2. *Natural England is a statutory consulted:*

1.2.1. *in respect of plans or projects that are subject to the requirements of the Conservation of Habitats and Species Regulations 2010 (the "Habitats Regulations") which are likely to have a significant effect on European sites (including both Special Areas of Conservation ("SAC") and Special Protection Areas ("SPA"), and, by way of Government policy, sites listed under the 1971 Convention on Wetlands of International Importance ("Ramsar site")); and*

1.2.2. *in relation to the Wildlife and Countryside Act 1981 (as amended) (the "1981 Act"), proposals likely to damage any of the flora, fauna or geological or physiographical features for which a Site of Special Scientific Interest ("SSSI") has been notified.*

1.3. *In determining this application, the Secretary of State will be acting as the competent authority for the purposes of the Habitats Regulations. The Secretary of State is also a section 28G authority with specific duties under the 1981 Act in respect of SSSIs. The designated sites relevant to this application are the Humber Estuary SAC, SPA and Ramsar sites, and the Humber Estuary SSSI and North Killingholme Haven Pits SSSI.*

1.4. *Species listed under Annex IV (a) to the Habitats Directive, 1 are referred to as "European Protected Species". In a case in 20092 it was established that a local planning authority, and by inference any determining authority (such as the Secretary of State in this case), must apply the tests of Article 16(1) of the Habitats Directive to their consideration of planning applications which have an effect on European Protected Species. Determining authorities must consider whether:*

1.4.1. *There are no satisfactory alternatives;*

1.4.2. *There are imperative reasons of overriding public interest (including socio-economic reasons);*

- 1.4.3. *And that the action authorized will not be detrimental to the maintenance of the population of the species concerned at a favorable conservation status in their natural range.*
- 1.5. *The European Protected Species of relevance to this application are bats and great crested newts. Natural England is the relevant licensing body for the purposes of granting licences in respect of European Protected Species under regulation 53 of the Habitats Regulations.*
- 1.6. *As stated in ODPM Circular 06/2005 on Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system, Part I of the 1981 Act sets out the protection that is afforded to all wild birds, and certain wild animals and plants. Section 25 places a duty on all local authorities to do what they consider expedient to bring the provisions of the 1981 Act relating to protected species to the attention of the public and particularly school children. Local authorities are also empowered to institute proceedings against any person committing an offence under Part I of the 1981 Act within their area. Furthermore, under section 16 of the 1981 Act, licences may be issued, providing certain conditions are met, derogating from the protection afforded to species for listed reasons, such as public health and safety. However, there is no provision for licences to be granted for the purposes of development. The nationally protected species of relevance to this application are water voles and badgers.*
- 1.7. *Badgers and their sets are also protected under the Protection of Badgers Act 1992, which makes it illegal to kill, injure or take badgers or to interfere with a badger sett. There is, however, provision within the legislation to permit activities affecting badgers or their setts where there is suitable justification and the problem cannot be resolved by alternative means. Natural England administers license applications in respect of badgers under the Protection of Badgers Act 1992.*
- 1.8. *Section 40(1) of the NERC Act places a duty on public authorities (which includes the Secretary of State, for the purposes of determining this application) with regard the conservation of biological diversity. This duty is as follows:*
- 'Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.'*

Background

- 1.9. *Natural England's advice is based on information submitted by Able Humber Ports Ltd in support of its application for a Development Consent Order ("DCO") in relation to the Marine Energy Park (the "project").*
- 1.10. *Natural England believes that there is an urgent need to develop clean energy developments in order to mitigate climate change. We therefore support the Government's commitment to offshore energy generation and its goal to ensure that 15% of our energy demand is met from renewable sources by 2020. We will continue to work proactively with developers to ensure that sustainable energy*

development can proceed in a manner that avoids unacceptable impacts on the natural environment.

- 1.11. *These relevant representations contain a summary of what Natural England considers the main issues to be in relation to the DCO application (as well as the Deemed Marine Licence contained therein), and the impact of those issues. They contain an outline of the principal points which Natural England wishes to make on the application at this stage and seek to identify the aspects of the application about which Natural England has concerns. Natural England may have further or additional points to make if further information becomes available in relation to the project.*
- 1.12. *Natural England has been working closely with Able Humber Ports Ltd to provide advice and guidance since June 2010. Natural England has also been working with the Environment Agency and the Marine Management Organisation to provide coordinated advice. Following the Infrastructure Planning Commission's acceptance of the Marine Energy Park application, we have scheduled a programme of joint meetings over the next three months to develop statements of common ground as part of the examination process.*
- 1.13. *Whilst Natural England has been working with Able Humber Ports Ltd for some time, not all Natural England's pre-application advice has been taken into account or addressed in the submission documents. These representations set out the significant issues which remain outstanding. First, set out below are the main issues which if they are not addressed satisfactorily could lead to the application failing to satisfy the requirements of the Habitats Directive, the Habitats Regulations and the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 as amended, as a result of the impacts of the project. Secondly, there are a range of other issues which Natural England advises should be addressed by Able Humber Ports Ltd and the Examining Authority as part of the application process in order to ensure that the project can properly be consented. These are set out in appendices to this document, together where possible with suggested solutions. These are primarily issues on which further information would be required in order to allow the Examining Authority properly to undertake its task or where further work is required to flesh out mitigation and compensation proposals to provide a sufficient degree of confidence as to their efficacy.*
- 1.14. *The Examining Authority may wish to ensure that the matters set out in these relevant representations are addressed as part of the Examining Authority's first set of questions to ensure the provision of information early in the examination process.*

The overall position

- 1.15. *Natural England's advice is that in relation to nature conservation issues within its remit there is no fundamental reason why the project should not be permitted. Natural England's advice is also that there are a number of matters which have not been resolved satisfactorily as part of the pre-application process that should be addressed by Able Humber Ports Ltd and the Examining Authority as part of the examination and consenting process. Some of these matters are important enough to mean that if they are not satisfactorily addressed it may not be*

possible safely to permit the project due to its impacts on the SAC, SPA, Ramsar and SSSI interests. However, Natural England's advice is that all these matters are capable of being overcome.

1.16. *With regards to the two areas of new habitat that will be created due to the impacts on the Humber Estuary designated sites, Natural England has the following advice:*

1.16.1 *Humber Estuary SPA and Ramsar site: Natural England's advice is that the proposed wet grassland mitigation (Area A - 16.7ha core area surrounded by 150m buffers) is adequate to mitigate for the loss of waterbird feeding and roosting habitat lost from Killingholme Marshes.*

1.16.2 *Humber Estuary SAC, SPA and Ramsar sites: With regards to the proposed compensation for the loss of intertidal mudflats and estuary habitat, it is Natural England's advice that the creation of mudflat habitat to habitat loss at a 2:1 ratio should be adequate to meet the test in regulation 66 of the Habitats Regulations and Article 6(4) of the Habitats Directive of ensuring that the overall coherence of the Natura 2000 network is protected, when it is considered alongside the commitment to also provide a 1:1 ratio for the loss of estuary habitat and the provision of wet grassland habitat at Old Little Humber Farm. Natural England has based its opinion on the assurances given on behalf of Able Humber Ports Ltd in the work undertaken by Black and Veatch as set out in their letter of 2 November 2011. Natural England has some residual concerns regarding the predictions for the managed realignment site and these are noted below in relation to the main issues.*

1.17. *When examining the application, the Examining Authority will need to consider whether all the relevant requirements of the Habitats Regulations and the Habitats Directive are satisfied, including the requirements of regulation 62 of the Habitats Regulations that where there is a negative assessment of the implications for the European sites there are no alternative solutions and that the project must be carried out for imperative reasons of overriding public interest.*

Main issues

1.18. *Set out below is Natural England's advice on the main issues which have not been resolved satisfactorily as part of the pre-application process. These are matters relating to the impacts of the project that in Natural England's view must be addressed properly by Able Humber Ports Ltd and the Examining Authority as part of the examination process before consent can properly be granted.*

1.18.1. **Proposed compensation site at Cherry Cobb Sands:** *As stated above, the proposed managed realignment site should provide adequate compensation for the predicted losses to the Humber Estuary designated site. However, the extent of habitat that Able Humber Ports Ltd has stated will be affected, both for the indirect losses to the designated sites and the type of new habitat to be created, are based on predictions from modelled data. Based upon the information provided, Natural England has a sufficient degree of confidence that the proposed amount of compensation should be sufficient. Nonetheless, there is a*

residual risk that the modelling work may not be accurate and the compensation habitat provided may not therefore protect the coherence of the Natura 2000 network in reality in terms of the area and/or function provided by the compensation scheme. For example, the mudflat habitat that will be lost is a key area for black-tailed godwit, which feed at this location in high densities and in numbers of international importance. If the managed realignment site does not deliver mudflat habitat with sufficient food resource, the designated site may no longer support a similar number of black-tailed godwit; thus there is a risk that the coherence of the network will not have been protected. To address this risk, monitoring will be required and, if the risk is realised, remedial action by Able Humber Ports Ltd would be necessary in the future to ensure that the managed realignment site meets its compensation objectives. It may be possible to agree sufficient provisions on monitoring, the necessary trigger for remedial action, and the principles governing such remedial action as part of a statement of common ground.

Applicant's Comments

60.2 The applicant agrees that there is inherent uncertainty with regard to predicting the long term evolution of the managed realignment site and that monitoring will be required to ensure the coherence of the Natura 2000 network is maintained. It has been agreed that NE will provide a skeleton document in the first instance.

1.18.2. Disturbance to Humber Estuary SPA/ Ramsar waterbirds: *The application documentation states that Natural England has confirmed that no seasonal restrictions on piling are required. This is not however the case. Natural England wrote to Able Humber Ports Ltd in December 2011 advising that seasonal restrictions on piling activities would be required if severe weather occurred during February or March in order to prevent the impact of the piling operations on birds and avoid an adverse effect on the site integrity of the SPA and Ramsar site. This remains the position. It may be possible to agree the necessary trigger and restrictions as part of a statement of common ground.*

Applicant's Comments

60.3 Natural England has proposed the following severe weather restrictions:

- a) No percussive piling (other than to finish driving any pile that is in the process of being driven at the point the cold weather restriction comes into force) shall take place following 7 consecutive days of zero or sub zero temperatures (where the temperature does not exceed 0°C for more than 6 hours in any day or any other pre-agreed formula to define short periods of thaw);
- b) monitoring points shall be agreed within the Humber Estuary
- c) The restrictions will be reviewed as follows:

After 24 hours of above-freezing temperatures, the restrictions will be lifted on a "probationary basis", provided that the weather forecast (met office forecast for Immingham) indicates that freezing conditions will not

return within five days. If this weather forecast turned out to be wrong and freezing conditions did return, then there would have to be an immediate suspension of activity again.

After five clear days of above-freezing temperatures the restrictions will be lifted entirely and the clock reset to zero.

- 60.4 The applicant agrees that these restrictions are appropriate and is seeking to agree with Natural England the applicable months which will be dependent on the pattern of usage of the Killingholme Marshes foreshore.

1.18.3. Designated site habitat loss; lack of proposed compensation for the SAC and Ramsar site: *The shadow Habitats Regulations Assessment ("sHRA") prepared on behalf of Able Humber Ports Ltd states that the berthing pocket will be over-dredged to the natural bedrock and then backfilled to -11m with stone aggregate. The impact of this work, including, for example, the loss of approximately 7.7ha of subtidal estuary mud habitat, is not assessed either in the sHRA or in the Environmental Statement. Natural England advises that this impact should be assessed by the Examining Authority as part of its Habitats Regulations Assessment. Sufficient information will be required to allow this to be done. Without in any way pre-judging the outcome of this assessment, Natural England advises that if the information provided on dredging determines that this activity will lead to a permanent loss of estuary habitat, then this will be an impact that results in an adverse effect on the integrity of the SAC and Ramsar site. It should be noted that this impact has not yet been incorporated into the calculation of required compensation habitat and is a likely impact which is not therefore addressed.*

Applicant's Comments

- 60.5 It is not clear why the deposition of rock into the berthing pocket gives rise to a permanent loss of sub-tidal habitat and therefore to an adverse effect on integrity (AEOI) which requires compensation. The proposals change the stratum of sub-tidal habitat but do not result in a loss *per se*.
- 60.6 The effect of the works is to remove the existing sediment in the berthing pocket (an area of 7.5 ha) and replace it with rock. Over a short time the rock will become smothered by muddy silts and sands which will deposit out of the water column and enable the formation of a new opportunistic subtidal assemblage. Maintenance dredging of the pocket will result in this assemblage being removed periodically. This process will repeat for the entire operational life of the facility in exactly the same manner as any other berthing pocket or any dredged channel.
- 60.7 Whilst there is a conservation objective to '*(m)aintain the pattern of distribution of predominant habitats throughout the feature*', such an objective does not constitute an absolute bar on any change in habitat type whatsoever and there are other examples of gravel beds within the estuary. In this case a relatively small scale change (as opposed to a loss) of subtidal habitat is considered inconsequential to the overall integrity of the SAC. The ecological impact of this change on the sub-tidal area appears insignificant.

60.8 Biotope reporting by IECS (2012) concludes that:

'The subtidal assemblage is largely considered to be impoverished in this area, based on the available data, this impoverishment presumably reflecting both the physical rigors of the location, with most sample stations present within the main estuarine channel, and/or also as a result of maintenance dredging activity. As such, it is not considered that the biotopes present within the study area (are) of particular conservation importance, particularly given the impoverished nature of the associated infauna'.

60.9 In the IOTA project, 312 ha of the SAC is proposed to be capital dredged. The appropriate assessment for that scheme acknowledged that subtidal habitats would be affected by the works, but did not find such an impact to be an adverse effect on integrity, EX 8.13 included in the Volume of SEI accompanying this report. If disturbing 312 ha of habitat on a regular basis is not AEOI then it seems inconceivable that AMEPs proposals for the berthing pocket amounts to AEOI.

1.18.4. Mitigation for great crested newts (Area B): *Based on the information provided to date, Natural England is concerned that Area B would not provide sufficient terrestrial habitat for great crested newts. This could be overcome by the provision of additional mitigation land, but as Able Humber Ports Ltd does not own the surrounding land, any shortfall would not be capable of being remedied on the suggested translocation site. Able Humber Ports Ltd submitted a draft European Protected Species licence application to Natural England on 16 February 2012 and our licensing team will be responding to Able Humber Ports Ltd in full as soon as possible. In light of the information so far provided with the draft licence application, the licensing team have concerns in relation to the adequacy of the survey work carried out, the details of the impacts upon the population of great crested newts, and the adequacy of the proposed mitigation.*

Applicant's Comments

60.10 The applicant has received comments from Natural England on their draft licence application and those do not indicate any concern regarding the sufficiency of Area B and the adjacent local nature site to provide terrestrial habitat. A copy of correspondence with NE is reproduced in EX11.20 included in the Volume of SEI accompanying this report. A second draft application was submitted to NE on 12 June 2012.

1.18.5. Biodiversity mitigation; breeding birds: *Based on the information provided to date, the proposed development will result in a loss of semi-natural woodland, semi-improved grassland fields and associated hedgerows, trees, field margins and 1800m of ditches which currently support 74 bird species, including UK Biodiversity Action Plan and red and amber listed species. The significance of this loss of biodiversity is not properly represented in the main chapters of the Environmental Statement as breeding bird survey data has been omitted. Therefore, rather than 116 red and amber listed breeding bird territories that the Environmental Statement reports, there were, in fact, 271 red and amber listed*

breeding bird territories present. With reference to the duty for public authorities under Section 40 NERC Act to have regard to the conservation of biodiversity.

Natural England advises that a development site of this scale should provide sufficient opportunities to mitigate impacts on breeding birds. It may be possible to agree appropriate mitigation proposals as part of a statement of common ground.

Applicant's Comments

60.11 A supplementary report has been issued to NE and is reproduced in the volume supplementary environmental information (EX11.16) included in the Volume of SEI accompanying this report.

Other issues

1.19. *In addition to the main issues noted above, there are a range of other issues which Natural England advises should be addressed by Able Humber Ports Ltd and the Examining Authority as part of the application process in order to ensure that the project can properly be consented. These issues are set out in appendices to this document, together where possible with suggested solutions. These are issues which it has not been possible to resolve satisfactorily with Able Humber Ports Ltd in pre-application discussions. These are primarily issues on which further information would be required in order to allow the Examining Authority properly to undertake its task or where further work is required in order to flesh-out mitigation and compensation proposals to provide a sufficient degree of confidence as to their efficacy. These are issues in relation to which Natural England is concerned about the information provided to date and on which Natural England advises that the Examining Authority should require further information for consideration as part of the examination and consenting process.*

1.20. *The issues are identified in the appendices as follows:*

1.20.1 *Issues on which further evidence or assessment work is required.*

1.20.2 *Issues where further work on the mitigation and compensation proposals is required, and the contents of the proposed Ecological Management and Monitoring Plans.*

1.20.3 *Issues that should be dealt with under the DCO requirements.*

1.20.4 *Initial comments on the draft DCO itself.*

1.21. *Natural England intends if possible to continue discussions with Able Humber Ports Ltd to seek to resolve these matters through the provision of further assessment and/or information by Able Humber Ports Ltd which can then lead to the agreement of matters in statements of common ground. Failing satisfactory agreement, Natural England advises that the matters set out in the appendices will require consideration by the Examining Authority as part of the examination process.*

2. Appendix 1: Issues on which further evidence or assessment work is required

Habitats Regulations

2.1. **Disturbance to birds on the intertidal habitat:** *There is an adverse impact arising from the project that could be the subject of mitigation so as to avoid an adverse effect on site integrity; this is the disturbance to birds on the remaining intertidal habitat caused by construction works identified in the sHRA. However, mitigation is not proposed and instead compensation is suggested. Compensation rather than mitigation should only be proposed if the adverse effect on the designated site cannot be avoided or mitigated. Further work should be required to develop mitigation proposals for this matter.*

Applicant's Comments

60.12 The sHRA recognises that part of the SPA that is currently functional may be disturbed. This area will be disturbed during construction of the facility by the visual impact of plant and during operation of the facility, also by the operation of plant. Visual disturbance resulting from the operation of plant of significant height (eg. Cranes) cannot be screened and so the disturbance cannot be mitigated; it is therefore being compensated for within the managed realignment site. It is agreed with NE that this functional loss should be compensated.

2.2. **Designated site habitat loss:** *There are a number of elements of the project that will lead to direct or indirect loss of designated site habitat. These include the proposed new quay, berthing structure, the breach for the managed realignment site and associated erosion. However, there are other aspects of the project in relation to which it is not clear whether there would be habitat loss, namely the proposed rock armouring, and the pumping station including temporary coffer dam and associated drainage channel with stone mattressing. Information should be provided to make it clear, with a sufficient degree of confidence, what the position is in relation to the direct or indirect loss of designated site habitat arising from these elements of the project.*

Applicant's Comments

60.13 Refer to Reports EX11.23 and EX11.24 in the volume of supplementary environmental information. These reports have not yet been agreed by NE.

2.3. **Construction and operational disturbance:** *Noise and visual activity can disturb birds, resulting in reduced food in-take and increased energy expenditure and ultimately affecting their usage of the designated site. Natural England advises that there has not been proper consideration of construction and operational disturbance arising from the project on designated site birds utilising the remaining SSSI, SPA and Ramsar intertidal habitat and North Killingholme Haven Pits. For example, Natural England advises that an assessment of terrestrial construction works on the adjacent North Killingholme Haven Pits should be undertaken.*

Applicant's Comments

60.14 Refer to Report EX11.25 in the volume of supplementary environmental information. This report has not yet been agreed by NE.

2.4. ***In-combination impacts:*** *Natural England advises that the in-combination section in the sHRA does not address the complete set of plans and projects and their associated impacts that may combine with the Marine Energy Park and affect the Humber Estuary. Some in-combination effects, such as the direct loss of terrestrial and estuary habitat, have been ruled out on the basis that mitigation and compensation would be provided for them. However, in-combination effects⁵ should only be ruled out if these measures reduce the impact on the designated site such that there is no longer any significant residual effect. Natural England advises that based on the information currently available this is not the case and therefore further work should be required to assess the in-combination effects of the project. Able Humber Ports Ltd has already undertaken some further work to include a cumulative assessment of Green Port Hull; however Natural England disagrees with some of the aspects of that work, such as the statement that there will be no cumulative impacts from noise disturbance as the two proposals are remote from each other. Birds are mobile species and therefore can be affected by impacts occurring in different locations on or adjacent to the designated site.*

Applicant's Comments

60.15 Refer to Report EX44.1 in the volume of supplementary environmental information. This report has not yet been agreed by NE.

2.5. ***Shadow HRA:*** *Natural England advises that the sHRA prepared on behalf of Able Humber Ports Ltd does not adequately assess all the implications of those impacts that could lead to an adverse effect on the integrity of the Humber Estuary SAC, SPA and Ramsar sites. The Examining Authority could not therefore simply adopt the sHRA without undertaking further consideration of these implications. Natural England has been working with Able Humber Ports Ltd to seek to ensure that all the potential impacts of the development are properly assessed in the application documentation, and where necessary mitigation and/or compensation are provided.*

Applicant's Comments

60.16 Issues relating to the sHRA will be addressed in the relevant Statement of Common Ground.

2.6. ***Estuary biotope (habitats and species) characterisation:*** *Whilst information has been collected on behalf of Able Humber Ports Ltd to inform the assessment of impacts on the aquatic environment, it is not presented in a way which allows robust assessment to be undertaken. Natural England advises that a full characterisation of the biotopes in the area of the project, in the form of a*

biotope map, should be prepared in order to enable assessment of the direct and indirect effects of the project. This information would be particularly important for the future monitoring programme, for example to determine whether post-construction changes to the estuary are consistent with the modelling.

Applicant's Comments

60.17 Refer to Report EX11.14 in the volume of supplementary environmental information. Natural England has agreed that this supplementary interpretation is sufficient to understand the baseline condition.

2.7. **Dredging:** *Natural England advises that dredging may have a significant impact on the Humber Estuary designated sites. Dredging will affect subtidal habitats and associated benthos, leading to increased suspended sediment concentrations, and may smother benthic communities in the disposal areas. These impacts should be assessed in an appropriate assessment covering the proposed capital dredge, maintenance dredge, plough dredging and dredge disposal. Without pre-judging the conclusion of the appropriate assessment which may indicate that mitigation is required, it is Natural England's view that sufficient mitigation options are available so that it is unlikely that dredging will have an adverse effect on the integrity of the designated site.*

Applicant's Comments

60.18 Refer to Report EX10.4 in the volume of supplementary environmental information. This report has not yet been agreed by NE.

2.8. **Hydrodynamic and sedimentary regime:** *There are a number of effects of the project which have not been assessed by Able Humber Ports Ltd in its application documentation, these are as follows:*

2.8.1. *Section 8.6.33 of the Environmental Statement reports that upstream of the quay there will be increased bed shear stress. This could lead to increased erosion of the designated site habitat. However this potential impact is not assessed.*

Applicant's Comments

60.19 Refer to Reports EX8.5-EX8.12 in the volume of supplementary environmental information. These reports have not yet been agreed by NE.

2.8.2. *There is no assessment of how an increase in wave height could impact on the Humber Estuary SSSI, SAC and Ramsar sites. A full estuary image of changes in wave heights is absent from the application documentation which makes it very difficult, if not impossible, for the wider estuary impacts to be assessed.*

Applicant's Comments

60.20 Refer to Report EX8.7 in the volume of supplementary environmental information.

2.8.3. The compensation site has the potential to affect estuary wide processes. The compensation site work focused on changes within the managed realignment site and does not discuss the potential wider scale hydrodynamic changes/impacts which might affect on the Humber Estuary SSSI, SAC and Ramsar sites. This is also not discussed in the hydrodynamic and sedimentary regime chapter of the Environmental Statement.

Applicant's Comments

60.21 These issues are discussed in Chapter 32 and its 6 associated Annexes.

60.22 Annex 8.1 of the ES details the impacts of the development on estuary processes. Paragraph 5.6 of that Annex notes that, '*A model simulation was performed without the compensation site included in the model grid. The difference in maximum water levels between this model simulation and that of the scheme including the compensation site was everywhere less than 2mm in magnitude, which is indistinguishable from model noise. The model is, therefore, insensitive to reductions in the size of the compensation site, and the predicted change in water levels is due to the alteration of the flow regime irrespective of the compensation site.*'

60.23 Earlier EA studies have assessed the impact of all of EA's managed realignment sites in-combination on estuary morphology and reported only 'small local accretion and erosion', where flood defences are breached, ('Humber Estuary Shoreline Management Plan Phase 2 Summary of Geomorphology Studies' Black and Veatch, November 2004). This information is still being reviewed by NE.

2.9. The results of the hydrodynamic modelling suggest that changes to the intertidal area and composition caused by the project will be negligible when viewed against the impact of continued sea level rise in the estuary. Natural England advises that this is not an appropriate approach to the assessment of the effects of the project. Effects caused by the project are not natural changes and the significance of their effects on the Humber Estuary must be properly assessed for the impact they will have on the environment, notwithstanding any wider natural changes.

Applicant's Comments

60.24 Chapter 8 of the ES does not compare the effects of the projects to those of sea level rise and thereby conclude that they are negligible. Annex 8.2 simply makes a reasonable observation that the effects will be negligible when compared to natural change.

2.10. Compensation at Cherry Cobb Sands: Black and Vetch's letter dated 2

November 2011 states that further modelling work will be carried out to predict ground levels and hence mudflat development within the managed realignment site for the first 10 years. This work is not included in the application documentation. It should be provided to demonstrate the extent of intertidal mudflat habitat will be created by the managed realignment site and maintained in the long term. This is important because the success of the managed realignment site will demonstrate whether, and if so how, the compensatory measures will ensure the overall coherence of Natura 2000 is protected.

Applicant's Comments

60.25 Refer to Report EX35.10 in the volume of supplementary environmental information. The detailed design has not yet been agreed with NE.

2.11. **Loss of terrestrial habitat utilised by SPA/ Ramsar waterbirds:** *The terrestrial habitat at Cherry Cobb Sands is utilised as a high tide roost by SPA/Ramsar waterbirds, including up to 640 curlew. This habitat will be lost when the site is flooded. Able Humber Ports Ltd has provided an additional report to assess the loss of this habitat. It may be possible to agree any outstanding issues as part of a statement of common ground in light of this additional information.*

Applicant's Comments

60.26 Refer to Report EX35.12 in the volume of supplementary environmental information. It has been agreed with Natural England that the loss of this high tide roost at the compensation site will not have a significant effect on the SPA assemblage.

Humber Estuary and North Killingholme Haven Pits SSSIs

2.12. *Following the Habitats Regulations Assessment by the Examining Authority, it will be necessary to undertake an assessment of any impacts that may affect the Humber Estuary and North Killingholme Haven Pits SSSIs under Section 28I of the Wildlife and Countryside Act 1981 (as amended). It is likely that there will be additional impacts on the SSSI interest features that have not been assessed as part of the Habitats Regulations Assessment; for example, impacts on the saline lagoon specialist species that could result through entrainment of the thermal plume or increased sedimentation within North Killingholme Haven Pits, and impacts on breeding birds.*

Protected species

2.13. *Additional survey work is required to enable the proper assessment of impacts on bats and badgers. In particular:*

2.13.1. **Bats, south bank development site:** *The survey work carried out for the application is not consistent with the Bat Conservation Trust bat survey guidelines in terms of the survey of individual trees to assess them for roost potential and the use of automated bat detectors for surveying the wider site.*

Additional survey work is required to determine with confidence whether bats utilise the site for roosting. If evidence of bat roosts is found which are likely to be affected by the development, a European Protected Species licence will be required.

Applicant's Comments

60.27 Refer to Report EX11.19 in the volume of supplementary environmental information. It has been agreed with Natural England that the survey effort is sufficient to understand the use and value of the site to bats. Proposals for mitigation are still to be agreed with NE.

2.13.2. **Badgers, Cherry Cobb Sands:** *The creation of the proposed managed realignment site will be damaging to badger setts and a licence is therefore required under the Protection of Badgers Act 1992. Additional survey work will be necessary to inform the licence application. Able Humber Ports Ltd has acknowledged that they will require a licence, however a draft licence application has not yet been submitted to Natural England.*

2.14. *It may be possible to agree this additional work as part of a statement of common ground, and any mitigation that may be required should be secured through the Ecological Management and Monitoring Plan.*

Applicant's Comments

60.28 An additional badger survey has been completed to inform a potential License application, refer to Report EX11.21 in the volume of supplementary environmental information. It is to be agreed with NE whether a licence is required.

2.15. **North bank compensation site:** *The landscape and visual impact assessment (chapter 41) identifies a 500m long avenue of trees that will be removed as a result of the site development. The impacts of this removal as part of the project, such as loss of roosting or foraging habitat for bats, should have been assessed but do not appear to have been.*

Applicant's Comments

60.29 The ES states at paragraph 35.6.24 that, '*No .. trees were present on the site that could have represented suitable roosting places for bats*'. Natural England has agreed that the loss of trees will have no significant impact on bats.

Biodiversity

2.16. **Landscape masterplan:** *This plan indicates that there is potential within the development site for ecological mitigation to be provided, which is welcomed. However, the submitted landscape plan has insufficient detail to assess whether the suggested mitigation will be adequate and effective. Broad descriptions have been applied to Mitigation Areas A and B with some of the mitigation features*

listed. Natural England advises that the Examining Authority should require more detailed plans including planting plans in order to assess whether impacts on species and habitats have been mitigated sufficiently. For example spatial plans for Areas A and B and the wider development site should be provided giving details of habitats to be created, such as hedges, ponds, ditches, grassland, and details of other mitigation measures for protected species.

Applicant's Comments

60.30 Refer to Report EX20.3 in the volume of supplementary environmental information which provides further landscaping details. These details are still to be agreed with NE.

2.17. **Old Little Humber Farm:** *The Environmental Statement reports that the wet grassland habitat that will be created as part of the SPA/Ramsar compensation package will also provide mitigation for breeding birds and the loss of terrestrial habitat. However, it is understood that Able Humber Ports Ltd wish the wet grassland habitat at Old Little Humber Farm to be temporary. Natural England therefore advises that it is necessary to clarify how Able propose adequately to mitigate these impacts in the long term should Old Little Humber Farm revert to arable use, as appears to be intended.*

Applicant's Comments

60.31 It has been agreed with NE to introduce some additional landscaping at Cherry Cobb Sands to provide permanent mitigation.

3. Appendix 2: Issues where further work on the mitigation and compensation proposals is required, and the contents of the proposed Ecological Management and Monitoring Plans

Habitats Regulations

3.1. *Able Humber Ports Ltd has agreed to work with Natural England and the Humber Industry and Nature Conservation Association to complete three Ecological Management and Monitoring Plans - terrestrial, marine and for the compensation site.6 These plans need to be worked-up to a sufficient level of detail to give a sufficient degree of confidence as to the adequacy and efficacy of the proposed measures, and be secured by requirements on the DCO, before consent is granted. The main issues still to be resolved are:*

3.1.1. **Monitoring Cherry Cobb Sands Managed Realignment Site:** *Natural England advises that compensation objectives should be included within the Compensation Site Ecological Management and Monitoring Plan. The site should deliver a minimum 1:1 ratio loss to creation in the long-term, together with the appropriate function, so that the compensatory measures ensure that the overall coherence of Natura 2000 is protected.*

Applicant's Comments

60.32 The applicant agrees with NE.

3.1.2. **Old Little Humber Farm:** *Able Humber Ports Ltd has stated it will create an area of wet grassland at Old Little Humber Farm to provide feeding habitat for SPA/Ramsar waterbirds whilst the managed realignment site develops benthic invertebrates; it is therefore important that this habitat is created in advance. Natural England welcomes the suggestion by Able Humber Ports Ltd that a meeting can progress this issue. Flightlines between Old Little Humber Farm and the Humber Estuary should be secured and it is understood that Able Humber Ports Ltd are progressing this. It is Natural England's advice that the wet grassland habitat at Old Little Humber Farm would be required in order to support the compensation package provided in accordance with the Habitats Regulations. Management measures and monitoring requirements for the wet grassland should therefore be included in the Compensation Site Ecological Management and Monitoring Plan. This should be required until it is demonstrated through monitoring and reporting that the managed realignment compensation site at Cherry Cobb Sands is meeting its compensation objectives and that the Old Little Humber Farm site is no longer required.*

Applicant's Comments

60.33 Refer to Report EX35.11 in the volume of supplementary environmental information. The proposals set out in the report are not yet agreed with NE.

3.1.3. **Marine piling:** *Lamprey are a designated feature of the Humber Estuary SAC and Ramsar site. The evidence regarding the potential impacts of underwater piling noise on lamprey is unclear, as a result of which it is not possible to be certain that they will not be adversely affected by the marine construction works. It is expected that the Environment Agency's proposed mitigation measures for salmon will also be effective for the most vulnerable lamprey forms. Natural England advises that these mitigation measures should be required as part of any development consent.*

Applicant's Comments

60.34 The applicant is currently considering the Environment Agency's proposals for piling restrictions which were provided by letter on 19th June 2012.

Humber Estuary and North Killingholme Haven Pits SSSIs

3.2. **Loss of SSSI soak dykes:** *The Environmental Statement states that there are a number of soak dykes that will be lost when the Cherry Cobb Sands site is flooded. These soak dykes are included in the Humber Estuary SSSI boundary as they demonstrate a range of brackish to freshwater transitional plants and invertebrate communities. Able Humber Ports Ltd has agreed to recreate these features behind the new flood defence. The specification of and management regime for these features should be included in the Compensation Site Ecological*

Management and Monitoring Plan.

Applicant's Comments

60.35 It is agreed with NE that a soke dyke will be included in the proposals for the compensation site, as shown on the drawings.

3.3. **Habitat improvements:** *Able Humber Ports Ltd has suggested that it could improve habitat management at North Killingholme Haven Pits. The SSSI is currently in unfavourable condition and as Able Humber Ports Ltd is the owner of the site we welcome the suggestion in the Environmental Statement to remedy this. Details of the proposed management measures should be included in the Terrestrial Ecological Management and Monitoring Plan.*

Applicant's Comments

60.36 Noted. The applicant has agreed with NE to the production of a Terrestrial Ecological Management and Monitoring Plan and inclusion of improvement works at NKHP.

3.4. **Little ringed plover:** *This is a Humber Estuary SSSI species that has been recorded breeding on the development site. This breeding habitat will be lost as part of the project. Natural England advises that impacts on this species should be mitigated by providing new breeding habitat on the islands at North Killingholme Haven Pits. Again, details should be provided in the Terrestrial Ecological Management and Monitoring Plan.*

Applicant's Comments

60.37 Noted, however, the habitat was temporary being part of the development of Area E which exists as a result of works being suspended. It is very unlikely that the loss of habitat could give rise to a significant effect on the species but it has been agreed with NE that alternative gravel habitat will be provided on an island within NKHP.

Protected Species

3.5. **Bats:** *As stated above, sufficient survey work has not been undertaken to determine whether bats utilise the development site. If further survey work shows that foraging/commuting routes of bats would be affected by the project, mitigation for the resultant impact should be included in the terrestrial Ecological Management and Monitoring Plan.*

Applicant's Comments

60.38 Refer to Report EX11.19 in the volume of supplementary environmental information. It has been agreed with Natural England that the survey effort is sufficient to understand the use and value of the site to bats. Proposals for mitigation are still to be agreed with NE.

- 3.6. **Water voles:** *More detailed mitigation proposals are required to ensure that this species is adequately protected. For example, details of new habitat to be created including ditch profiles, planting plans and proposed habitat maintenance works. This should be addressed in the terrestrial Ecological Management and Monitoring Plan.*

Applicant's Comments

- 60.39 Refer to Report EX20.3 in the volume of supplementary environmental information which provides details of habitat mitigation.

- 3.7. **Badgers:** *No mitigation is proposed for the loss of foraging habitat utilised by badgers on the south bank despite this being recommended in the badger survey report. This should be addressed in the terrestrial Ecological Management and Monitoring Plan.*

Applicant's Comments

- 60.40 There are no setts within the development site, but there is evidence that it is currently used as foraging habitat. Loss of that habitat may reduce the capacity of the land to support badgers. Since the application was made, the applicant has had the opportunity since submitting the application to review the Management plan for Burkinshaws Covert. This is a 20 year Plan which is scheduled to be reviewed every 5 years and many of the proposals within it will be of benefit to the local badger population and would help to sustain the long term future of the local badger clan.

Biodiversity:

- 3.8. **Mitigation Area A:** *The Environmental Statement reports that in addition to its primary function as SPA/Ramsar waterbird mitigation, Area A will also function as mitigation for a diversity of breeding birds. However, it will not be possible to maintain the area's open sightlines and short swards for foraging SPA/Ramsar waders whilst simultaneously managing the area for breeding birds, the majority of which require areas of scrub and taller vegetation for nesting and foraging. The project would also result in the loss of Station Road Fields Local Wildlife Site and the mitigation for this is described as being part of Area A. Additional details should be included in the Terrestrial Ecological Management and Monitoring Plan to provide sufficient confidence that adequate and effective mitigation can be provided and maintained in the long-term at Mitigation Area A for all its various objectives.*

Applicant's Comments

- 60.41 Refer to Report EX20.3 in the volume of supplementary environmental information for details of site wide habitat mitigation. These details are not yet agreed with NE.

4. Appendix 3: Issues that should be dealt with under the DCO requirements

Habitats Regulations

- 4.1. **Operational buffer:** *An operational buffer is proposed along one side of the mitigation area (Area A). Further information on exactly what will be permitted in this area should be provided by Able Humber Ports Ltd and included in the DCO requirements to ensure that construction and operational noise and visual disturbance do not affect the success of the mitigation area.*

Applicant's Comments

60.42 Refer to Report EX11.22 in the volume of supplementary environmental information. Operating restrictions are not yet agreed with NE.

- 4.2. **Lighting:** *Artificial lighting can affect birds' usage of the SPA and Ramsar site and Natural England advises that maximum light levels and measures to avoid light overspill should be included in the DCO requirements in order to avoid such impacts.*

Applicant's Comments

60.43 Light spill can be controlled by directional luminaires. Draft Requirement 17 should be sufficient to ensure that lighting does not cause a problem. It is not necessary to include any additional level of detail in the DCO. The applicant has agreed with NE that the DCO could be drafted such that the approval by the local planning authority is made in consultation with both the highway authority and NE.

- 4.3. **Grey seals:** *Grey seals are a designated feature of the Humber Estuary SAC and Ramsar site. Able Humber Ports Ltd has agreed to a soft-start technique to mitigate the impact of underwater piling noise. This is a necessary limitation and should be included in the DCO requirements so as to secure its implementation.*

Applicant's Comments

60.44 Refer to EX10.7 within the volume of SEI for an assessment of the efficacy of a 120 second soft start procedure.

- 4.4. **Footpath diversion:** *Natural England welcomes Able Humber Ports Ltd proposed footpath diversion to the landward toe of the new flood defences as this will minimise disturbance to SPA/ Ramsar waterbirds which are anticipated will utilise the managed realignment site. The proposed footpath diversion should be secured in the DCO requirements.*

Applicant's Comments

- 60.45 It is agreed with NE the footpath diversion is secured by Article 17 of the draft DCO.

North Killingholme Haven Pits SSSI:

- 4.5. *The land adjacent to North Killingholme Haven Pits is already developed and the relevant planning permission includes safeguards for the designated site, such as a 200m buffer. Natural England welcomes the suggestion by Able Humber Ports Ltd to include a requirement in the DCO to retain these safeguards.*

Applicant's Comments

- 60.46 It is agreed with NE that existing conditions relating to an operational buffer be retained should be retained by a suitable Requirement in the DCO.

5. Appendix 4: Initial comments on the draft DCO

Schedule 11 Requirements

Ecological mitigation

- 5.1. *This section should refer to the Ecological Management and Monitoring Plan (plans for the terrestrial development site, the compensation site, and the marine environment). These plans should be approved by the Local Planning Authority or the Marine Management Organisation (as appropriate) in consultation with Natural England.*

Applicant's Comments

- 60.47 Agreed.

European Protected Species

- 5.2. *This provision currently only applies to bats and great crested newts for this development (on the south bank site based on existing survey results). Natural England advise that this requirement should closely follow the wording of the Model Provision, so that „no development at all“ should be begun if European Protected Species are present until a scheme of protection and mitigation measures has been submitted and approved by Natural England.*

Applicant's Comments

60.48 The applicant would not wish the start of marine works to be constrained by measures to protect terrestrial EPS. It has been agreed with NE that the caveat '*other than tidal works*' can be inserted.

Nationally Protected Species

5.3. *Mitigation plans should be included in the Ecological Management and Monitoring Plans. This should include mitigation for badgers, water voles and breeding birds. European Protected Species are specifically referred to in the DCO. As the Ecological Management and Monitoring Plans should include badgers, water voles and breeding birds, nationally protected species should also be referred to in the DCO.*

Applicant's Comments

60.49 Nationally protected species are covered by Requirement 14 of the draft DCO. NE are reviewing this matter.

5.4. *Natural England notes that there is no reference in the Development Consent Order to the creation of the compensatory habitat site at Cherry Cobb Sands. Natural England would expect to see proper reference to compensation within the DCO and as an **additional requirement** so it is clear how the necessary measures to provide the compensation would be secured together with a requirement to complete the compensatory measures by a particular point.*

Applicant's Comments

60.50 The Compensation Site is part of the Authorised Development and is listed as part of the Associated Development in Schedule 1 of the DCO. All referenced to authorised development include the compensation site. The stages of the development are covered by Requirement 3. An additional requirement 2(2) would be sufficient to cover the issue. NE are reviewing this matter.

61 REPRESENTATION No. 71 – RSPB

Relevant Representation

61.1 The following representation was received by the Infrastructure Planning Commission from RPSB on 2nd April 2012.

Our main concerns relate to the potential impacts to the Humber Estuary SPA, SAC, Ramsar and SSSI sites' species, as well as the North Killingholme Haven Pits, Saltfleetby - Theddlethorpe Dunes, and The Lagoons SSSIs, both from this application alone and in combination with other projects. It is the RSPB's view that as currently presented the application would not comply with the Conservation of Habitats and Species Regulations 2010 (as amended)(the Habitats Regulations) in particular Regulations 61, 62 and 66, including consideration of alternative solutions and imperative reasons of overriding public interest as well as the points made below, and in addition does not comply with the requirements of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 and the Wildlife and Countryside Act 1981 (as amended). The RSPB welcomes the Applicant's proactive and constructive pre application consultation including on its Preliminary Environmental Information Report. However at present it appears that a number of the RSPB's concerns highlighted throughout that process have not been taken into account, for example:-

Environmental Information - the data provided for the scale of the impact on the SPA, SAC and Ramsar site is inadequate and the analysis and assessment of it is additionally inadequate.

Mitigation and Compensation Measures - for example as a result of inadequate environmental information and flawed assessment, the objectives, scale, location and management proposals for the Compensation and Mitigation sites are inadequate. This particular issue is compounded by a lack of detailed proposals in the application documentation, stating instead that the final details will be agreed should permission be granted. It is imperative that full details of both the mitigation and compensation measures are presented now in order for the application to be adequately considered by the IPC and enable it to comply with the Habitats and EIA Regulations. However we will continue discussions with the Applicant with a view to attempting to resolve these concerns, where possible, and to ensure that robust evidence is submitted to the IPC. The above concerns are also supported by national, regional and local planning policies. The RSPB reserves the right to add to and/or amend our position and in light of new information submitted to the IPC.

Applicant's Comments

61.2 This representation is characterised by sweeping, unsubstantiated statements and the applicant will need to address these points on receipt of the Written Representation.

- 61.3 With respect to the applicant's consultations with RSPB, refer to the comments on Representation No. 3 which demonstrates that the RSPB's principal concerns have been taken into account.
- 61.4 It is inconsistent for the RSPB to comment before the application was submitted that, *(o)n the basis of the approach set out above we consider that the mitigation area that is likely to be appropriate to the AMEP development alone is likely to be in the order of 45-50ha on the basis of the information available to date and the proposed location'*, and to now assert the opposite.
- 61.5 The RSPB assert that, *'(i)t is imperative that full details of both the mitigation and compensation measures are presented now in order for the application to be adequately considered by the IPC and enable it to comply with the Habitats and EIA Regulations'*. Yet the same organisation was content to sign a document supporting the compensatory measures for Immingham Outer Harbour (refer to Appendix A, Schedule 2 of the Agreement) when the details of the compensatory proposals appear to have been unsupported by an ES.

62 REPRESENTATION No. 72 – Paul Forshaw on behalf of Centrica Plc

Relevant Representation

62.1 The following representation was received by the Infrastructure Planning Commission from Paul Forshaw on behalf of Centrica Plc on 2nd April 2012.

Centrica own and operate the 652 MW Killingholme Power Station, which is located off Chase Hill Road, adjacent to the site of the proposed Marine Energy Park. The power station is a Combined Cycle Gas Turbine Plant and produces electricity from natural gas. It produces approximately 3 million MW hours of power every year. The Power Station operates 24 hours a day, 365 days a year and employs approximately 50 skilled employees. The Power Station uses a water-cooled condenser to dispose of waste heat from its steam turbine. Cooling water is extracted from the River Humber via an inlet located to the north of the proposed location of the Marine Energy Park's (AMEP) quay, with an associated pumping house located adjacent to the northern boundary of the application site. Centrica also has a right of way over the access road to the pumping house, off Rosper Road. This road is included within the red line boundary of the proposed AMEP. Centrica also has an easement which gives right to the free passage of services through conduction media over a large area surrounding the Power Station, including Plots B2 and T1 of the Able proposals. There are also a number of underground pipelines and cables in the area surrounding the Power Station which are required for its operation, including electrical and optical cables for controlling the Pumping House, which run along the length of the cooling pipeline and through the proposed development area. Centrica Storage Ltd (CSL), a subsidiary of Centrica Plc, also leases a site on Station Road for storage purposes which contains modern storage and office premises and a large storage yard. The site is located to the north and east of Station Road, between proposed plots T1 and T2 and the Overspill Low Level Storage 3 area of the proposed Marine Energy Park. The site is excluded from the Proposed Marine Energy Park's red line boundary however. CSL also operates a condensate pipeline which runs from Ulceby Skitter to Immingham along Chase Hill Road and Skitter Road, and partly falls within the application site. Centrica has previously submitted representations to Able on the proposals in August 2010 and March 2011 and has met with representatives of Able on a number of occasions. Centrica has expressed concern over the following:

Access

Vehicular access is required to the Power Station, pumping house and storage site at all times. Access is required for staff, emergency response vehicles and also for maintenance. Increased vehicle movements on local roads, including Chase Hill Road and Rosper Road, may delay access to the Power Station, pumping house and storage land. This would create significant problems for the efficient operation of the Power Station in the case when urgent repairs or maintenance is required to either the Power Station or pumping house. Centrica requests that any vehicle movements by road are kept to a minimum. In particular, it is considered that no large turbine parts should be transported by road. Transportation of these parts by road is likely to require large slow moving vehicles, which could potentially create long delays on the surrounding road

network. It is also considered that the local road network would not be suitable for these types of vehicles. The Power Station is accessed off a private road extending northwards from Chase Hill Road. This road should not be used for access to the AMEP. Centrica's vehicles which use this road are restricted to maximum load of 40 tonnes so as to not damage pipelines which pass under this road. Use of this road for access to the AMEP may increase the likelihood of damage being caused to these pipelines, and would therefore not be appropriate. Access to the pumping house is gained via the road which is proposed to be the northern access road into the AMEP, which Centrica has a right of access over. The area immediately adjacent to the pumping house is currently a car park in relation to Able's current operations at the site, and Centrica's maintenance and repair vehicles are required to travel through this car park to access the pumping house. Centrica therefore requires that its rights of access to this pump house are not restricted in any way. However, Land Plan 3 submitted with the DCO application indicates that private rights and easements will be extinguished over the access road which leads to the CSL site, and Centrica is extremely concerned by this. Access should also not be restricted to Centrica's pipelines and cables in the area for maintenance purposes, including the Condensate Pipeline and the numerous cables which pass through the proposed development site. Centrica holds a freehold easement over the route of these cables and pipelines to allow access. Land Plan 5 shows that existing easements and rights of way will not be extinguished in the area within which the cooling pipeline and other cables pass. Centrica would like confirmation that its easements and rights of access to these pipelines and cables will not be restricted.

Flooding

The AMEP will result in a large area of land on the south bank of the River Humber being developed and land being reclaimed from the Humber. This land is located within Environment Agency Flood Zones 3a and 3b and forms part of the Humber Functional Floodplain and is therefore at high risk from flooding. Centrica is concerned that due to the large amount of hardstanding to be developed in this location, part of the River Humber's Functional Floodplain will be lost, resulting in a reduction in floodwater storage areas and increased flooding on surrounding sites. Centrica therefore requests that Able is required to provide suitable mitigation measures to ensure that there is no adverse impact on Centrica's operations in the area by way of flooding.

Centrica's Right to the Free Passage of Services through Conducting Media

Centrica requires that the proposed development will not restrict their ability to undertake its easement to pass services through the application site and surrounding land.

Cooling Inlet / Outfall

The Power Station uses a water-cooled condenser to dispose of waste heat from its steam turbine. Cooling water is extracted from the River Humber via an inlet located to the north of the proposed location of the Marine Energy Park's quay. This inlet is essential to the efficient operation of the Power Station and Centrica holds a licence from the Environment Agency to extract water from the River

Humber at this location. Centrica therefore requires that both the operation and construction of the quay, and any associated dredging activities, do not have any negative impact on the cooling inlet / outfall itself and its operation. Able has acknowledged that there will be an impact on Centrica's Inlet / Outfall as a result of increased deposition of sediment, and has proposed to mitigate this through dredging the river channel close to the inlet / outfall. Centrica is currently reviewing the dredging strategy proposed by Able to identify whether it will sufficiently mitigate any impacts on the operation of the inlet / outfall, and will provide further comments on this at the Written Representation stage and at the Examination. However, in the meantime, Centrica remains concerned over the impact of increased sediment and temperatures on the inlet / outfall. Centrica will expand on the above points at the Written Representation stage and at the examination. It is requested that the examining authority acknowledges these potential impacts, and in particular Centrica's concerns regarding the impact on the inlet / outfall pipeline, and access to its assets in the area. It is requested that the examining authority considers holding hearing sessions at the Examination covering these issues.

Applicant's Comments

Access

- 62.2 The applicant last met with Centrica and their representatives on 21 June 2012.
- 62.3 There are no proposals within the application to transport abnormal loads routinely on the public highway.
- 62.4 **Centrica's rights of access** to maintain their pumping station, pipelines and other services currently passing through the site will not be removed.
- 62.5 The application is accompanied by a Transport Assessment and a Framework Travel Plan; these are included in Annexes 15.1 and 15.2 of the ES respectively. The scheme includes for works to a number of existing road junctions to mitigate for increased traffic as a consequence of the development in the event that the proposed A160 dualling works do not come to pass.
- 62.6 **The application does not include any use of Centrica's private access road.**

Flooding

- 62.7 A comprehensive flood risk assessment has been undertaken and was submitted with the application, refer to Annex 13.1 of the ES.
- 62.8 The application site **does not form part of the 'Humber Functional Floodplain'**; no such area exists in any formal or defined sense. Functional floodplain is required to be identified within Strategic Flood Risk Assessments (SFRAs), refer to '**Technical Guidance to the National Planning Policy Framework**', (DCLG, 2012). In the North and North East Lincolnshire SFRA, the only functional flood plain on the south bank of the Humber is at Alkborough, which was created by the Environment Agency in 2006. During the consultation process the Environment

Agency confirmed that compensatory flood storage was not required to mitigate for any loss of flood storage capacity within the application site.

- 62.9 The pumping station is already located on low lying ground immediately behind the existing flood defences and is currently at risk of flooding in the event of a breach of those defences; it will continue to be subject to such a risk, refer to Figure 62.1. The risk of flooding from a breach of the sea defences is not quantified statistically by the EA, and whilst it cannot be excluded as a possibility, maintenance procedures exist to avoid such an event.
- 62.10 *In summary Centrica's request, 'that Able is required to provide suitable mitigation measures to ensure that there is no adverse impact on Centrica's operations in the area by way of flooding', amounts to a request for a significant (and unrealistic) enhancement of their existing position.*
- 62.11 Surface water drainage of the Killingholme Marshes catchment will be improved as a consequence of the works. The development will incorporate a new surface water pumping station that will be designed to cater for 1:100 year rainfall events.

Centrica's Right to the Free Passage of Services through Conducting Media

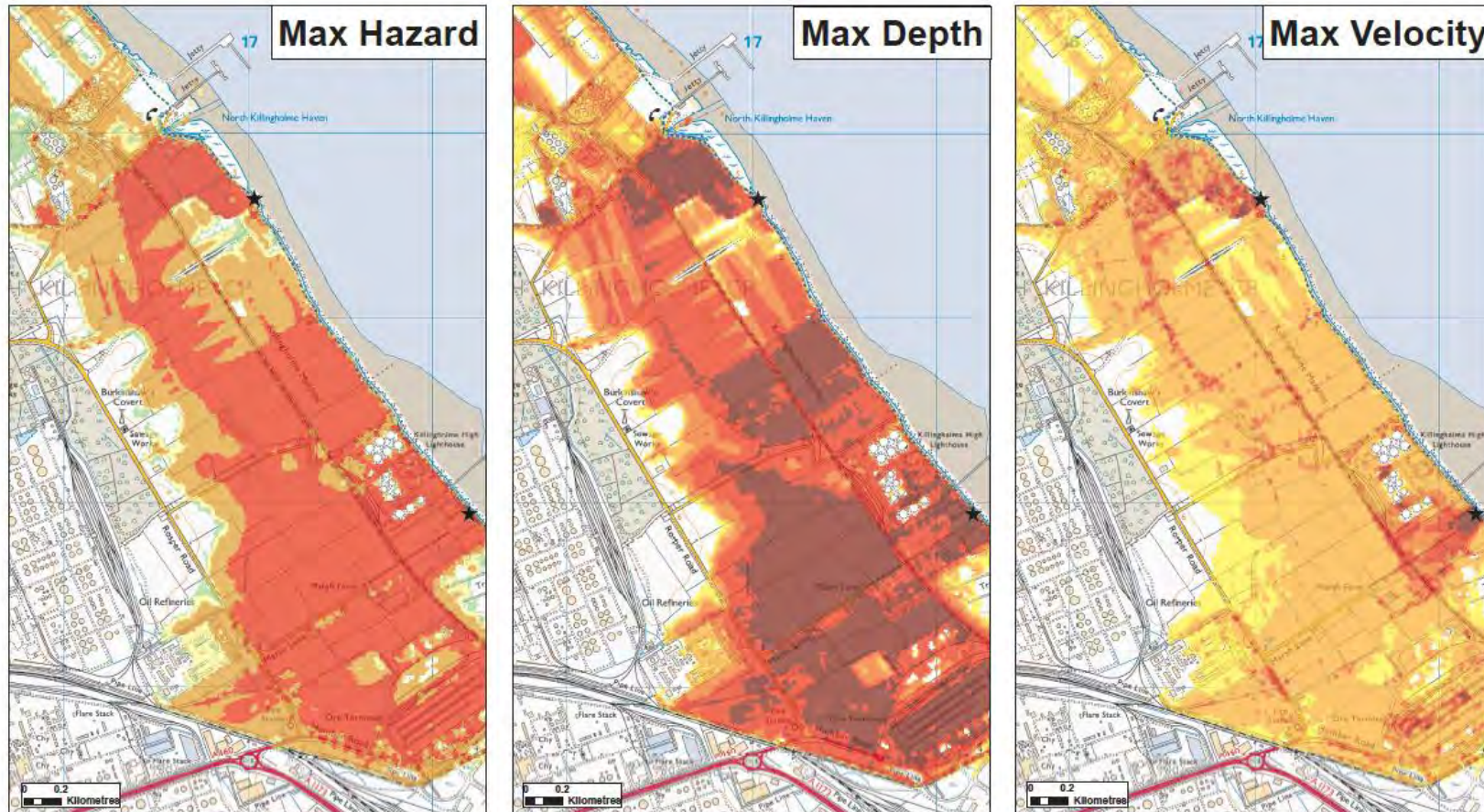
- 62.12 **Centrica's rights** to pass services through the application site and surrounding land will not be removed.

Cooling Inlet / Outfall

- 62.13 A report on the impact of the development on the thermal plume caused by the **operation of Centrica's outfall is included in Annex 9.2 of the ES. It was originally submitted to Centrica on 4 April 2011, but no comments were ever returned.**
- 62.14 **The impact of dredging activity on Centrica's apparatus is reported in Annex 8.4** of the ES, insofar as the activity might give rise to increased suspended sediment concentrations local to the cooling water intakes.
- 62.15 The applicant has endeavored to mitigate the impacts of the proposals on **Centrica's cooling water infrastructure by ensuring that no buildings are located** over the pipeline routes. In addition, as the estuarine environment is characterised by fine sedimentary material carried in suspension within the waterbody, the designers sought to configure the quay so as to avoid suspended sediment settling onto the estuary bed in the vicinity of the cooling water intake and outfall structures. Numerous quay alignments were considered and the impacts of each were investigated by hydrodynamic modeling in order to understand likely changes in accretion patterns; a broad summary of the iterative design approach to the quay is included in Annex 4.4 of the Environmental Statement.
- 62.16 The applicant understands that hydrodynamic modeling is not an exact science, estuarine systems are complex and modeling of them is, necessarily, a **simplification of the 'real world'. Accurate computer modeling of sedimentation** patterns is particularly challenging and the results have a degree of uncertainty, both in terms of the area likely to be affected and also with regard to the

quantum and rate of any change. The deposition of suspended sediment within the estuary is controlled by the speed of the currents and the particle size of the sediments. Clearly, the velocity of the water column at the application site is in a state of flux, being influenced by the tidal cycle, and a range of sedimentary particles (gravels, sands and muds) may be eroded, transported and deposited.

- 62.17 The cohesive transport modeling reported in Annex 8.3 of the ES gave the most adverse results with respect to the rate of accretion to the north of the proposed quay. Our consultant has compared computer predictions of sedimentation rates in existing berths to actual maintenance dredge volumes and this indicates that cohesive computer modeling is overestimating the average rate of sedimentation by a factor of around two.
- 62.18 In the scheme that has been submitted for consent the cohesive modeling indicates that there is little risk of significant sedimentation at the Centrica intake but that there is potentially a risk of sedimentation at the outfall. Since the application was submitted the long term morphological change to the north of the quay, reported in Annex 8.3, has been re-assessed and is further reported in EX 8.8 included in the Volume of SEI accompanying this report.
- 62.19 It is proposed within the application to manage this risk by observation and by intervention if necessary. Intervention would be by dredging, details of the particular technique are set out in the Dredge Strategy included at Annex 7.6 of the ES.



Modelled Breach Locations - see also the accompanying plan "Location of Modelled Breaches"			
Max Hazard (Flood Risk to People - FD2320) Less than 0.75 (Low Hazard) Between 0.75 and 1.25 (Danger for Some) Between 1.25 and 2.0 (Danger for Most) Greater than 2.0 (Danger for All)	Max Depth (m) 0 - 0.25 0.25 - 0.50 0.50 - 1.0 1.0 - 2.0 2.0 +	Max Velocity (m/s) 0 - 0.3 0.3 - 1.0 1.0 - 1.5 1.5 - 2.5 2.5 +	<p>This map shows the level of flood hazard to people (called a hazard rating) if our flood defences are breached at certain locations, for a range of scenarios. The hazard rating depends on the depth and velocity of floodwater across the floodplain. The map is based on computer modelling of simulated breaches at intervals along the coastline and at certain points on Main Rivers. Each breach has been modelled individually and the results combined to create this map. Multiple breaches, other combinations of breaches, different sized tidal surges or flood flows may all give different results.</p> <p>The map only considers the consequences of a breach, it does not make any assumption about the likelihood of a breach occurring. Our defences generally provide a good standard of flood defence but a risk of breaching remains.</p> <p>The map does not show the possible consequences of overtopping of the tidal defences, though overtopping of fluvial defences is included. Separate maps of the flood extent from just overtopping are available.</p> <p>These hazard maps do not replace the flood zone maps used in Planning Policy Statement 25 (PPS25).</p> <p>Please contact the Environment Agency for information on how these maps are used in the management of flood risk.</p> <p>General Enquiries No: 08708 506 506. Weekday daytime calls cost 8p plus up to 50p/min from BT Weekend Unlimited. Mobile and other providers charges may vary.</p>
Date Printed October 2010	Scenario year 2006	Scenario 0.1% (1 in 1000)	<p>Environment Agency Produced by the Flood Risk Mapping & Data Management Team, Lincoln</p> <p>Northern Area Tidal Hazard Mapping</p> <p>Map Centred on TA 1700 1830</p> <p><small>This map is reproduced by permission of Ordnance Survey on behalf of The Controller of Her Majesty's Stationary Office. Crown copyright. All rights reserved. Environment Agency 10002980, 2010. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.</small></p>

Figure 62.1 : Environment Agency Tidal Hazard Map for the Site – (The Centrica Pumping Station is marked by the upstream ★ symbol)

63 **REPRESENTATION No. 73 – Environment Agency**

Relevant Representation

- 63.1 The following representation was received by the Infrastructure Planning Commission the Environment Agency on 2nd April 2012. As, in this instance, the representation is particularly long, the applicant's comments have been inserted in plain type at appropriate intervals.

Able Marine Energy Park, Killingholme Marshes, North Lincolnshire Relevant Representations by the Environment Agency Introduction The Environment Agency is an executive non-departmental public body established under the Environment Act 1995. It is an adviser to Government with principal aims to protect and improve the environment, and to promote sustainable development. It plays a central role in delivering the environmental priorities of central government and the Welsh Government through its functions and roles. It is also an adviser to local decision makers in its role as a statutory consultee in respect of particular types of development, as listed in Schedule 5 of the Development Management Procedure Order 2010. For the purposes of this Development Consent Order (DCO) application, we are a statutory interested party. The Environment Agency takes action to conserve and secure proper use of water resources, preserve and improve the quality of rivers, estuaries and coastal waters and groundwaters through pollution control powers and regulating discharge consents. We have regulatory powers in respect of waste management and remediation of contaminated land designated as special sites. We also encourage remediation of land contamination through the planning process. The Environment Agency is the principal flood risk management operating authority. It has the power (but not the legal obligation) to manage flood risk from designated main rivers and the sea. The Environment Agency is also responsible for increasing public awareness of flood risk, flood forecasting and warning and has a general supervisory duty for flood risk management. As of 2008 the Environment Agency also has a strategic overview role for all flood and coastal erosion risk management. The Environment Agency also has statutory duties under the Salmon and Freshwater Fisheries Act 1975 to 'maintain, improve and develop migratory and freshwater fisheries in England and Wales'. Scope of these representations These Relevant Representations contain an overview of the project issues, which fall within our remit. They are given without prejudice to any future detailed representations that we may make throughout the examination process. We may also have further representations to make when supplementary information becomes available in relation to the project. We have been working closely with Natural England and the Marine Management Organisation to provide advice and guidance to the applicant since June 2010. We have a schedule of meetings arranged to progress and resolve as many outstanding issues as possible and to develop a Statement of Common Ground (SoCG) in this respect. We have reviewed the DCO application, Environmental Statement (ES) and supporting documents submitted as part of the above mentioned application, which were received on 23 February 2012. The comments are presented under topic headings.

Flood risk - Marine Energy Park site

The Flood Risk Assessment (FRA) submitted in respect of the Marine Energy Park (MEP) site has assessed the risks to and from the project based on an earlier quay (chamfer) design. The modelling methodology used is fit for purpose. Unfortunately, the FRA does not reflect the latest amended (square edged) quay design, which only becomes apparent on reading Chapter 8 of the Environmental Statement. It will be difficult for us to advise on the definitive requirements for flood risk mitigation until the FRA is updated and we request that this further work is submitted as soon as possible. The construction of the quay will result in a reduction of the current standard of protection provided by the adjacent defences. This occurs at both the north and south ends of the quay, the north section being the worst affected. However, Able is proposing to mitigate for this increase to the north as part of the development. It is our opinion that the project may increase sedimentation over time to the south of the quay. Able has also agreed to monitoring sediment levels and the foreshore to the south, with a view to improving defences if/when required. The flood modelling has identified that the project will impact on overland flood flows and locally increase the flood depth to the surrounding area. This generally results in a 300mm increase in flood depths, which could affect third parties, in particular the warehousing/office buildings at Manby Road, and property on Marsh Lane, such as Hazel Dene (a residential property). The Secretary of State will need to take a view on whether or not this increase in flood depths to third parties is acceptable. The FRA includes sufficient detail to confirm the acceptability of surface water disposal from the site. However, further details will be required to ensure a satisfactory scheme will be implemented. Currently, the proposal requires adaptation to a small but integral part of the North East Lindsey Drainage Board scheme and the relocation of the pumping station. The former will require the agreement of the Drainage Board and the latter will require consent from us under the Environment Agency Anglian Region Land Drainage and Sea Defence Byelaws 1987. The FRA has used climate change requirements set out in Planning Policy Statement 25 'Development and Flood Risk' (PPS25), which was relevant policy in force at that time, (but is now superseded by the National Planning Policy Framework (NPPF)). This was our advice to the applicant during the pre-application consultation stages. In January 2012 the National Policy Statements for Ports was finally designated and this requires the applicants to use the latest set of UK Climate Projections. The PPS25 levels are comparable to the high emission scenario 90% estimate from UKCP09, so by having considered this degree of change, it is our opinion that Able has covered all that is required. However, if there are any safety-critical elements to the project, Able may want to revisit the high emissions scenario to ensure those elements are set at an appropriate level, above the potential flood risk. As the MEP development will take place within the Environment Agency Anglian Region Land Drainage and Sea Defence byelaw distance of 9 metres, our consent for the works will also be required under these Byelaws.

Applicant's Comments

- 63.2 An addendum to the FRA for the AMEP site is included in the volume of supplementary environmental information; refer to EX13.3.

Impact on migratory fish

The Environment Agency has statutory duties under the Salmon and Freshwater Fisheries Act 1975 to 'maintain, improve and develop migratory and freshwater fisheries in England and Wales'. The same legislation affords specific protection to any salmon, trout or freshwater fish which is either unclean (the fish is about to spawn, or has recently spawned and has not recovered from spawning) or immature; making it a criminal offence to take, kill or injure, or attempt to take kill or injure such a fish. The Environment Agency is concerned that the noise and vibration caused by around 26 weeks of percussive piling during the construction period has the potential to damage migratory fish populations within the Humber system. The Humber estuary acts as the sole gateway for migratory fish into the Humber system, allowing fish to travel upstream from the sea, to spawn in rivers such as the Don, Aire, Ouse, Trent, Wharfe and Derwent; the last of which has SSSI and SAC status. The success of these populations relies wholly on their ability to gain safe passage through the Humber in order for them to complete their life-cycle. As such, any activity taking place in the Humber that hinders the ability of fish to make this journey, has the potential to threaten populations throughout in the river catchment. In addition to the above, many fish populations, particularly Atlantic Salmon, are in a fragile, recovering state, following the almost total annihilation of the species within the Humber as a result of the poor water quality and physical barriers introduced by the industrial revolution. Recent work to address some of these issues has seen Salmon returning to upstream rivers for the first time in decades. Whilst the current number of fish within the system is not well known, a device to count the number of juvenile salmon on the River Ure was operated up until about 5 years ago, with its most recent measurements suggesting around 20,000 juveniles moving downstream. This would usually result in a yield of around 2,000 adults returning upstream to spawn. These numbers are from just one of a number of tributaries, which drain into the Humber, so are likely to represent a fraction of the overall population present within the system. Fish can be disturbed by noise and vibration in a similar way to humans or birds. The main difference is that water is much denser than air, so the noise travels much more efficiently and can therefore cover larger distances. The loudest noises may cause physiological damage to the extent that fish may be fatally injured. As noise levels decrease with distance from the source of noise, a sliding scale of behavioural responses can be expected, with higher proportions of fish close to the source noise likely to be diverted from their usual course, and lower proportions at larger distances. The Subacoustech report presented by Able (Annex 10.3) has modelled various scenarios (tide variations and pile sizes), concluding there is a potential for auditory injury, a strong avoidance reaction, and significant avoidance behaviour in all scenarios at particular distances across the estuary. Able has considered the different species which might be present and likely to be affected by the predicted noise. Different species are more sensitive to sound than others. Atlantic salmon are the most sensitive of the main migratory species and more is known about the characteristics of their auditory system and their behavioural response than other species in the estuary. Underwater noise levels have been estimated using a proprietary underwater sound propagation model (Inspire v3.0.7), which enables the level of noise from piling and its behaviour with range to be estimated for varying tidal conditions, water depths and piling locations. Given that noise levels can be estimated at any point across the estuary, the proportion of fish likely to be diverted can be predicted, taking into account other

factors such as daily/weekly working hours, seasonal working restrictions and the migratory patterns of different fish species. Despite the conclusions of the Subacoustec report, the conclusion recorded in the Environmental Statement, Chapter 10, Paragraph 10.8.6 is that Migratory fish of conservation interest passing through the area are unlikely significantly affected from prolonged exposure to piling works as their exposure is limited to a few hours, but it is not known if the piling operations act as an acoustic barrier to the spawning runs." The Environment Agency is of the opinion that Able need to explore opportunities to avoid, mitigate and, where necessary, compensate for the predicted effects. We will require conditions to mitigate the impacts of piling noise on the deemed marine licence, and if necessary, an agreement to provide compensation for residual impacts (we are currently negotiating mitigation/compensation for a similar site on the north bank of the Humber, known as Green Port Hull). This position is supported by the Marine Management Organisation and Natural England, who are raising similar issues in respect of marine mammals and lamprey respectively.

Applicant's Comments

What is the risk to Salmon?

- 63.3 In discussion with the EA it appears to be agreed that the level of underwater noise will not be fatal to fish in any significant way. Instead there is concern that the noise environment during piling may have a significant impact on the behaviour of migrating fish; the noise might in effect act as an acoustic barrier to their journey up and down river. The migrating fish specifically identified are Atlantic salmon, Sea Trout, River and Sea Lamprey, and Eel.
- 63.4 In the first instance it is worth noting with respect to this particular risk, that the applicant is not aware of, and the Regulators have not identified, any instances of migratory fish populations actually being adversely affected by underwater noise.

What evidence underpins the perceived risk?

- 63.5 There has been no scientific evidence presented to the applicant that would specifically support the proposition that piling noise acts as an acoustic barrier to migrating fish – all that appears to be known from all the scientific research undertaken to date is that fish respond to sound and can suffer some physical injury, including fatality if in very close proximity to impact piling. The most recent research that the applicant is aware of is, '*Effects of pile-driving noise on the behaviour of Marine Fish*', (Cowrie, 2010). The report includes a useful summary of previous studies that are, to all intents and purposes, inconclusive with regard to fish response.
- 63.6 Able employed ERM (environmental consultants) to undertake an environmental impact assessment which considers the likely significant effects of AMEP on, *inter alia*, aquatic ecology and their assessment is detailed in Chapter 10 of the ES. The assessment of underwater noise impacts are substantially informed by the report, '*Technical Guidance for Assessment and Mitigation of the Hydroacoustic Effects of Pile Driving on Fish*', (California Department of Transport, 2009).

- 63.7 Given the degree of uncertainty, the applicant also employed Subacoustec to make an independent assessment using proprietary computer modelling techniques and their report is included in Annex 10.3 of the ES. The general conclusion was that some fish might exhibit strong avoidance behaviour over approximately half the width of the estuary.
- 63.8 Finally, the applicant commissioned the Institute of Estuarine and Coastal Studies at the University of Hull to report on the impact of the construction works on Sea and River Lamprey, their report forms Annex 10.2 of the ES. It concludes that there is a minor to possibly moderate risk of an adverse effect on lamprey from piling works. The effect on lamprey is particularly uncertain as there it is not known whether they hear anything at all.
- 63.9 It is recognised that the above assessment does not identify a body of scientific proof that salmon and other migratory fish will not be affected by the underwater noise – the assessment does not, in effect, prove a negative.
- 63.10 The applicant has therefore further reviewed available EA data on the salmon statistics for tributaries of the Humber as published in annual reports and these are summarised in Table 63.1 below, the annual records with respect to Salmon and Trout. We note as well that the neither the Humber nor any of its tributaries are classified as 'principal salmon rivers', nor do they have Salmon Action Plans.

EA Report	Year	Rod Catch		Stocking	Comment
		Ouse	Trent		
Salmonid and freshwater fisheries statistics for England and Wales	2000	0	0	150,000	
	2002	2	0	20,000	
	2003	8	0	120,000	
	2004	6	0	120,000	
	2005	16	0	75,000	
	2006	22	0	103,000	
	2007	18	0	130,000	
	2008	10	0	130,000	
	2009	20	1	130,000	
Annual Assessment of Salmon Stocks and Fisheries in England and Wales	2007				"there is evidence of increasing returns of salmon to the Yorkshire Ouse and Esk systems"
	2008				"there is evidence of increasing returns of salmon to the Yorkshire Ouse and Esk systems"
	2009				"there is evidence of increasing returns of salmon to the Yorkshire Ouse and Esk systems"
	2010				"there is evidence of increasing returns of salmon to the Yorkshire Ouse and Esk systems"

Table 63.1: Summary of EA Annual Report on Salmonid

63.11 Also, reference to the Salmon Action Plan for the Tees shows that coastal salmon catches in the South Yorkshire area are relatively small compared to those along the north-east coast, refer to the abstract below: -

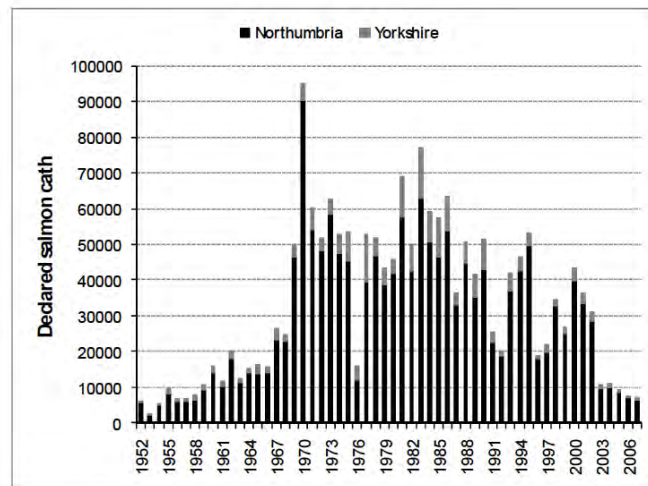


Figure 2.2 North East Coast Salmon Fishery annual salmon net catch 1952 to 2007.

Figure 63.1: Abstract from the Tess Salmon Action plan

63.12 Further, it is noted that English Nature’s Report, ‘The Humber Estuary: A Comprehensive Review of its Nature Conservation Interest’ (2005), states that, ‘the Humber Estuary is not an important migratory corridor for the salmon in the context of English Rivers that have significant salmon “runs” ’.

63.13 Thus it seems to be the case that the migratory salmon population in the Humber is small and the extent to which it is recovering is not known in any quantitative measure. However, whatever recovery has occurred has done so despite the fact that six significant piling campaigns were undertaken in close proximity to the AMEP site between 1999 and 2007; three at Humber Sea Terminal to the north (2000, 2003 and 2007) and three at the Port of Immingham to the South (1999-2005).

63.14 Usefully five piling campaigns were undertaken in the six years immediately prior to the **salmon population being described as ‘recovering’, and one during the period of recovery.** None of the works are believed to have been undertaken with any piling restrictions in place for migratory fish. In fact during this period piling has normally occurred during the Spring, Summer and Autumn that includes the fish migration periods. Nevertheless, the fish stocks are reported, in discussions with EA to be increasing. This fact is given little weight by the Environment Agency; the argument put forward in discounting this evidence has been that fish stocks might have improved more rapidly in the absence of these works. There is, of course, no scientific data to underpin such conjecture.

What quantifiable benefit is expected from the mitigation proposed by EA

63.15 It is doubtful that any quantifiable benefit will be realised were the proposed restrictions to be adopted. If fish stocks continue to improve it can never be

known whether they would have improved in any event, as they have been doing with the unrestricted piling operations.

Is the measure proportionate to the required level of protection?

63.16 In environmental decision making the precautionary principle should be invoked when:

- *there is good reason to believe that harmful effects may occur to human, animal or plant health or to the environment; and*
- *the level of scientific uncertainty about the consequences or likelihood of the risk is such that the best available scientific advice cannot assess the risk with sufficient confidence to inform decision-making.*

63.17 The first criterion is not met directly by any scientific studies relating to migrating fish. The risk is inferred from scientific observations, including evidence that artificially elevated levels of underwater noise will reduce (but not prevent) fatality levels of some species at power station intakes (Maes et al 2003¹). Conversely, recent piling activity within the Humber Estuary and close to the site has not obviously harmed the fish population of the Humber Estuary, so the risk cannot credibly be that significant.

63.18 The current EC and UK approach to the principle is a 'weak' version which requires precautionary action to be balanced against the costs and benefits of taking the action. ILGRA² Report, '*The Precautionary Principle: Policy and Application*' (2002) states that '*action in response to the precautionary principle should accord with the principles of good regulation, i.e. be proportionate, consistent, targeted, transparent and accountable*'.

63.19 On the basis of the impact assessment undertaken, the applicant would assert that the environmental risk of piling in this specific area of the river is limited to a reduced rate of improvement in numbers of a very low population but even that consequence may not arise. Conversely, the cost of taking the action proposed by the Environment Agency is high.

63.20 The matter is further confused by The Associated British Ports (Grimsby Riverside Ro-Ro Terminal) Harbour Revision Order 2011 which states that,

'No piling operations in connection with the works will be carried out except between 1st May and 31st July in any year'

This restriction is contrary to EA's current advice. The piling works are being undertaken this year by ABP without any steps being taken by the Regulator that has a duty to protect fisheries, to stop what they assert to be a harmful environmental activity.

¹ Field evaluation of a sound system to reduce estuarine fish intake rates at a power plant cooling water inlet (Maes et al 2003)

² Inter-Departmental Liaison Group on Risk Assessment

Hydrodynamic and sedimentary regime

The assessment of the hydrodynamic and sedimentary regime, contained in Chapter 8 and the associated Annexes does not fully address the impact of the MEP, the compensation site and the dredge disposal site. If they are discussed in detail elsewhere, this needs to be made much clearer in terms of referencing the relevant part of the application. There is very little assessment or discussion of the impact of waves in Chapter 8. There is no adequate assessment of the impact of capital and maintenance dredging on the long-term impact on estuary processes. Indirect intertidal losses are not adequately assessed in terms of changes resulting from long-term morphological change caused by the MEP. Able only appear to be proposing to compensate for direct losses. Annex 8.2 refers to it taking several decades for the estuary to respond to the building of MEP and a dynamic equilibrium being reached, but no mitigation or compensation is being proposed for this impact. There is no quantification of this change in relation to natural variability. The Environment Agency has engaged independent consultants to review the modelling work and the early findings of this work are that additional compensation, to compensate for indirect, losses will be required. There is an inadequate assessment of the in-combination and cumulative impacts within Chapter 8. If these are assessed elsewhere in terms of hydrodynamics and sedimentary regime this needs indicating. At present it is unsatisfactory. We have concerns about the disposal of dredged material in association with other development projects. The changes in the quay design have not been adequately assessed, most notably reducing the extent into the estuary by 80m. The quay will now be closer to third party flood defences, and the chamfer design has been amended to a square edged quay. The impact of all of these changes on the interpretation of the modelling results needs explanation. There have been major changes to the erosion and deposition expected within the estuary as a result of additional modelling work undertaken, but the design has been further changed. This reduces our confidence in the modelling results and this combined with the exclusion within the modelling results of data that is within the model error bands; for sensitivity analysis it would be helpful if the impacts of these potential changes (currently excluded from further discussion) were included. Without this discussion there is likely to have to be longer-term monitoring of suggested potential impacts.

Applicant's Comments

- 63.21 Further assessments of the hydrodynamic effects are included in the volume of supplementary environmental information; refer to EX 8.7 – 8.10 included in the Volume of SEI accompanying this report.
- 63.22 The EA has provided the applicant with their consultant's (Deltares) assessment of long term morphological change caused by the Project. The assessment infers change from studies undertaken on set-back sites within the estuary, assuming that the quantum of habitat change resulting from the reclamation works will be pro-rata, and opposite to, the quantum of habitat change due to a substantial (808 ha) set back site on Sunk Island.

- 63.23 The Deltares assessment of the impact of AMEP refers to a paper by Jeuken, Wang & Keiller on the impact of setbacks on the estuarine morphology. This paper relies on work carried out for the Environment Agency in 2004 as part of the Humber strategy by WL|Delft Hydraulics; which was reported by Wang & Jeuken in a paper entitled '*Long term morphologic modelling of the Humber estuary with ESTMORF*'.
- 63.24 ESTMORF is a one dimensional morphology model that combines hydraulic and geomorphology equations based on a regime approach to predict the long term evolution of an estuary in response to development or sea level rise. For the Humber the issues modelled were primarily set back areas and sea level rise effects.
- 63.25 The key study of relevance to the AMEP proposal was the modelling of a large set back of the Sunk Island defences on the north bank of the Humber that increased the estuary intertidal area by between 800 and 850 ha. This model run included all developments existing in 2003 including the Paull Holme Strays managed realignment and assumed that over the following 50 years sea levels would continue to rise at a rate of 1.8mm/year. The results of the run with the Sunk Island set back are compared with a similar run without this setback. Section 5.5 of the WL|Delft Hydraulics report discusses the findings.
- 63.26 Within the text of section 5.5.2 it is noted that at the beginning of the run, not all of the Sunk Island set back was flooded by the tide, though at the end of the run more, perhaps all, of the set back area was flooded.
- 63.27 In Table 5.5a which examines the initial changes in more detail the majority of the increase in intertidal area is in the set back area, though there is predicted to be 812 ha gain in the setback area, 3 ha loss of intertidal area in the upper estuary and a further 1 ha in the Tidal rivers. This indicates that outside the setback area there is an immediate loss of 4 ha of intertidal area due to the changes in tidal range in the inner estuary that the setback causes.
- 63.28 The comparison between the results with and without scheme is repeated after 50 years in Table 5.5b. This shows that in the downstream part of the estuary (Grimsby to Spurn) there is a 16 ha loss of intertidal compared with a gain of 16 ha upstream of the set back (from the Change of difference row). The 22 ha gain in section 3 at the centre of the setback area is assumed to be additional flooding in the setback area and not an estuary effect. This gives **no** net change in estuary area as a result of the Sunk Island setback after 50 years. Accordingly the applicant disagrees with the EA.

Results from Table 5.5a for year 0 Part 1 downstream: Part 10 upstream at Trent Falls.

Part	1	2	3	4	5	6	7	8	9	10	Estuary	Rivers
No scheme	3328	1876	782	529	435	270	342	169	1374	497	9603	165
With scheme	3328	2123	1139	684	490	270	342	169	1372	496	10412	164
Difference	0	47	357	155	55	0	0	0	-2	-1	-3	-1

Gains in bold italics are for the setback site

Results from Table 5.5b for year 50

Part	1	2	3	4	5	6	7	8	9	10	Estuary	Rivers
No scheme	3295	1859	771	523	428	263	327	165	1333	492	9456	169
With scheme	3281	2104	1150	681	487	267	330	168	1332	490	10289	166
Difference	-14	245	379	158	59	4	3	3	-1	-2		-3
Change in difference	-14	-2	22	3	4	4	3	3	1	-1	-16 +39	-1

Gain in bold italics are for the set back site

- 63.29 The applicant would also note that modelling morphological change carries high levels of uncertainty. Long term change in the estuary will be dictated by sea level rise which over one hundred years will amount to around 1055 mm between 2015 and 2115 using UKCP09 955 medium emission scenario. On the same basis, over the first 50 years sea level rise is predicted to be 380 mm. The Humber CHaMP uses an assumption that sea levels will rise by 6mm/year between 2000 and 2050 and that this will give rise to a need for 600 ha of new intertidal habitat in order to maintain the habitat at its current quanta.
- 63.30 By contrast to the above, the changes in water levels due to AMEP are reported to be less than a millimeter (EX8.7) and cannot be distinguished from model error. Thus, any impact will be dwarfed by natural change (sea level rise is defined as natural change in the Humber CHaMP).
- 63.31 A further assessment of in-combination effects is included in the volume of SEI; refer to EX44.1.

Choice of Site

Cherry Cobb Sands compensation site In 2004 the Environment Agency produced a Coastal Habitat Management Plan (CHaMP) (Black & Veatch Consulting Ltd, March 2004). CHaMPs provide a framework for managing sites of European importance and Ramsar sites that are located on or adjacent to dynamic coastlines. Currently flood protection in the Humber estuary is provided by approximately 235km of defences largely comprising grassed, earth embankments or heavier rock/stone protected banks with some lengths of quay walls and sheet-piled walls, mainly in the urban areas. The defences are generally in reasonable condition, but the standard of protection is low in places where insufficient height of defence could lead to damage through overtopping, or where the condition of the defence itself results in an unacceptable risk of breaching/destabilisation through wave action. Records show that water levels in the Humber estuary have been rising historically, relative to the land levels, at a rate of c. 2mm per year. This rate is increasing as a result of climate change and, unless action is taken, will increase flood risk in many areas to unacceptable levels. In addition to the increased risk to people, property and land uses, the rising sea levels are causing loss of inter-tidal habitats within the estuary; these habitats are prevented from migrating inland by the existing flood defences (a process known as 'coastal squeeze'). The 2004 CHaMP assumed a rate of 6mm/year over the period 2000 - 2050. A recent review of the CHaMP

revised this rate to 4mm/year (as recommended by Defra for use in flood risk planning). The review also allowed a revision of calculations of coastal squeeze habitat losses based on improved data sets. The primary functions of the Humber Estuary CHaMP are to: provide a clear and agreed record of predicted habitat losses and gains, and other potential impacts on the habitats and species of European or international importance subject to shoreline change; and set the direction for habitat conservation measures to address net losses. The Humber Estuary CHaMP commits the Environment Agency to compensate for the loss of inter-tidal habitat on the following basis (unless agreed otherwise on a site by site basis or as a result of future Strategy / CHaMP reviews): 1:1 replacement for coastal squeeze and temporary disturbance from Flood Risk Management schemes, and 3:1 replacement for permanent loss due to flood defence works (this is the currently agreed ratio, but may be subject to alteration in the future). As a result of this commitment the Cherry Cobb Sands site is identified in our Humber Strategy (our long term plan for managing flood defences along the Humber estuary into the future) as a planned habitat creation site, to compensate for these losses, identified at Keyingham. Whilst we recognise that the Strategy comes with a delivery risk, by identifying sites where we do not currently own the land, this project has the potential to hinder the Environment Agency's ability to deliver habitat compensation requirements.

Applicant's Comments

- 63.32 The applicant appreciates that the EA had identified the proposed compensation site as a potential habitat creation site to compensate for coastal squeeze losses. The land has also been identified by ABP as potential compensatory habitat for their longer term development plans. Accordingly, the landowner issued tender documents to all three parties in 2011 and subsequently identified the applicant as the preferred bidder.

Flood risk - Cherry Cobb Sands compensation site

The applicant has put forward the site at Cherry Cobb Sands on the north bank of the River Humber to provide habitat compensation for the adverse effect the development will have on the internationally designated subtidal and intertidal habitat within the Humber Estuary. In order to create the new habitat the applicant proposes to construct a new flood defence behind the existing defence line. The existing defence will then be breached to enable tidal inundation to provide compensatory habitat, which will be lost from the south side of the estuary following construction of the MEP quay. We have significant concerns about the proposed design of the compensation site's new flood defence embankment. Having reviewed the relevant Flood Risk Assessment (FRA), Chapter 36 and Annex 36.1, we are not yet assured that the design crest level for the new embankment will be to the required 1 in 200 year standard including climate change. Different types of embankment protection are specified along the embankment length, apparently commensurate to the expected erosion forces of tidal inundation. However, we believe that greater lengths of the embankment require more robust protection than suggested. This is because the preferred breach width in the existing flood bank is likely to increase over time because the ends of the breach will not be protected from erosion. Therefore, more of the new embankment will be subjected to wave action than predicted.

We note that the hydraulic model used appears to take account of existing ground levels rather than predicted ground levels following re-profiling of the site to provide embankment material. Regarding the suitability of embankment material, we still have concerns about whether winnings from within the site will be suitable for use in a flood bank. We reserve judgement until the outcome of the proposed further Site Investigation (SI) work, including laboratory testing, which is mentioned on page 52 of the Signpost Report (which Able supplied to us following submission of the application). The proposal also has the potential to increase the levels of siltation at Stone Creek, which lies 400m to the south-east of the site. Dredging of Stone Creek has in recent times been undertaken by the Environment Agency. The local Internal Drainage Board has recently taken over responsibility for a temporary dredging programme, part funded for 5 years by the Environment Agency and East Riding of Yorkshire Council, to alleviate the existing siltation issue. Able has acknowledged (in Chapter 36, paragraph 36.8.5) the potential for the development to exacerbate the issue. We would concur with the need for an agreed monitoring and maintenance plan for Stone Creek in order to identify circumstance in which work will be required. We request that the need for this plan is secured in the DCO. The flood defence works will require consent from us under the Yorkshire Land Drainage Byelaws 1980 as the site is on the north bank of the Humber. We are currently liaising with Able on this issue and hope to make further progress, which will be recorded in the SoCG.

Applicant's Comments

- 63.33 Further details of the design criteria for the flood defence wall at Cherry Cobb Sands are included in the volume of SEI; refer to EX36.2.
- 63.34 The detailed design of the site will include an assessment hydrodynamic forces and the new flood defence wall will be appropriately designed. Schedule 11, Requirement 4 of the draft DCO provides for the approval of the detailed design by the local planning authority before the start of construction.
- 63.35 The additional site investigation works includes for testing of the soils for the appropriate level of treatment with lime and/or cement in order to make them suitable for use.
- 63.36 With regard to monitoring of siltation in Stine Creek, refer to comments on Representation No. 40.
- 63.37 The applicant notes the requirement for a Flood Defence Consent and will submit an application in due course.

Potential land contamination

We have considered the reports submitted in respect of potential land contamination at the Cherry Cobb Sands compensation site (Annexes 31.2 and 31.4) together with Chapter 31 of the Environmental Statement. The assessments provided have identified that previous land uses may have given rise to contamination at the site. The limited intrusive investigation work undertaken within the fields in the north west area of the site has identified

metal and hydrocarbon contamination of the ground, believed to be associated with a historic landfill site at this location. In addition, the assessments have identified that creeks on the site may also have been in-filled with potentially contaminated material and that there is a potential for contamination in the area of the site associated with use as a decoy site in WWII. The recommendation of the assessments is that further intrusive investigation work is required to determine the areas of potentially contaminated ground, based on the information gathered to date. We concur with this recommendation. The soil sample locations should be appropriately sited in relation to current and historic areas where contamination may have arisen. Following a robust intrusive investigation the risk to controlled waters should then be determined using an updated conceptual site model for the site. We note that requirements are already included in the DCO in respect of contamination but we may provide some revised wording in due course.

Applicant's Comments

63.38 Additional geotechnical and chemical investigation has been undertaken on the compensation site and contaminated land has been identified at the location anticipated in the contaminated land risk assessment included in Annex 31.4 of the ES. Testing is being undertaken to determine the nature of the contamination and to inform proposals for making the soils suitable for use. Initial evidence indicates that the material was deposited on the site in the late 1960's to early 1970's. **In these circumstances the Environmental Protection Act 1990, Part IIA, requires that any necessary remediation work is the responsibility of an 'appropriate person', or, alternatively that the enforcing authority may undertake remediation work and recover the cost of doing so. An 'appropriate person' is defined as either being any person or persons who caused or knowingly permitted the substances giving rise to the contaminated land being in, on or under that land, or is the owner or occupier of the land in question.**

Hydrogeological risk

We are satisfied that the assessment in respect of controlled waters has been adequately undertaken. We agree with the conclusions of the Hydrogeological Risk Assessment that due to the general permeable nature of the overlying superficial deposits in the proposed piling and dredging area, their removal or penetration will not significantly affect the saline interface. The proposed area is not in a Source Protection Zone and is not considered to be within the zone of influence of groundwater abstractions. The project has identified that the tidal variation may lead to some intrusion but that the net effect will be outflow to the channel. A significant mechanism of discharge which already exists.

Applicant's Comments

63.39 No comments

Foul water drainage

Annex 9.5 includes a letter from Anglian Water Services confirming that they will work with Able to develop the appropriate sewage infrastructure so that foul sewage can be directed to the mains sewer. It is disappointing that Able has not included our suggestion that details of flows for sewage and trade effluent be included in the ES, together with discussion on potential effects on the receiving water body. As a result of the project Anglian Water Services will need to upgrade its waste water treatment works. Further details on quantities and flows would enable us to know with greater certainty that the required Environmental Permit variation can be accommodated within environmental limits. We are aware that the Customs House will not be connected to the mains system, but will be serviced by a package treatment plant. The discharge from this plant will require an Environmental Permit from us under the Environmental Permitting Regulations (England and Wales) 2010.

Applicant's Comments

63.40 The applicant currently estimates that peak foul water flow will be in the order of 7 litres/second

Waste

We are satisfied that the waste chapters cover the relevant Duty of Care aspects of the development proposal from construction to operation. They acknowledge the relevant legislation and the requirement to undertake a Site Waste Management Plan.

Applicant's Comments

63.41 No comments

Water Framework Directive

The application includes a Water Framework Directive Assessment in Annex 9.4, which covers the relevant waterbodies in the area. The assessment is satisfactory for the MEP site and the dredging works. We are still awaiting submission of a Water Framework Directive Assessment for the Compensation Site at Cherry Cobb Sands. We reserve the right to advise and comment on the appropriateness of this once we are in receipt of it.

Applicant's Comments

63.42 The applicant issued a WFD assessment for the Compensation Site to the EA on 3 April 2012 and received comments on 29 May 2012 refer to report EX8.11 included in the Volume of SEI accompanying this report. A further submission for the project as a whole is included in the volume of SEI; refer to EX 8.12 which supersedes the previous assessments.

In-combination and cumulative impacts

The in-combination assessment is inadequate as presented. We recommend that a table with conclusions from all the Chapters needs to be drawn together so that it is clear what impacts arise from the development in-combination and cumulatively as a result of other developments within the estuary and if, and where, these are mitigated. In addition we would recommend that the assessment area is expanded to include a 10km radius around the compensation site and a 10km radius around the capital and maintenance disposal sites. At present, Grimsby and the Sunk Dredge Channel are being excluded from the assessment, but may conflict with dredging works. Environmental Permits We note that the application includes the proposed construction of a new outfall within the quay frontage that would be used to divert existing E.ON and Centrica outfalls. The current outfalls are regulated by Environmental Permits issued to the operators. Diversion of the outfalls will require a variation to these permits and will therefore require the agreement of the operators.

Applicant's Comments

- 63.43 Grimsby Ro-Ro and the deepening of Sunk dredged channel were included in the in-combination assessment. An expanded assessment of in-combination effects is included in the volume of supplementary environmental information; refer to EX44.1
- 63.44 The applicant is consulting with Centrica and E.ON regarding the impacts on their infrastructure and the submission of applications for new consents.

Protection of Environment Agency interests

During the coming weeks we will be working with Able on these outstanding issues and giving further consideration to the draft DCO, in particular the requirements and protective provisions. We will also raise with Able any issues we think need to be covered in a side agreement etc., in order to safeguard our interests. We note that a plot of Environment Agency land has been included in the order as one which the applicant wishes to compulsorily purchase - we believe this land may be essential for operational purposes in relation to flood risk management and we are urgently looking onto that issue. We will advise further as soon as possible. We will submit further detailed written representations on these issues in due course and we will also be working with Able and other Defra bodies in respect of a SoCG. We reserve the right to add or amend these representations during the course of the examination.

"

Applicant's Comments

- 63.45 The EA has confirmed to the applicant that they are willing to sell the parcel of land in their ownership that is affected by the works.

64 **REPRESENTATION No. 74 – Friends of the Earth**

Relevant Representation

64.1 The following representation was received by the Infrastructure Planning Commission from Friends of the Earth on 2nd April 2012.

As a sustainable development organisation Friends of the Earth UK strongly supports the expansion of the UK renewable energy sector including off-shore wind manufacturing and installation developments. We believe that this sector is essential for reducing our carbon emissions in line with the Climate Change Act 2008 and the resulting carbon budgets set to 2026. Offshore wind forms a significant part of a green UK economy and secure energy supply in the future. Friends of the Earth has consistently supported proposals where these have had minimal unmitigated impacts. As such, we have supported the proposals for the ABP/Siemens development on the north bank of the Humber, potential development on Teesport and the recent investment decision by Gamesa at Leith. The north of England has historically played an important part in the UK's electricity generation. Therefore, in general, we welcome investment in the renewable energy sector in this region and recognise that the East Coast's proximity to the key Round 3 offshore wind areas in the Hornsea Range and Dogger Bank. Furthermore, we recognise that local manufacturing facilities are invaluable for creating the necessary capabilities that ensure the north of England continues its role of the UK's 'power house' as well as boosting the local economy and creating green jobs. Nevertheless, we do not think that these arguments and investments made to date by the developer justify the destruction of 55 ha of internationally important wildlife habitat. The National Policy Statement requires that the decision maker considers the impacts on European sites affected by the Habitat and Species Regulations and whether sufficient measures have been taken to mitigate these impacts and seek alternative sites. We understand that the developer has consulted with experts on site specific environmental issues and some mitigating measures were taken as a result such as the reduction of the initially proposed quay length at Killingholme to 1320m. However, given the importance of this particular area, we find the proposed compensation site to be inadequate. We are also concerned about the loss of intertidal mudflats that serve as feeding grounds and limited on-site mitigation measures. Furthermore, we question the lack of alternative sites suitable for such developments along the east coast. Sufficient sites in the UK exist to meet the anticipated demand for east coast offshore wind turbines and associated component supply without creating the impact on the natural environment likely to be result from this application in its current form. As such, we object to this proposal and look to the developers to revise their plans for mitigation and to scope out alternative sites for investment in this important industry.

Applicant's Comments

64.2 Refer to the comments on Representation No.1.

- 64.3 The assertion that, '(s)ufficient sites in the UK exist to meet the anticipated demand for east coast offshore wind turbines and associated component supply without creating the impact on the natural environment likely to be result from this application in its current form', is not substantiated in the representation.
- 64.4 A great deal of capital investment is required by the private sector if the transition to a carbon neutral means of energy production is to be achieved by 2050, **which is the EU's goal as explained in paragraph 5.2.5 of the ES. The UK intends to implement this transition through further development of atomic power and through wind generated electricity, specifically offshore wind generation. The transition must be planned and cannot be expected to 'happen'** by the ad-hoc development of disparate small scale sites. The need for large scale Marine Energy Parks in the United Kingdom is explained and fully justified in Chapter 5 of the ES.
- 64.5 The application specifically proposes the development of a Marine Energy Park that can provide a significant base for the development of an emerging sector of industry with particular requirements and also delivers significant socio-economic benefits to a relatively deprived area of the UK.
- 64.6 The alternative development of a grouping of smaller sites is considered by the applicant in Annexes 6.1 and 6.2 of the ES but is discounted as, inter alia, distributed supply chains are not likely to provide a manifestly better environmental solution, refer to paragraph 6.6.6 of the ES.



AMEP
APPLICANT'S COMMENTS ON THE
RELEVANT REPRESENTATIONS

Date: June 2012

65 REPRESENTATION No. 75 – V Jones

Relevant Representation

65.1 The following representation was received by the Infrastructure Planning Commission from V Jones on 1st March 2012.

The land offered to compensate for the area proposed to be compulsory purchased is inadequate in size and not of the same quality needed for the migrating birds. These birds have rights to feed here and the whole area would be spoiled if the wildlife stopped coming here to feed in the mud. More area and more rich land needs to be offered.

Applicant's Comments

65.2 Refer to the comments on Representation No's 1 and 2.

66 **REPRESENTATION No. 77 – Mrs Margaret Jane Francis**

Relevant Representation

66.1 The following representation was received by the Infrastructure Planning Commission from Mrs Margaret Jane Francis on 29th March 2012.

I live in Goxhill, about 2 miles from the River Humber. I have walked for an hour along a section of the river bank at least 6 days a week for the last 20 years. I enjoy watching the wildlife. The Humber estuary is rich in wildlife and one of Britain's most important for wintering birds and migrating wildlife. In late summer and autumn, hundreds of thousands of birds come to the Humber; some stay and some continue their migration having eaten and rested. Wildlife depend on it for their survival. As such, the Humber has been designated as a Special Protection Area (SPA) under the European Birds Directive, a Special Area of Conservation (SAC) under the European Habitats Directive, a Ramsar site, designated under the convention on wetlands of international importance and is also a Site of Special Scientific Interest (SSSI). Economic development could be possible if the environmental impact could be adequately compensated. Any damage caused by development should be offset by comprehensive compensation of new habitat. Able U.K.'s marine energy park application would destroy 55 hectares of habitat on the estuary. The current proposal is insufficient to compensate for this loss.

Applicant's Comments

66.2 Refer to the comments on Representation No.1 and 2



AMEP
APPLICANT'S COMMENTS ON THE
RELEVANT REPRESENTATIONS

Date: June 2012

67 REPRESENTATION No. 78 – Philip Dixon

Relevant Representation

67.1 The following representation was received by the Infrastructure Planning Commission from **Philip Dixon**.

I disagree with the application because the area concerned is part of the SPA - SAC - and SSSI. It means that it would destroy 55 hectares of prime habitat for both wintering and migrating wildlife. Areas like this are becoming fewer and fewer and I believe that the time has arrived to say stop - no more.

Applicant's Comments

67.2 Refer to the comments on Representation No's 1 and 2.

68 REPRESENTATION No. 79 – Marine Management Organisation

Relevant Representation

68.1 The representation received by the Infrastructure Planning Commission from Marine Management Organisation is reproduced below. As, in this instance, the representation is particularly long, the **applicant's comments have been inserted** in plain type at appropriate intervals.

The Able Marine Energy Park

- 1.1 *On 23 February 2012, the Marine Management Organisation (the "MMO") received notice under section 56 of the Planning Act 2008 (the "2008 Act") that the Infrastructure Planning Commission (the "IPC") had, on 12 January 2012, accepted an application made by Able Humber Ports Limited (the "Applicant") for an order granting development consent (the "DCO Application") (MMO ref: DC9172; IPC ref: TR030001).*
- 1.2 *The MMO was established by the Marine and Coastal Access Act 2009 (the "2009 Act") to make a contribution to the achievement of sustainable development in the marine area and to promote clean, healthy, safe, productive and biologically diverse oceans and seas. The UK Government's Marine Policy Statement forms the framework for the MMO's management of the marine area.*
- 1.3 *Under section 102 of the 2008 Act, the MMO is an interested party for the examination of Development Consent Order ("DCO") applications in the marine area.*
- 1.4 *The DCO Application seeks authorisation for the Able Marine Energy Park (AMEP), which involves a quay of solid construction on the south bank of the river Humber together with an ecological compensation scheme comprising both temporary and permanent habitat creation on the north bank. Associated development includes dredging and land reclamation, onshore facilities for the manufacture, assembly and storage of marine energy installation components. Ancillary matters include compulsory purchase of land, harbour regulation and the diversion of two footpaths (the "Project").*
- 1.5 *The Project would comprise a range of terrestrial and marine developments. Several work items have the potential to impact on the marine area. These representations reflect the MMO's marine management functions and the MMO's understanding of the legislative regime for the proposed works.*

2. *Scope of these representations*

- 2.1 *This document comprises the MMO's initial comments in respect of the DCO Application in the form of a relevant representation. This is without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This is also without prejudice to any decision the MMO may make on any associated application for consent,*

permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for anything else.

2.2. *These representations comprise:*

- *the MMO's comments on the pre-application engagement process for the Project – **section 3***
- *the MMO's initial comments on the licensing requirements of the marine works under the 2009 Act. – **section 4***
- *the MMO's initial comments on the draft DCO – **section 5***
- *the MMO's initial comments on the Environmental Statement – **sections 6, 7 and 8***
- *the MMO's initial comments on the information to support a Habitats Regulations Assessment – **section 9***
- *contact details for officials within the MMO – **section 10***

2.3 *Due to the volume of material presented in the DCO Application, it may be that the Applicant has presented information dealing with issues raised in these representations that the MMO has not yet come across following its initial assessment of the DCO Application. The MMO will continue to consider the DCO Application and reserves the right to add to, amend or withdraw, from time to time, part or all of these representations.*

3 Pre-application consultation

3.1 *The MMO has been consulted by the Applicant during the pre-application stage of the DCO Application process by way of one formal consultation under section 42 of the 2008 Act.*

3.2 *The Applicant has provided the MMO with additional material, undertaken a number of non-statutory consultations and held a number of meetings with the MMO throughout the pre-application process. Throughout this process, the MMO have provided written and verbal feedback on a number of documents as detailed in Annex 1. The MMO has also worked closely with Natural England (NE) and the Environment Agency (EA) to provide coordinated advice where appropriate.*

3.3 *The MMO considers that the pre-application engagement process has not been timely or appropriate given the piecemeal submission of documents for review, some absence of evidence, various technical shortcomings and the time constraints imposed. A tri-partite briefing letter from the MMO, NE and the EA was submitted to the Applicant, and copied to the IPC, on 30 June 2011 detailing the issues each of the agencies had identified at the time, provided at Annex 2.*

3.4 *It is disappointing that many of the issues raised by the MMO in respect of the Environmental Statement (ES), Habitats Regulations Assessment (HRA) and*

supporting documents during the pre-application consultation have not been resolved in the final submission to the IPC (see sections 6, 7 and 8 of these representations). In some instances, where comments had previously been made, the sentence or paragraph they relate to have simply been removed from the final ES (for example, see paragraphs 8.27 and 8.30).

- 3.5 *The MMO has provided comments throughout the pre-application engagement process to the Applicant on the drafting of Schedule 8 to the DCO "Schedule 8 the deemed marine licence under Part 4 (Marine Licensing) of the Marine and Coastal Access Act 2009" (the "deemed marine licence").*
- 3.5 *The MMO has advised the Applicant of the MMO's role in monitoring, variation and enforcement of the deemed marine licence post-consent, the importance of identifying all licensable marine works and undertaking a robust environmental impact assessment of those works on the marine environment, and of the importance of consultation on the drafting of the deemed marine licence.*
- 3.6 *The MMO has repeatedly advised the Applicant that the pre-submission drafts of the deemed marine licence would not be fit for purpose post-consent. Despite this, a significant number of issues remain outstanding (see paragraphs 5.11 to 5.51) and the draft as submitted to the IPC would not allow the MMO to fulfil its statutory obligations post-consent.*
- 3.7 *Following the IPC's acceptance of the DCO Application, the MMO has continued to work closely with the Applicant to improve the drafting of the deemed marine licence and a scheduled programme of joint meetings over the next three months with NE, the EA and the Applicant to develop Statements of Common Ground on the ES and HRA have been arranged.*

4 Licensing requirements under Part 4 of the 2009 Act

- 4.1 *Any marine activity described under Part 4, s.66 of the 2009 Act requires a licence unless a relevant exemption applies. This includes the construction, alteration or improvement of any works in over or under the seabed, below the level of mean high water springs and any works which involve the deposit or removal of substances or objects below the level of mean high water springs within the UK marine area (amongst other activities).*
- 4.2 *For Nationally Significant Infrastructure Projects ("NSIPs"), the 2008 Act enables DCOs for projects which affect the marine environment to include provisions which deem marine licences. Alternatively, applicants may seek consent for a marine licence directly from the MMO rather than having it deemed in a DCO.*
- 4.3 *For post-consent monitoring and enforcement purposes it needs to be clear in the deemed marine licence what activities have been licensed and the conditions imposed on that licence in respect of each of the licensed activities.*
- 4.4 *The Applicant has identified the following activities as licensable under the 2009 Act and included them in the deemed marine licence:*
- a) *construction of the quay*

- b) *construction of the pumping station*
- c) *capital dredging*
- d) *maintenance dredging*
- e) *deposit of dredged arisings.*

4.5 *No detailed descriptions of these works are provided.*

4.6 *The MMO has assessed the entirety of the information provided. Although not all licensable activities are presented together in a coherent manner, the MMO has identified the following activities as licensable under the 2009 Act:*

- *construction of the quay, to include:*
 - a) *piling (perimeter, sheet metal and anchor)*
 - b) *rock armour protection*
 - c) *land reclamation*
 - d) *construction and removal of temporary dolphins*
- *backfilling of a berthing pocket with stone aggregate*
- *construction of a new outfall structure*
- *works to the pumping station, to include:*
 - a) *temporary sheet pile cofferdam*
 - b) *excavation of the foreshore*
 - c) *six drainage pipes*
 - d) *stone mattressing of drainage channel*
- *construction of the compensation site, to include:*
 - a) *breaching of the sea wall*
 - b) *excavation of the foreshore*
 - c) *placement of excavated material in construction of new flood defence*
 - d) *erosion protection*
- *capital dredging of the following areas:*
 - a) *turning area*
 - b) *approach channel*
 - c) *berthing pocket*
 - d) *reclamation area for the construction of the quay*
 - e) *excavation of the foreshore at the pumping station*
 - f) *plough dredging around the E.ON and Centrica outfall structures*
- *disposal of capital dredged material at sea*
- *maintenance dredging of the following areas:*
 - a) *turning area*
 - b) *approach channel*

- c) *berthing pocket*
 - d) *south bank channel*
 - e) *plough dredging around the E.ON and Centrica outfall structures*
- *disposal of maintenance dredged material at sea.*

- 4.7 *The MMO met with the Applicant on 27 March 2012 where it was agreed that these are the activities licensable under the 2009 Act as both parties understand it at this time. Other licensable activities may become apparent as the DCO Application progresses.*
- 4.8. *Some of these activities are mentioned in passing in various chapters of the ES, the HRA or Annexes without detailed descriptions. As such, the Application submitted does not sufficiently describe all of the activities which are licensable under the 2009 Act. It has therefore not been possible to assess whether an adequate impact assessment of the marine works has been undertaken through the environmental impact assessment (EIA) process (discussed further at in sections 6, 7 and 8).*
- 4.9. *In order for the activities to be included in the deemed marine licence, the Applicant needs to clearly demonstrate through the EIA process that the environmental impact of all licensable activities has been addressed and, where required, mitigated. The MMO do not believe that the ES and associated DCO Application documents currently achieves this in a clear manner.*
- 4.10. *Should the Applicant be able to demonstrate that a robust assessment of all activities has been undertaken as part of the EIA process, full details of the activities will need to be included within the deemed marine licence.*
- 4.11. *The MMO require that each activity is contained within its own discrete section with conditions to capture any mitigation required. The conditions should be developed in consultation with those bodies or persons with particular expertise in the marine aspects of the development.*
- 4.12. *A list of licensable activities must be developed and the Applicant must demonstrate that a full environmental impact assessment of the works has been undertaken before the deemed marine licence can be redrafted to incorporate such conditions.*
- 4.13. *Where relevant, the MMO has indicated where a condition on the deemed marine licence would be required. This is purely for indicative purposes and is not an exhaustive list of conditions.*
- 4.14. *To ensure that the deemed marine licence is fit for the MMO's purposes post-consent, the MMO would wish to be involved in the drafting of all conditions to be included on the deemed marine licence.*
- 4.15. *As currently drafted, the deemed marine licence would not allow the MMO to fulfil its statutory obligations post-consent but the MMO continues to work closely with the Applicant to develop this.*

Applicant's comments

68.2 The applicant and MMO are in the process of agreeing a revised draft Marine Licence. A revised draft is included in Appendix B.

5. Draft Development Consent Order

Part 1, Interpretation, paragraph 2 and Schedule 10

5.1 *The drafting here does not clearly define the jurisdiction of the harbour authority and there are no coordinates provided on the plan in Schedule 10. The MMO would advise that coordinates (in degree, decimal minutes to 3dp in WGS84) are used to define the area of jurisdiction, either here or on the plan in Schedule 10, to bring in line with current drafting practices under the Harbours Act 1964. Suggested wording is as follows:*

"Area of jurisdiction" means the area below the level of mean high water spring tides bounded by a line drawn from point A (00 degrees 00.000'N, 0 degrees 00.000'W) through point B (00 degrees 00.000'N, 0 degrees 00.000'W) to point C (00 degrees 00.000'N, 0 degrees 00.000'W) and then point D (00 degrees 00.000'N, 0 degrees 00.000'W) (based on the WGS 84 datum), shown for identification only on the plan in Schedule 10; and in the following provisions of this Order, references to the limits of the harbour shall be construed as references to the limits so shown;

"the WGS 84 datum" means the World Geodetic System, revised in 1984 and further revised in 2004.

Applicant's Comments

68.3 The applicant is content to add co-ordinates to the plan in Schedule 10, which it understands would be acceptable to the MMO (while reducing the limit to 100m in response to other representations).

Part 2, paragraph 7, Jurisdiction of the Harbour Authority

5.2. *This appears to be an overlap in jurisdiction created with an existing harbour authority which is not usually permissible under the Harbours Act 1964. It is of course for the Consenting Authority to determine the scope of the 2008 Act to authorise such matters with regards to the DCO Application.*

Applicant's Comments

68.4 Paragraph 5.2 suggests that overlapping jurisdiction with another harbour authority is unusual. In fact this is not so unusual, particularly in a case such as the Humber where there is an overall estuary conservancy harbour authority, together with individual harbours carved out of this. The neighbouring Humber Sea Terminal is an example of such an authority. The same is the case with the Thames Estuary for which the conservancy authority is the Port of London

Authority, and article 7 is based on the equivalent article in the Harbour Empowerment Order for the London Gateway Port, which is also a harbour carved out of a larger conservancy. Able thus intends to keep the draft as it is.

Part 2, paragraph 9, Maintenance of authorised development

- 5.3. *The MMO considers that this would not exempt the Applicant from the marine licensing provisions of Part 4 of the 2009 Act.*

Part 2, paragraph 10, Provision of works

- 5.4. *The MMO considers that this would not exempt the Applicant from the marine licensing provisions of Part 4 of the 2009 Act.*

Part 2, paragraph 12, Consent to transfer benefit of Order

- 5.5. *It is not clear what this provision is seeking to achieve. The transfer of part of a harbour authority is only permissible under certain circumstances under the Harbours Act 1964. It is of course for the Consenting Authority to determine the scope of the 2008 Act to authorise such matters with regards to the DCO Application but given that the transfer of part a harbour authority is a relatively uncommon event, the MMO would like some clarification as to how this would work in practice.*

Part 4, paragraph 18, Discharge of water

- 5.6. *The MMO considers that this would not exempt the Applicant from the marine licensing provisions of Part 4 of the 2009 Act, for example, for trial boreholes.*

Part 4, paragraph 20, Authority to survey and investigate the land

- 5.7. *The MMO considers that this would not exempt the Applicant from the marine licensing provisions of Part 4 of the 2009 Act, which includes the licensing of temporary works.*

Applicant's Comments

- 68.5 In response to paragraphs 5.3, 5.4, 5.6, 5.7 and 5.58, the applicant acknowledges that nothing in the order other than the deemed marine licence itself exempts Able from any requirement for licences for matters covered by Part 4 of the Marine and Coastal Access Act 2009.
- 68.6 In response to paragraph 5.5, the applicant notes that article 12 is based on model provision 9 for harbours. The article is therefore presumably not intended to allow for the transfer of powers and duties as a harbour authority without a separate authorisation under the Harbours Act 1964.

Part 4, paragraph 21, Right to dredge

- 5.8. *The MMO considers that this would not exempt the Applicant from the marine licensing provisions of Part 4 of the 2009 Act as DCOs are not included in the s.75 exemptions for certain dredging activities under the 2009 Act.*
- 5.9. *In 21(1), the wording "as adjoin or are near to the work" does not provide enough clarity of the geographic extent of this provision. This should be drafted in line with recent best practice under the Harbours Act 1964 and detail coordinates and depths. The London Gateway Port Harbour Empowerment Order 2008 (s13 & Schedule 3) provides a good example of this and it is noted this is used as a reference for other provisions within this DCO.*

Applicant's Comments

- 68.7 In response to paragraphs 5.8 and 5.9, the applicant accepts that it should only be able to carry out dredging activities that are either deemed to be licensed by virtue of Schedule 8, exempted from licensing by virtue of the Marine and Coast Access Act 2009 or that have been granted a licence by the MMO. Given the comprehensive substitution of Schedule 8 that is planned in response to the MMO's representation, it is likely that article 21 will be able to be removed entirely.

Schedule 1 Authorised development

- 5.10. *Schedule 1 is referred to in the deemed marine licence at Schedule 8 for descriptions of works. However, this does not include details of all licensable activities and the description does not provide sufficient detail for the purposes of the deemed marine licence (see paragraphs 4.1 to 4.15). If it is intended that this should be a reference point for the deemed marine licence it would need to include all licensable activities items with a corresponding work number and works plan to include sufficient coordinates (see paragraphs 5.15 to 5.20). Alternatively, these details could be provided for in the deemed marine licence and any reference to Schedule 1 dropped.*

Applicant's Comments

- 68.8 Paragraph 5.10 asks that the deemed marine licence at Schedule 8 does not refer to Schedule 1 but gives more detail under its own terms. Schedule 8 is being comprehensively replaced following discussion with the MMO and will no longer refer to Schedule 1.

Schedule 8 Deemed marine licence

General comments

- 5.11. *As the body responsible for monitoring, enforcement and variation of the deemed marine licence deemed should development consent be granted, the*

MMO must be satisfied that the deemed marine licence would allow the MMO to fulfil its statutory obligations post-consent.

- 5.12. *Where applicants choose to have licensable activities under the 2009 Act deemed within the DCO the MMO would prefer that all licensable activities should be included in the deemed consent, unless there is a justifiable reason for them to be excluded.*
- 5.13. *As discussed in paragraphs 4.1 to 4.15, not all activities licensable under the 2009 Act have been included in the deemed marine licence. An adequate impact assessment of all of the marine works does not appear to have been undertaken in the EIA process and appropriate consultation has not been undertaken on the contents of the deemed marine licence. The deemed marine licence therefore lacks conditions required for mitigation, monitoring, and enforcement purposes and as such it is not sufficient as currently drafted to enable the MMO to fulfil its responsibilities should consent be granted.*
- 5.14 *The comments provided here detail the information that will be required within the deemed marine licence should the Applicant be able to demonstrate that an adequate impact assessment of the licensable activities has been undertaken. Any mitigation or monitoring arising from that impact assessment will need to be captured in the deemed marine licence for post-consent monitoring and enforcement purposes.*
- 5.15. *In order for contractors and MMO enforcement officers to be clear about the works which have been licensed in the deemed marine licence, the MMO expects that each work item is described in full in its own section and include:*
- description of works, including location in coordinates in degree, decimal minutes to 3dp in WGS84;*
 - methodology to be used;*
 - specific conditions relating to that aspect of the works which have been informed from the EIA and HRA process and any relevant consultation responses. Conditions must be drafted in consultation with the MMO.*
- 5.16. *In considering applications for marine licences, the MMO regularly consults with bodies including, but not limited, to:*
- the Environment Agency*
 - the relevant statutory nature conservation bodies, i.e. Natural England, the Countryside Council for Wales and/or the Joint Nature Conservation Committee*
 - the Maritime and Coastguard Agency*
 - English Heritage*
 - local planning authorities*
 - local harbour authorities*
 - local inshore fisheries and conservation authorities*
 - the Royal Yachting Association*
 - the Royal Society for the Protection of Birds*
 - the Corporation of the Trinity House of Deptford Strond.*

- 5.17. *In determining applications for marine licences, the MMO has regard to any representations made by the above listed bodies and any other person making comment during the public notification period. The MMO may then decide to grant the marine licences, to grant the marine licences subject to conditions or to refuse the marine licences.*
- 5.18. *Should the Consenting Authority determine that amendments to the deemed marine licence at Schedule 8 to the DCO are required, the MMO would be grateful to receive notice of the proposed amendments and be given the opportunity to provide further comment to ensure that the deemed marine licence would allow the MMO to fulfil its statutory obligations post-consent, if granted.*
- 5.19. *The MMO have commented on previous versions of the draft deemed marine licence and on the current draft to the Applicant prior to submitting these relevant representations. As such, all of the representations made here have been brought to the Applicants attention previously.*
- 5.20. *The MMO has continued to have discussions with the Applicant following the acceptance of the DCO Application by the IPC. As a result, the Applicant has provided the MMO with a revised draft deemed marine licence which has addressed some, but not all, of the comments made below. The MMO continues to work closely with the Applicant to agree a deemed marine licence which is fit for purpose for both parties.*

Detailed comments

Schedule 8 Part 1, paragraph 1

- 5.21 *Work No 1 refers to the construction of the quay. This does not provide sufficient detail to make clear the full extent of the works. A clear description of the activity is required (see paragraph 5.15).*

Schedule 8 Part 1, paragraph 2

- 5.22 *The MMO does not consider this provision is required.*

Schedule 8 Part 1, paragraph 3

- 5.23 *The MMO does not consider this provision is required.*

Schedule 8 Part 1, paragraph 4

- 5.24 *This does not contain sufficient information. A clear description of the activity is required (see paragraph 5.15).*

Schedule 8 Part 1, paragraph 5

- 5.25 *Work plans 8 and 9 refer to the construction of the quay. Neither the description nor the plans provide sufficient detail to make clear the full extent of the works. A description is required including coordinates to degree, decimal minutes to 3dp in WGS84 (see paragraph 5.15).*

Schedule 8 Part 1, paragraph 6

- 5.26 *The MMO recommend that this be re-drafted to make clear that any changes to the works schedule also need to be agreed in writing prior to works commencing by altering paragraph 6 and including an additional paragraph as follows:*

"6. The works shall be carried out in accordance with a works schedule to be agreed in writing between the Company and the MMO prior to the commencement of works.

7. Any changes to the works schedule are also to be agreed in writing between the Company and the MMO prior to the commencement of works. Any changes to the works schedule may require a variation to this licence."

Schedule 8 Part 1, paragraphs 7, 8, 9 and 10

- 5.27 *As drafted, these conditions are not worded appropriately. The MMO requires that conditions for each work item are drafted in light of all relevant consultation responses and in consultation with the MMO to ensure their suitability for the MMO's responsibilities post-consent. See paragraphs 5.16 to 5.18 for further comment.*

Schedule 8 Part 1, paragraph 8

- 5.28. *Should it be determined that this condition is required, the MMO requires that this is re-drafted such that any lighting requirements must be agreed in writing with the MMO prior to commencement of works in consultation with relevant bodies, including Trinity House and the Maritime and Coastguard Agency, should they wish to comment.*

Schedule 8 Part 2, paragraph 11

- 5.29. *Neither the description nor the plans provide sufficient detail to make clear the full extent of the works. A clear description of the activity is required (see paragraph 5.15).*

Schedule 8 Part 2, paragraphs 12 and 13

- 5.30. *Paragraph 12 states 12 (a) but there is no (b). It is not clear what these paragraphs add. Paragraph 11 should have a full description, as described above in paragraph 5.15; these paragraphs would not then be required.*

Schedule 8 Part 2, paragraph 14

- 5.31. *This does not contain sufficient information for it to be clear what the works are or where they are to take place. A clear description of the activity is required (see paragraph 5.15). Also, states 14 (a) but there is no (b).*

Schedule 8 Part 2, paragraph 15

- 5.32. *The drawings referred to do not contain sufficient coordinates for enforcement purposes. A clear description of the activity is required (see paragraph 5.15).*

Schedule 8 Part 2, paragraph 16

- 5.33. *The MMO requires that this be re-drafted to make clear that any changes to the works schedule also need to be agreed in writing prior to works commencing by altering paragraph 16 and including an additional paragraph as follows:*

"16. The works shall be carried out in accordance with a works schedule to be agreed in writing between the Company and the MMO prior to the commencement of works.

17. Any changes to the works schedule are also to be agreed in writing between the Company and the MMO prior to the commencement of works. Any changes to the works schedule may require a variation to the deemed marine licence."

Schedule 8. Part 3, Part 4 and Part 5. Dredging and deposit of dredged arisings

- 5.34. *Parts 3, 4 and 5 need to be altered as follows in order to bring them in line with the 2009 Act and OSPAR Convention 1992. A separate section for each dredge activity is required for capital dredging and maintenance dredging. Each section must detail:*

- name and location of area to be dredged with coordinates (e.g. turning area, approach channel, reclamation area, pumping station, south bank, berthing pocket, E.ON and Centrica outfalls);*
- of material to be dredged (e.g. silt, sand, gravel, clay);*
- quantity in wet tonnes to be dredged in total and each year, by type;*
- minimum depth of dredged area;*
- method of dredging to be used.*

- 5.35. *A separate section for both disposal of capital dredged material and disposal of maintenance dredged material is required. Each section must detail:*

- name and location of area to be dredged with coordinates (e.g. turning area, approach channel, reclamation area, pumping station, south bank, berthing pocket, E.ON and Centrica outfalls);*
- type of material to be dredged (e.g. silt, sand, gravel, clay);*
- quantity in wet tonnes in total and each year;*
- and location (in coordinates) of disposal site;*
- max amount of material in wet tonnes to be deposited in total and in each year from each dredge site, to each disposal site, by material type;*
- method of dredging and disposal to be used.*

- 5.36. *The Applicant must notify the MMO 10 days prior to the dredge or disposal activities commencing.*

- 5.37. *All dredge and disposal sections of the deemed marine licence must be time limited to a maximum of 3 years from the date of the first activity to bring in line with current practice under the 2009 Act and to comply with OSPAR reporting requirements.*

- 5.38. *Sampling and physico-chemical analysis of sampled material will need to be undertaken within 3 years prior to commencement of dredge/disposal operations*

in order to be compliant with OSPAR guidance (including dredging for land reclamation or plough dredging).

- 5.39. *The Applicant will be required to agree sampling and analysis requirements with the MMO prior to undertaking any sampling or analysis.*

Schedule 8 Part 3, paragraph 17

- 5.40 *Co-ordinates need to be provided for the capital dredged area in degree, decimal minutes (to 3dp) in WGS84 projection. See paragraphs 5.15 and 5.34 to 5.35.*

Schedule 8 Part 3, paragraph 19

- 5.41 *The MMO requires that this be re-drafted to make clear that any changes to the works schedule also need to be agreed in writing prior to works commencing by altering paragraph 19 and including an additional paragraph as follows:*

"19. The works shall be carried out in accordance with a works schedule to be agreed in writing between the Company and the MMO prior to the commencement of works.

20. Any changes to the works schedule are also to be agreed in writing between the Company and the MMO prior to the commencement of works. Any changes to the works schedule may require a variation to the deemed marine licence."

Schedule 8 Part 4, paragraph 20

- 5.42. *Co-ordinates need to be provided for the maintenance dredged area in degree, decimal minutes (to 3dp) in WGS84 projection. See paragraphs 5.15 and 5.34 to 5.35.*

Schedule 8 Part 4, paragraph 22

- 5.43. *The MMO requires that this be re-drafted to make clear that any changes to the works schedule also need to be agreed in writing prior to works commencing by altering paragraph 22 and including an additional paragraph as follows:*

"22. The works shall be carried out in accordance with a works schedule to be agreed in writing between the Company and the MMO prior to the commencement of works.

23. Any changes to the works schedule are also to be agreed in writing between the Company and the MMO prior to the commencement of works. Any changes to the works schedule may require a variation to the deemed marine licence."

Schedule 8 Part 5, paragraph 23

- 5.44. *Co-ordinates need to be provided for the dredge and disposal areas in degree, decimal minutes (to 3dp) in WGS84 projection. See paragraphs 5.15 and 5.34 to 5.35.*

5.45 ABP's applications for the Green Port Hull and Hull Riverside Bulk Terminal developments also seek to dispose of non-erodible material at HU081, HU082 and HU083.

5.46 The MMO has considered the requirements of all developments wishing to use these sites and has concluded that the Applicant will be permitted to dispose of the non erodible material to site HU082 only (see paragraphs 7.9 to 7.28). Eroderible material will be permitted to be disposed of to HU080.

Schedule 8 Part 5, paragraph 25

5.47 The MMO requires that this be re-drafted to make clear that any changes to the works schedule also need to be agreed in writing prior to works commencing by altering paragraph 25 and including an additional paragraph as follows:

"25. The works shall be carried out in accordance with a works schedule to be agreed in writing between the Company and the MMO prior to the commencement of works.

26. Any changes to the works schedule are also to be agreed in writing between the Company and the MMO prior to the commencement of works. Any changes to the works schedule may require a variation to the deemed marine licence."

Schedule 8 Part 6, paragraphs 34 to 37

5.48. An additional paragraph should be added, or the original paragraphs amended, to stipulate that the amended works cannot commence until the MMO has agreed the amendment or variation in writing and the Company has agreed to the terms and conditions of the amendment or variation in writing.

Schedule 8 Part 6, paragraph 38 Force majeure

5.49. This should be drafted to be consistent with licences issued under the 2009 Act and the wording at s.68 of the 2009 Act. As such the following should be re-drafted from:

"...and for the purposes of this paragraph force majeure shall be deemed to apply...."

to:

"...and for the purposes of this paragraph force majeure may be deemed to apply...."

Schedule 8 Part 6, paragraph 44

5.50. The MMO requires this is re-drafted to reflect licences issued under the 2009 Act as vehicles can also be used in dredging activities from:

"The Master or the Officer of the Watch of each of the vessels undertaking..."

to:

"The Master or the Officer of the Watch of each of the vessels and/or vehicles undertaking..."

Schedule 8 Part 6, paragraphs 47-54

- 5.51. *As drafted, these conditions are not worded appropriately. The MMO requires that conditions for each work item are drafted in light of all relevant consultation responses and in consultation with the MMO to ensure their suitability for the MMO's responsibilities post-consent. See paragraphs 5.16 to 5.18.*

Applicant's Comments

- 68.9 While Able is grateful to the MMO for the detail provided by paragraphs 5.11 to 5.51 in commenting on the draft deemed marine licence at Schedule 8, it is even more grateful for the subsequent receipt of a suggested draft of the content that the MMO would wish the deemed marine licence to contain. At Appendix B, a replacement draft for Schedule 8 has been provided which is based on this, but still requires the insertion of some data with the agreement of the MMO. It is expected that agreement on the drafting will be reached during the examination stage, possibly by 27 July.

Schedules 9 and 11. General comments

- 5.52. *Schedules 9 and 11 of the draft DCO contain requirements proposed by the Applicant. Some of these requirements relate to works in the marine area (see, paragraphs 5.57, 5.59, 5.61, 5.62).*
- 5.53 *The MMO recognises there is some overlap between the geographical jurisdiction of the MMO and the local planning authorities (i.e. between mean high water springs and mean low water).*
- 5.54 *The MMO has considered this and is of the view that matters which fall within the scope of the marine licensing provisions of the 2009 Act (i.e. anything below mean high water springs) are generally best regulated by conditions on marine licences. The MMO's preferred approach would be for matters arising from the works in the marine area to be dealt with by way of conditions on the deemed marine licence at Schedule 8 of the DCO, if granted, rather than by way of requirements on the DCO or in Schedule 11 of the DCO. This should minimize the risk of inconsistency between different schemes of regulation, or of a duplication of controls.*
- 5.55 *As such, the MMO does not support requirements on the DCO which would or could otherwise be included as conditions on the deemed marine licence and does not suggest any requirements in these representations.*
- 5.56 *If the IPC disagrees in principle with this approach, the MMO would be grateful to receive notice as soon as possible.*

Applicant's Comments

68.10 Paragraphs 5.52-5.56 propose that it be made clear that the requirements that are the responsibility of the local planning authority are restricted to that **authority's area and do not apply to the marine area**. The applicant is content to state that the MMO has exclusive responsibility for all matters below the low water mark and that the local planning authorities have responsibility for all matters above the high water mark. In the area between high and low water where there is overlapping jurisdiction, refer to paragraph 68.14 below.

Schedule 9 Part 1, For the protection of Natural England, paragraphs 2, 3, 4, 5

5.57 *The MMO considers that marine related conditions are best regulated through the 2009 Act for monitoring and enforcement purposes (see paragraphs 5.53 to 5.56). If these provisions remain here, it is unclear who is responsible for post-consent monitoring, enforcement and variation. This requires clarification prior to the DCO Application being consented.*

Applicant's Comments

68.11 Paragraph 5.57 suggests that the protective provisions for Natural England are better dealt with via the Marine and Coastal Access Act 2009 regime. The provisions as they stand were agreed with Natural England but the applicant is happy to agree alternative wording that satisfies both Natural England and the MMO.

Schedule 9, Part 2, For the protection of the Humber Conservancy

5.58 *The MMO considers that this would not exempt the Applicant from the marine licensing provisions of Part 4 of the 2009 Act. Any consent required from ABP will be supplementary to this.*

Schedule 9, Part 3, For the protection of the Environment Agency, paragraphs 2,3,4,5

5.59 *The MMO considers that marine related conditions are best regulated through the 2009 Act for monitoring and enforcement purposes (see paragraphs 5.53 to 5.56). If these provisions remain here, it is unclear who is responsible for post-consent monitoring, enforcement and variation. This requires clarification prior to the DCO Application being consented.*

Applicant's Comments

68.12 Paragraph 5.59 is similar in respect of the Environment Agency – the applicant is happy to amend this part of the draft to the satisfaction of both the Environment Agency and the MMO.

Schedule 10 Limits of harbour

5.60 *See comments at paragraph 5.1.*

Schedule 11 Requirements, paragraph 13, Archaeology

- 5.61 *The MMO considers that marine related conditions are best regulated through the 2009 Act for monitoring and enforcement purposes (see paragraphs 5.53 to 5.56). If these provisions remain here, it is unclear who is responsible for post-consent monitoring, enforcement and variation. This requires clarification prior to the DCO Application being consented.*

Schedule 11. Requirements. Paragraph 14, Ecological mitigation

- 5.62. *The MMO understands that Natural England are working with the Applicant and the Humber Industry and Nature Conservation Association (HINCA) to draft three Ecological Management and Monitoring Plans (EMMP) for terrestrial, marine and the compensation site.*
- 5.63. *The MMO considers that marine related conditions are best regulated through the 2009 Act for monitoring and enforcement purposes (see paragraphs 5.53 to 5.56). As such, the MMO requires that the marine EMMP and any marine elements of the compensation site EMMP are approved in writing by the MMO and any monitoring and mitigation requirements are captured on the deemed marine licence. If the marine aspects of these provisions remain here, it is unclear who is responsible for post-consent monitoring and enforcement and variation. This requires clarification prior to the DCO Application being consented.*

Applicant's Comments

- 68.13 Paragraphs 5.61 to 5.63 relate to the requirements that may have an overlap with the MMO's licensing powers. Such requirements refer to the 'relevant planning authority', which for the area above low water is the local planning authority, which would not have any jurisdiction below the low water mark. Able agrees that the monitoring of archaeological matters and ecological mitigation below the low water mark is best managed through the deemed marine licence and has addressed these issues via licensing conditions.
- 68.14 For the area between high and low water there is overlapping jurisdiction between the local planning authority and the MMO. Able would prefer one body to take the lead for monitoring compliance while consulting the other body, rather than matters having to be signed off by both bodies, which would take longer, require arbitration if there was disagreement, and so on, but it is neutral as to which one.

6. Environmental Statement: General comments

- 6.1 *The MMO has provided advice to the Applicant throughout the pre-application process on draft chapters and a number of Annexes of the ES that have implications for the marine area (discussed further in sections 6 and 7 and detailed in Annex 1).*

- 6.2 *It is disappointing that many of the comments raised during pre-application engagement have not been addressed in the final submission. As such, most of the comments detailed in this section have been communicated to the Applicant previously.*
- 6.3 *As discussed in paragraphs 4.1 to 4.15, a clear description of the marine works has not been provided in the DCO Application documentation together in a coherent manner and a number of licensable activities have not been included in the deemed marine licence.*
- 6.4 *It is the MMOs opinion that the activities licensable under the 2009 Act have not been assessed in a clear manner across the different chapters of the ES, the associated Annexes and DCO Application documents.*
- 6.5 *There does not appear to be an overall cumulative and in-combination assessment. While these are mentioned in each of the various chapters, there is only reference to other ongoing projects / activities, with little quantification of their combined effects.*
- 6.6 *It would be useful to have an overall section on cumulative and in-combination effects, where each of the other projects could be assessed as a whole against this DCO Application, as currently it appears piecemeal and it is not difficult to assess whether a proper cumulative and in-combination assessment has been carried out.*
- 6.7 *The MMO has undertaken a technical review of Volume 2 of the ES on the construction of the compensation site. The MMO provide no view on the conclusions of the Habitats Regulations Assessment.*
- 6.8 *The MMO requests that the Consenting Authority consider the requirement for further work to address these shortcomings as part of the examination process.*
- 7. Environmental Statement: Volume 1 Able Marine Energy Park**
- Chapter 2 EIA process
- 7.1 *Paragraph 2.3.5: The definition of 'wider effects' needs to be reconsidered. If the effect is individually significant at a regional level, it is likely to also be significant at the local level.*
- Chapter 3 Planning policy and context
- 7.2 *In determining the DCO Application, the IPC is required to have regard to the Marine Policy Statement and any relevant marine plan.*
- 7.3 *The MMO is the marine plan authority for the English inshore and offshore regions. The Project falls within the East Inshore area, which is one of the first areas in England to be selected for marine planning. Formal consultation on the draft marine plans is due to commence in winter 2012/2013. As such, the draft marine plan is likely to become a relevant consideration in determining the DCO Application.*

Chapter 7 Geology, hydrology and ground conditions

- 7.4 *The dredging of the reclamation area, anchorage trench, berthing pocket, approach channel and turning area have been considered in Chapter 7. Dredging requirements for the excavation works at the pumping station, the south back channel, of Stone Creek (mentioned in previous draft chapters of the ES but not the current one) and of plough dredging have not been included. In addition, it is not clear if the over-dredge of the berthing pocket has been accounted for in the values provided.*
- 7.5 *These additional dredging and disposal operations are licensable activities under the 2009 Act. The MMO would prefer for these activities to be deemed within the DCO alongside the other marine licences in order for the project to be considered as a whole. However, the Applicant will need to undertake an impact assessment of these activities to do so.*
- 7.6 *The MMO requests that the Applicant provides details of the location and quantity of material to be capital and maintenance dredged and disposed of the sea from these additional locations. The impact assessment in Chapter 7 and the Dredging Strategy at Annex 7.6 need to be updated to include this information.*
- 7.7 *Once this information has been provided, the MMO will advise whether any additional sampling and analysis requirements for these activities.*
- 7.8 *The comments made below in paragraphs 7.9 to 7.28 are the MMO's comments on the information provided. These comments will obviously need to be updated once the additional information has been provided.*

Capital dredging and disposal of capital dredged material

- 7.9. *Disposal of dredged material is controlled under the London Convention 1972, the OSPAR Convention 1992 and the EU Waste Framework Directive. The 2009 Act provides the necessary statutory means to meet the UK's obligations under both the OSPAR and London Conventions which address the prevention of marine pollution from dumping at sea. Dredged material is classed as a waste material under the aforementioned Conventions. Once a material has entered the waste stream it is strictly controlled. The OSPAR Convention requires Contracting Parties to ensure that authorisation or regulation is in accordance with the relevant applicable criteria, guidelines and procedures adopted by the Commission, which includes requirements to ensure the material is suitable for disposal to sea and maintaining records of material which is disposed of to sea.*
- 7.10. *In line with OSPAR guidelines, and as conducted for disposal applications made under the 2009 Act, samples were requested for this DCO Application during the pre-application stage. In consultation with the MMO, 45 samples were collected at 23 sites at depths of surface, 1m, 2m and 3m. The samples were analysed in line with practices used for dredge and disposal licence applications the MMO receive under the 2009 Act.*
- 7.11. *The analysis showed that the material is acceptable for disposal to sea and this was confirmed to the Applicant in a letter to them dated 23 November 2011 and included at Annex 7.6 of the DCO Application.*

7.12. The capital dredge material is proposed to be disposed of at disposal sites within the Humber estuary at HU080, HU081, HU082 and HU083. A total of 954,350m³ of non erodible material is proposed to be deposited across disposal sites HU081, HU082 and HU083 (sunk dredge channel sites B, A and C respectively). The remaining 981,150m³ of erodible material is proposed to be deposited at HU080 (Humber 1A).

Cumulative and in combination assessment

7.13. There are a number of dredging operations within the Humber some which are licensed and some at the application stage, which also utilise the disposal sites mentioned in paragraph 7.12. The dredging strategy submitted with this DCO Application does take these operations into consideration however some of the quantities used in their assessment are not accurate. Whilst the Environmental Statement references Green Port Hull, it does not include the dredging aspects of the project.

7.14. The Applicant has provided further information to the MMO on this in the form of a Green Port Hull Cumulative Impacts Screening Assessment. However, this assessment has been made presuming that Green Port Hull is the same as Quay 2005. Whilst the Green Port Hull project does use the existing licences granted for Quay 2005, there is additional work including infilling of part of Queen Alexandra Dock and additional dredging. Therefore the cumulative assessment screening surrounds the dredging and changes to suspend sediment and coastal processes.

7.15. Grimsby RO-RO will also dispose of material to HU080. This has not been included in the calculations in the Environmental Statement. The correct amounts of material from other applications are as per Table 1 below; these quantities are taken from ABPs cumulative impact assessment submitted with the Green Port Hull application to the MMO. Whilst these disposal quantities are higher than referenced in this Application, the MMO is content that the disposal sites do have the capacity to take the material described in the ES. The MMO will provide further advice on this once the details of the additional dredging requirements have been provided.

Table 1: The proposed disposal quantities of known projects disposing to disposal sites HU080, HU081, HU082 and HU083

Application	HU081, 82 & 83; Sunk dredge channel A,B & C (m³)	HU080; Humber 1A Middle shoal (m³)
Able Marine Energy Park	954,350	981,150
Green Port Hull	135,850	
Hull Riverside Bulk Terminal	548,000	
Immingham Oil Terminal Approach Channel	375,000	1,597,000
Grimsby Ro-Ro	45,000	115,000
TOTAL	2,058,200	2,693,150

7.16 *The sunk dredge channel sites were opened with the purpose of filling the existing pits located across the disposal sites. Therefore, material deposited at these sites, must be placed in the depressions of the sites. This can only be undertaken using bathymetry to ascertain the location of these depressions. As the construction of Green Port Hull and AMEP may now take place at the same time it is important to ensure that the material is not placed in a way that would lead to mounds being created on the seabed as this could have an effect on navigational safety. As such, the MMO stipulates that the Applicant be permitted to dispose of the non erodible material to site HU082 only.*

7.17 *To conclude, based on the figures presented in the ES, 954,350m³ of non-erodible capital material is suitable for disposal to HU082 and 981,150m³ of erodible capital material is suitable for disposal to HU080. The deemed marine licence at Schedule 8 must be updated to reflect this latest advice.*

7.18 *However, these comments must be viewed as preliminary and the MMO will provide further advice on this once the details of the additional dredging requirements have been provided.*

Maintenance dredging and disposal of maintenance dredged material

7.19 *The deemed marine licence includes maintenance dredging and disposal of maintenance dredged material. Additional information on this activity is required on the deemed marine licence as discussed at paragraphs 5.15 and 5.34 to 5.39. The licence does not state the amounts, as is required, but it appears from the ES and annexes, it is understood that a maximum of 1,328,000m³ of maintenance dredge material is proposed be deposited to HU080. This information will need to be included in the deemed marine licence.*

7.20 *As with the capital dredged material, not all of the maintenance dredging and disposal to be undertaken as part of this project is included in the current assessment.*

7.21 *The impact assessment in Chapter 7, the Dredging Strategy at Annex 7.6 and the deemed marine licence need to be updated to reflect the additional dredging requirements from the south bank channel, Stone Creek (if to be undertaken) and the plough dredging around the E.ON and Centrica outfalls.*

7.22 *HU080 has taken large quantities of material in the past and, given the dispersive nature of the Humber, the MMO considers that the disposal site has capacity to take the material as currently described in the DCO Application. However, the site will need to be monitored to ensure the material is dispersing as predicted and the MMO will require this to be a condition on the deemed marine licence with the Applicant required to agree the scope of the monitoring with the MMO prior to commencement.*

7.23 *The MMO reserves the right to amend these comments once the additional information requested at paragraphs 7.4 to 7.8 is provided.*

7.24 *The MMO requires that the Humber Baseline Document be updated to incorporate the dredging and disposal of dredged material being consented for this project. The MMO requests that this is provided to the MMO within 12*

months of this consent being granted. This must be conditioned within the deemed marine licence.

Annex 7.6 Dredging Strategy

- 7.25 The dredging plan produced by Westminster Dredging has not been amended to reflect the correct disposal sites mentioned in the rest of the document and in the DCO Application.
- 7.26 The MMO requires that this Dredging Strategy be updated to reflect previous changes and the comments in these written representations.
- 7.27 The Dredging Strategy must also be updated to include all dredging and disposal activities to be undertaken as part of this project including the turning area, approach channel, berthing pocket, south bank channel, plough dredging, dredging for land reclamation, excavation at the pumping station and maintenance of Stone Creek, as well as any other dredge or disposal activities to take place which have not been mentioned in the DCO Application documents.
- 7.28 The Dredging Strategy must be updated and be approved in writing by the MMO prior to any dredging operations commencing. This must be conditioned in the deemed marine licence.

Chapter 8 Hydrodynamic and sedimentary regime

Modelling studies

- 7.29 Modelling studies have included hydrodynamic, sediment transport, sediment plume and near-shore wave transformation modelling. Both cohesive and non-cohesive sediment transport models have been used and evidence is presented of model calibration and validation.
- 7.30 However, the modelling has not been undertaken on the final proposed scheme for all component processes. This includes the final quay design and the full extent of dredge and disposal activities (see paragraphs 7.4 to 7.28 for discussion on dredge and disposal activities). The impact of these changes on the interpretation of the modelling needs explanation. The Applicant must be able to demonstrate that the results of the modelling as presented adequately assess the impact of the Project as applied for. The MMO requests that the Applicant clearly demonstrate that the modelling results which have been presented are still relevant in relation to the revised project. Otherwise the Applicant may be required to undertake additional work to be able to demonstrate that an adequate impact assessment of the Project to be consented has been undertaken.
- 7.31 In addition, impacts to Immingham Outer Harbour have not been considered and drag effects of jetties around Immingham and Humber Sea Terminal have not been included in the modelling studies. The MMO considers that the modelling should have included these omissions.
- 7.32 Annex 8.1, paragraph 5.68: It has been proposed that the design will include an allowance to "top up" the front 28 m of quay by 200 mm if needed, as a response to climate change. Appendix E, E.27 states that "additional work

conducted by Hydraulics Research, Wallingford" will be undertaken to detail how this would be undertaken/enforced/assessed or the requirement monitored over time. The MMO requests that this report be provided to the MMO for further comment.

- 7.33 *Annex 8.2: The response of the intertidal areas adjacent to the proposed development are largely assessed using the bed shear stress (skin friction) results presented in Chapter 8, and setting these changes in the context of the wider estuarine natural variability. Wave modelling, including investigation of wave reflection from the quay, is used, but the results do not appear to be included in the calculations of bed shear stress, which is particularly relevant in intertidal areas where wave motion is important to erosion. If this is not considered important, it should be stated and backed up with evidence. Otherwise the assessment of erosion/accretion due to the development should include wave (natural and reflected) induced shear stress. The additional impact of the reflected waves off the proposed structure on the intertidal area should also be assessed.*
- 7.34 *Annex 8.2, paragraphs 3.14 and 3.15 mention important data/evidence. For ease of understanding, quantification and to visualise spatial aspects, these data should also be given in graphical form, for example, a time-series of erosion/accretion maps. Additional discussion on where the accretionary area is located, how large it is, what the rates of change are, what the spatial variability in bed level changes mentioned are and whether all of the changes are within the 0.5-1m range.*
- 7.35. *It would appear that the drainage channels of the currently terrestrial side of the compensation site are not represented in the model. Please comment on the significance of this.*
- 7.36. *Notwithstanding the comments made in paragraphs 7.30 to 7.35, based on the results as presented, the description of the environment and impacts appears accurate as far as is practical. There are inherent uncertainties in sediment transport modelling and this is acknowledged in the ES.*
- 7.37. *Of concern is the predicted increase in the annual maintenance dredging requirement and potential interactions with the Centrica and E.ON power stations intakes and outfalls.*
- 7.38. *The proposed development will result in some changes to the flow speeds in some locations. It is considered that the greatest impact of these changes may be a build up of material around part of the AMEP structures. A monitoring and mitigation strategy to assess, and where required mitigate, these changes must be agreed in writing with the MMO prior to any works commencing. The MMO requires a condition to this effect on the deemed marine licence (see paragraphs 5.16 to 5.18 for further discussion on conditions for the deemed marine licence).*
- 7.39. *The increase in suspended material at the intake valves of the E.ON and Centrica power stations is also of some concern. Real-time monitoring of suspended sediment concentration is proposed near the power station intakes by the Applicant. A monitoring and mitigation strategy to assess, and where required mitigate, these changes must be agreed in writing with the MMO prior to any works commencing. The MMO requires a condition to this effect on the deemed*

marine licence (see paragraphs 5.16 to 5.18 for further discussion on conditions for the deemed marine licence). Consultation with the power station operators (Centrica and E.ON) will be required in designing an effective monitoring programme with suitable management trigger thresholds.

- 7.40. Construction of a new outfall structure is discussed as potential mitigation for the potential increase in suspended material at the intake valves of the power stations. The Applicant will require a licence under the 2009 Act for construction of a new outfall. The MMO would prefer for this to be deemed within the DCO alongside the other marine licences in order for the project to be considered as a whole. However, the MMO has not found any assessment of this activity in the ES which would be required for the licence to be deemed within the DCO.
- 7.41. The DCO Application recognises that monitoring and maintenance of the flood embankment around Cherry Cobb Sands will be required to ensure there are no significant impacts to coastal processes. Similarly, a monitoring plan for the impacts of the Cherry Cobb Sands site on land drainage through Stone Creek is also proposed.
- 7.42. The Applicant acknowledges the inherent uncertainties in sediment modelling and their management of this uncertainty centres on a strategy of monitoring and dredging. The monitoring plans have not yet been produced or consulted upon, but the Applicant states that they will produce detailed monitoring plans for the Centrica and E.ON outfall and intakes structures and the flood embankment around Cherry Cobb Sands and the drainage through Stone Creek. The monitoring plans will also need to address ABPs concern regarding the extra siltation and mitigation measures should be proposed.
- 7.43. Any monitoring and mitigation plans must be agreed in writing with the MMO prior to any works commencing. The MMO requires a condition to this effect on the deemed marine licence (see paragraphs 5.16 to 5.18 for further discussion on conditions for the deemed marine licence). These plans would need to be developed in agreement with other relevant bodies, for example the Environment Agency, Natural England, E.ON and Centrica.

Chapter 10 Aquatic Ecology

- 7.44. With regards to table 10.13, the distance at which injuries, including Temporary Threshold Shift, could occur is more useful than the 'accumulation of energy' distance. Potentially, a marine mammal may only have to be within a certain distance of the piling once to have some auditory damage such as a Temporary Threshold Shift in their hearing.
- 7.45. Paragraph 10.6.46 states that "in a worst case scenario, harbour porpoises may display behavioural responses within a distance of 1.7km from the piling due to the maximum rms noise during a pulse". It then goes on to say that "they would only suffer potential auditory damage if they regularly approach within approximately 25.0 to 38.6km of the piling". Previous drafts of the ES stated "in a worst case scenario, harbour porpoises may display behavioural responses over a wide area (40.4 km from the piling)". The Applicant should clarify the position and ensure that the impact has been correctly assessed citing relevant studies where appropriate.

- 7.46 *The impact of piling on migratory fish populations, including Atlantic salmon and lamprey species, during the construction period is of some concern. The impacts of piling on these species will need to be mitigated. As such, the MMO requests that the Applicant submits a piling mitigation strategy. This must be developed in consultation with other relevant bodies, in particular the Environment Agency, and be agreed in writing with the MMO prior to works commencing. The mitigation must be detailed within the deemed marine licence for monitoring and enforcement purposes.*
- 7.47 *The construction of the Project could cause a barrier to the migration of lamprey species along the intertidal zone as the area is reclaimed. The impact has been mentioned in Table 10.10 and in paragraphs 10.6.59 and 10.6.62, stating that the lamprey could move through other parts of the estuary. However, the MMO does not consider that this is sufficient justification for the conclusion of no significant effect.*
- 7.48 *Paragraph 10.8.6 states that "a significant impact to local resident fish populations beyond those that would succumb to the loss of subtidal habitat is possible". The only point at which any impact is mentioned is in paragraph 10.6.56. However other than to state there may be a locally significant effect, the impact is never described or quantified. Whilst the paragraph goes on to state that the conservation designations of the Humber Estuary SAC may not be affected, this is not to say the fish populations would not be affected either. A full description of the potential impact on resident fish populations should be provided.*
- 7.49. *In general, many statements of impact are made but are not evidenced or backed up by appropriate references (for example, paragraphs 10.6.44, 10.6.47, 10.6.49 and 10.6.56). While there are references within paragraph 10.6 as a whole, all statements of impact need to be evidenced. Worked examples of how significance was calculated would assist interpretation.*
- 7.50. *An auditable methodology of significance assessment is not provided in this Chapter; there are only statements as to whether an impact is significant, in many cases, not backed up by any references. The Applicant needs to provide these methodologies for consideration. Impact tables or matrices of significance, as provided in Chapter 12, would also aid interpretation.*

Chapter 14 Navigation

- 7.51. *Once the final construction plan is developed and an accurate vessel movement plan is available, a more detailed navigational risk assessment of the construction phase should be undertaken. This should be consulted upon with relevant parties, for example the local Harbour Authority and the Maritime and Coastguard Agency, and agreed in writing with the MMO prior to works commencing. This needs to be included as a condition on the deemed marine licence.*
- 7.52. *Any temporary moorings required for construction of the quay must not extend any further out from the shore than the footprint of an operational vessel berthed at the completed quay.*

7.53 *Temporary pilings or mooring dolphins associated with construction of the Project must be fully extracted once the construction phase is complete.*

7.54 *The Applicant will require a licence under the 2009 Act for the construction, deposit and/or removal of any permanent or temporary pilings or mooring dolphins. The MMO would prefer for this to be deemed within the DCO in order for the project to be considered as a whole. However, the MMO has not found any environmental impact assessment of this activity in the Environmental Statement which would be required for the licence to be deemed within the DCO as discussed at paragraphs 4.9 to 4.11.*

8 Applicant's Comments

68.15 The current status of issues raised under Section 7 are detailed in Table 54.1 of the Applicant's answers to the first set of Examiner's questions.

8. Environmental Statement: Volume 2 Compensation site

Chapter 27 Planning policy and context

8.1 *In determining the DCO Application, the Consenting Authority is required to have regard to the Marine Policy Statement and any relevant marine plan.*

8.2 *The MMO is the marine plan authority for the English inshore and offshore regions. The Project falls within the East Inshore area, which is one of the first areas in England to be selected for marine planning. Formal consultation on the draft marine plans is due to commence in winter 2012/2013. As such, the draft marine plan is likely to become a relevant consideration in determining the DCO Application.*

Chapter 28 Description of Development

8.3. *Erosion protection may be required, for example concrete blocks or rockfill. The Applicant may require a licence under the 2009 Act for this activity if the activity is taking place below mean high water springs. The MMO would prefer for this to be deemed within the DCO alongside the other marine licences in order for the project to be considered as a whole. However, the MMO has not found any environmental impact assessment of this activity in the Environmental Statement which would be required for the licence to be deemed within the DCO.*

68.16 *Rock armour is proposed at the northern and southern revetments. The rock armour will be imported by road and placed by land based plant. What likely significant effect is anticipated and has not been assessed in the ES?*

8.4. *It is not clear whether the final resulting areas of expected salt marsh, mud flat and subtidal habitat will compensate for lost habitat at the main site in a "like for like" fashion. This needs to be clarified by the Applicant.*

8.5 *The anticipated areas of mud flat and salt marsh (after five years) alongside the areas of mud flat and salt marsh lost as a result of the development have not*

been provided. This is required to assess the effectiveness of the proposed Compensation Site (CS).

- 8.6 The MMO welcome that the Applicant has committed to producing a monitoring and mitigation strategy and programme. This needs to be conditioned within the deemed marine licence to reflect that works cannot commence until the strategy has been agreed in writing by the MMO.

Chapter 32 Hydrodynamic and sedimentary regime

- 8.7 Annex 32.2, paragraph 3.1: The model performance could be tested using the adjacent coastal realignment (i.e. Paull Holme Strays). As the forcing conditions are the same, such a test would give an indication of the reliability of the model as compared to the current situation in which there are no calibration data for the area of interest.
- 8.8 Annex 32.2, paragraph 3.3.6: The suggestion that the large differences between the two models is due to model resolution (and a more uneven surface in the higher resolution model) appears speculative. Evidence for this suggestion and reasoning as to why field measurements were not taken to validate the model (in Cherry Cobb Creek, for example) should be provided.
- 8.9 Annex 32.2, paragraph 3.3.7: A potential issue with the wetting and drying of surfaces in the model is cited for spikes at points 1 and 2. However, if this were the case one might reasonably expect to observe the same behaviour at all intertidal sites. However, this is not the case. Further discussion and justification is required to identify the likely causes and whether or not the model performance is acceptable.
- 8.10. Annex 32.2, paragraph 3.3.10: The model results/performance should be compared statistically using an objective approach. On a number of the plots in Figure 7, the velocity, magnitude and phase are incorrect. For example, sites 2, 5 and 7 show significant magnitude or phase deviations between the two models.
- 8.11. Annex 32.3, paragraph 3.4.5 and 3.4.11: The CS is predicted to give an increase in the maximum average current of 44% from 0.67 m/s to 0.97 m/s between the outlet and Stone Creek. It is stated that there will be increased erosion in this area, but no formal assessment is made to show whether this is correct and, if erosion is to occur, to what levels. As significant deepening is a highly likely impact of the proposed compensation site, it should be quantified in the assessment.
- 8.12. The MMO understands that further modelling work is being undertaken by the Applicant to predict the development of the realignment site for the first 10 years. The MMO would wish to see the results of this modelling and would need to have sight of any new design for the compensation site, along with a detailed method statement which would need to be agreed prior to works commencing.
- 8.13. Annex 32.4: It has been stated that there are no data available for calibration and validation of the model. The Applicant should consider what evidence there is that this model has correctly predicted the effects of a coastal realignment, or

how this may be assessed if no evidence readily exists. Although the CS under consideration here does not presently exist, there are other sites in and near the Humber estuary where similar activities have occurred. These sites would make an ideal blind-test of the model – that is the model could be run without calibration/validation and compared afterwards with field data from an established re-alignment site. This would give confidence in the model results. It would be useful to know if the model was used previously with any of the Humber sites and, if so, how well it performed.

- 8.14 Annex 32.4, paragraph 3.5.7: At point 16 there is a considerable change in flow speed. This is likely to scour a deeper channel and result in a slower speed. This model does not assess changes in bed level, which is a limitation. However, one could make predictions of the scour in the channel and use this information to model an anticipated 'equilibrium' channel configuration. At present the model only investigates the initial conditions rather than the hydrodynamic conditions that are likely to persist.
- 8.15 Annex 32.4, paragraph 4.3: This paragraph is important, but it is only briefly documented and reported. The time-series of bed shear stress, plotted along with the critical deposition and erosion values, would be informative and should be included. Likewise, an explanation of why the increased velocities at point 19 (Figure 14b) result in a reduction (rather than the expected increase) in the annual erosion estimate (Table 12) would also be useful.
- 8.16 Annex 32.4, paragraphs 5.1.2 and 5.1.3: The qualitatively forecast "high erosion levels" in the Cherry Cob Sands Creek should be quantified (i.e. erosion/accretion estimates) as for other parts of the study area. This should be done upstream and downstream of the breach where accretion and erosion (respectively) are expected.

Chapter 33 Water quality and sediment quality

- 8.17 The land that will be flooded to create the compensation site is agricultural land. The flooding is likely to cause some material to wash into the Humber and as such the Applicant must ensure that this does not present a contamination or pollution risk to the marine environment.
- 8.18 Ground investigations were undertaken for a variety of analysis. From a marine perspective, the material was tested for metals and hydrocarbons; however the methods used are not comparable to the methodologies used by the MMO's scientific advisors at Cefas to assess contamination of the marine environment.
- 8.19 The results from locations TH11 and TH12 are higher than Cefas Action Level 2 for copper, mercury, lead and zinc; however it is unclear whether the methods are comparable to those used to determine the Cefas Action Levels. The MMO requests that details of the analytical methodologies used are provided in order to assess the comparability of this data. If it is not possible to compare the results with MMO criteria, the MMO may require re-sampling and testing using Cefas methods to ensure the direct comparison of TH11 and 12.
- 8.20 TH11 and TH12 also showed higher levels of pyrene and flouranthene than background levels in the Humber. The methods for these analyses also need to

be provided to the MMO to determine the suitability of the data for a direct comparison to Cefas Action Levels.

- 8.21 Some sites were also tested for dichlorodiphenyldichloroethylene (DDE) and dieldrin however the limits of detection are several orders of magnitude above Cefas Action Level 1 (0.2 PPM and 0.001 PPM respectively). DDE and dieldrin concentrations have not, therefore, been adequately assessed for risk assessment purposes and will require further sampling and analysis.
- 8.22 The MMO understands that the Applicant is intending to undertake additional site investigation works. The MMO strongly recommend that the MMO are consulted on the scope of these works and the methodologies to be used to ensure that the results can adequately describe the contamination and pollution risk for the marine environment.
- 8.23 The MMO would require that works are not allowed to commence at the compensation site until the information requested in paragraphs 8.17 to 8.22 is provided to the MMO and the MMO has agreed in writing that the works should commence. Should the methodologies used be insufficient to be able to assess the risk of pollution to the marine environment, the MMO would require additional sampling and analysis of sediments to be undertaken place prior to works commencing. The MMO would require that this is made a condition of the deemed marine licence.
- 8.24 Paragraph 33.6.3 states "the sensitivity of the receiving estuarine waters to contaminants is considered to be medium and the magnitude of effect to be medium, resulting in a moderate negative significant effect". Evidence of this statement has not been provided. Where possible, appropriate mitigation should be proposed and be detailed in the deemed marine licence.
- 8.25 Paragraph 33.6.7 mentions that a soke dyke will need to be relocated. It is unclear whether this is below mean high water springs, but there is mention that the waters are saline, which implies that it is. Depending on its current and proposed location, this may require a licence under the 2009 Act. Details of the current and proposed location of the soke dyke should be provided to the MMO, as well as a brief intended method statement in order to clarify this point. Should this activity require a licence under the 2009 Act, the MMO would prefer for this to be deemed within the DCO in order for the project to be considered as a whole. However, the MMO has not found any assessment of this activity in the ES which would be required for the licence to be deemed within the DCO.

Chapter 34 Aquatic ecology and nature conservation

- 8.26 Paragraph 34.6.2 states that while there will be damage to the salt marsh due to construction vehicles, but it will recover quickly. There is no evidence or references for this statement and further clarification is required.
- 8.27 Previous drafts of this chapter have mentioned that the removal of salt marsh and placement of any protective matting for vehicles tracking across salt marsh will be required during construction. There is no reference to this in the final ES; however, the applicant has agreed that there will be some excavation of the foreshore during construction. Clarification is sought from the Applicant on whether this will form part of the construction methodology. If these activities

are due to occur an impact assessment should be made of them in this DCO Application for the project to be considered as a whole.

- 8.28 *The removal of salt marsh and placement of protective matting below mean high water springs are licensable activities under the 2009 Act. Should they be taking place, the MMO would prefer for this to be deemed within the DCO alongside the other marine licences in order for the project to be considered as a whole. However, the MMO has not found any assessment of this activity in the ES which would be required for the licence to be deemed within the DCO (as discussed in paragraphs 4.9 to 4.11). This would need to include describe the maximum envisaged extent of matting and the impact of the matting on the marine environment. This should also be included in the in-combination and cumulative impacts assessment for salt marsh habitat.*
- 8.29 *Paragraph 34.8.1 states that a monitoring programme will be set up. The monitoring programme should also be designed to monitor the "like for like" and have a mitigation programme in place in case of any unforeseen issues arising. The monitoring and mitigation plan should be agreed in writing with the MMO prior to any works commencing at this site. This will also need to be conditioned in the deemed marine licence for compliance and monitoring purposes.*

Chapter 36 Drainage and flood risk

- 8.30 *Previous drafts of this chapter mentioned possible dredging of Stone Creek if siltation levels rise. Any specific reference to dredging has been removed but there is now mention of a monitoring and maintenance plan which will identify mitigation works (see paragraph 7.41).*
- 8.31 *The MMO requests that the Applicant clarifies whether additional dredging is likely to be required. If there is potential for additional dredging, the environmental impacts of this should be assessed in this DCO Application for the project to be considered as a whole.*
- 8.32 *Any dredging or disposal would require a licence under the 2009 Act. The MMO would prefer for all licences under the 2009 Act to be deemed within the DCO alongside the other marine licences in order for the project to be considered as a whole.*
- 8.33 *However, the MMO has not found any environmental impact assessment of this activity in the ES which would be required for the licence to be deemed within the DCO.*

Chapter 40 Historic environment

- 8.34. *Annex 2.2 notes that English Heritage is the body responsible for agreeing mitigation below low water mark. Any mitigation may need to be captured in the deemed marine licence for compliance and monitoring purposes.*
- 8.35. *Paragraph 40.7.1 states that detailed mitigation measures are set out in a Written Scheme of Investigation for marine and intertidal archaeology. Once agreed with English Heritage and any other relevant bodies, a copy should be provided to the MMO for agreement. Any mitigation or conditions relating to the marine environment would need to be captured in the deemed marine licence for*

compliance and monitoring purposes.

Applicants Comments

68.17 The current status of issues raised under Section 8 are detailed in Table 54.1 of the Applicant's answers to the first set of Examiner's questions.

9. Habitats Regulations Assessment

9.1 *A likely significant effect was determined due to the effects of the project on estuarine habitats and on birds. A table detailing why other features were screened out is given in Annex D, however, it lacks detailed reasoning. Additional justifications for why features were screened out should be given, or links to relevant chapters where this is detailed should be provided within the table.*

Applicant's Comments

68.18 The issues in relation to the Habitats Regulations Assessment will be addressed in a Statement of Common Ground.



AMEP
APPLICANT'S COMMENTS ON THE
RELEVANT REPRESENTATIONS

Date: June 2012

ANNEX 1 - Pre-application consultation and engagement between the MMO and the Applicant

Document	Date received	Date MMO response provided
<i>Environmental Scoping Report</i>	<i>20/09/2010</i>	<i>15/10/2010</i>
<i>Preliminary Environmental Information Report</i>	<i>01/02/2011</i>	<i>24/03/2011</i>
<i>Dredge Method Statement and Programme / Sampling</i>	<i>14/02/2011</i>	<i>At dredge workshop 09/03/11</i>
<i>Dredge Strategy</i>	<i>19/04/2011</i>	<i>n/a - for info only</i>
<i>Thermal Plume Modelling Assessment</i>	<i>21/04/2011</i>	<i>26/05/2011</i>
<i>Likely Significant Effect Report</i>	<i>26/04/2011</i>	<i>26/05/2011</i>
<i>Humber Modelling Report (Annex 8.1 of draft ES)</i>	<i>28/04/2011</i>	<i>03/06/2011</i>
<i>Cherry Cobb Sands Compensation Site (Annex 8.1 and 8.2 of draft ES)</i>	<i>28/04/2011</i>	<i>03/06/2011</i>
<i>Chapters 1 - 6 of Draft ES</i>	<i>28/04/2011</i>	<i>03/06/2011</i>
<i>Aquatic Ecology Report (Chapter 10 of Draft ES)</i>	<i>03/05/2011</i>	<i>03/06/2011</i>
<i>Commercial Fisheries Report (Chapter 12 of Draft ES)</i>	<i>05/05/2011</i>	<i>03/06/2011</i>
<i>Water and Sediment Quality Report (Chapter 9 of Draft ES)</i>	<i>09/05/2011</i>	<i>03/06/2011</i>
<i>Geomorphology Report</i>	<i>13/05/2011</i>	<i>17/06/2011</i>
<i>Water Framework Directive Assessment</i>	<i>07/06/2011</i>	
<i>Draft ES</i>	<i>28/06/2011</i>	<i>27/07/2011</i>
<i>Habitats Regulations Report</i>	<i>05/07/2011</i>	<i>8/07/2011 and 27/07/2011</i>
<i>Navigation Risk Assessment</i>	<i>19/07/2011</i>	<i>n/a - for info only</i>
<i>Navigation Risk Assessment</i>	<i>14/04/2011</i>	<i>03/05/2011</i>
<i>Revised Dredge Strategy (Revision D)</i>	<i>25/10/2011</i>	<i>23/11/2011</i>
<i>Draft DCO and DML</i>	<i>01/12/1011</i>	<i>05/12/2011</i>

Presented is an overview of the documents the MMO has commented on throughout the pre-application process for this DCO Application. Alongside this, the MMO has met the Applicant on numerous occasions to discuss comments provided.



AMEP
APPLICANT'S COMMENTS ON THE
RELEVANT REPRESENTATIONS

Date: June 2012

ANNEX 2 - Tri-partite letter to the Applicant from the MMO, NE and the EA

6 July 2011

Richard Cram – Technical Director
Able UK
Able House
Billingham
Teesside
TS23 1PX

Dear Richard,

ABLE UK MARINE ENERGY PARK: IPC PRE-APPLICATION CONSULTATION

Natural England, the Marine Management Organisation and the Environment Agency have been in recent discussions regarding the above consultation process. We are all in agreement that this is a timely point at which to provide our joint view on the process thus far and the way ahead.

All three agencies are of the view that the early part of this consultation process was both timely and positive. However, over the past two months we have all been required to comment upon individual chapters of the Environmental Statement to very short deadlines. Furthermore, some of the assertions made in these chapters have been supported by evidence presented in chapters that we have not yet received or have not been supported by evidence at all. In light of this, we have thus far been unable to provide a definitive view on this material as these chapters are to varying degrees interrelated. We are collectively of the view that this method of consultation does not meet the IPC Guidance regarding the appropriate methods of pre-application consultation.

It must also be noted that the technical scope of some of the chapters received thus far is such that it falls short of providing a robust evidence base to address the environmental issues identified in relation to the proposal. We trust that the revised chapters will have addressed our comments. To this end we will continue to work with you and your consultants to provide relevant and timely comments and feedback in order to assist in addressing any outstanding matters.

We have been advised that the IPC expect that comments of this nature regarding the effectiveness of consultation will be submitted to them as **part of the Applicant's** Consultation Report. To that end can you please ensure that this letter is included in the relevant section in your finalised submission to the IPC.

For the future and in order to provide you with the best service we can, we collectively maintain that we will need adequate opportunity to consider the Environmental Statement (including the information you intend to supply to inform the Habitats Regulations Assessment), in their final completed form in order to provide the most robust statutory comments for submission to the IPC.

We understand that the period given for the section 42 consultation has now closed. However we note that during the period given for that consultation, the information

provided to and representations made by us were largely confined to the scoping of your assessments. A great deal of more detailed information as to likely effects has subsequently been, continues to be and is expected to be provided. Substantive representations on this material cannot therefore have been or be provided during the period of the section 42 consultation.

We understand that it is Able UK's view that the current consultation on individual chapters does not form part of a formal statutory consultation. We appreciate that the IPC's guidance note 10 was not published until after the expiry of the period given for the section 42 consultation and cannot therefore have informed the way in which that consultation was carried out. However it would seem appropriate and in the best interests of all parties to take advantage of our continuing dialogue to meet the expectations of the IPC, as set out in that note. We particularly draw your attention to **that part of the guidance that advises "the developer to use the pre-application process to seek assurances from the relevant statutory agencies that all potential impacts have been properly addressed in sufficient detail before the application is submitted."** Given the piecemeal submission of ES chapters, some absence of evidence, various technical shortcomings and the time constraints imposed on us it is difficult to see how such assurances can be provided. For example we have recently been given 17 days to **provide comments on a "draft environmental statement"**. **This does not provide us with sufficient time to give an informed view given the volume and scope of the material which we are being asked to consider.** Whilst we understand that the section 42 consultation has now closed it does we feel provide a more realistic timetable of the time required for consideration of these substantial matters (i.e. not less than 28 days as specified in Section 45). A suitable timetable for continued consultation is essential, particularly given the substance of what we now understand the IPC would like us to have considered at the pre-application stage.

A further matter for consideration is that any relevant conditions to be applied in respect of a development should also be considered in full before an application is made to the IPC. This will include having discussions with the appropriate statutory agencies to whose remit they pertain. We would therefore suggest that you build a suitable time window into your submission timetable in order to address the needs of this process. The precise wording and scope of conditions should be drafted by yourselves and will need to be agreed and transposed directly into your submission as an annex signed off by Able UK. To assist you in this matter we have agreed the following broad remit areas in order to clarify the matters upon which we will submit our formal comments:

Environment Agency

- Air Quality (issues connected with EA permitting regime only);
- Flood Risk;
- Flood Defence;
- Aquifer Issues;
- Migratory Fish;
- Geomorphology (shared jointly due to Flood Risk issues);
- Historic Landfill Issues (NE supporting);
- Managed Realignment – Delivered jointly – EA, expertise on design and engineering;



AMEP

APPLICANT'S COMMENTS ON THE RELEVANT REPRESENTATIONS

Date: June 2012

- WFD – Cross cutting issue – Some involvement will be required from local authorities;
- Dredging Issues (to be delivered jointly)

Natural England

- Protected Species e.g. water vole;
- Impacts upon Humber Estuary Designated Sites;
- Geomorphology (to be joint due to links with ecological issues relating to sedimentation and lamprey)
- Managed Realignment (delivered jointly; NE expertise on ecological functioning)
- Thermal plume issues re. saline lagoons;
- Sedimentation re. saline lagoons
- Dredging Issues (to be delivered jointly)
- Landscape and Access

Marine Management Organisation

- All potential impacts on marine environment (direct and indirect), including those listed above;
- Marine navigation;
- Protected species;
- Marine plans and marine policy statement;
- Intended use of development;
- Assessment of project as a whole, including land based elements;
- Harbour order provisions;
- Deemed marine licence and associated conditions;
- Post-consent monitoring and enforcement of deemed marine licence.

All three agencies continue to brigade considerable resource and expertise in the interests of ensuring your application will meet the requirements set by the IPC and with respect to our statutory remits. We have all fielded many meetings, enquiries and consultations to that end and will continue to work energetically with you for the remainder of the pre-application period. Furthermore, as fellow Defra agencies, and in order to provide the best service to our customers, we endeavour to adhere to the **principle of "One Voice" in providing a fully integrated view on projects we share in common.** To that end we have agreed to have regular inter-agency teleconferences and communications to ensure we deliver a truly joint approach to the Marine Energy Park proposal.

If we can be of any further assistance on this matter please do not hesitate to contact us.

69 REPRESENTATION No. 80 – National Grid

Relevant Representation

- 69.1 *The representation received by the Infrastructure Planning Commission from National Grid on 2nd April 2012, is reproduced in Appendix C of this report.*

Applicant's Comments

- 69.2 The *applicant* obtained **as-built details of national grid's overhead** electrical services that pass through the site in 2005 when undertaking the development of the existing KIA car storage facility. Pylon 2AJ006 that lies within the application boundary, is shown on the Indicative Masterplan, AME-02006-A, together with the route of the overhead line.
- 69.3 The location of the proposed buildings avoids the land immediately beneath the overhead lines. The size of buildings proposed on the Indicative Masterplan is the largest for which the applicant seeks consent; the actual size of any building may be smaller. The development as proposed can be constructed without encroaching into the overhead line safety clearances simply by limiting the height of those building closest to the overhead lines.
- 69.4 The applicant has consulted with National Grid who are preparing draft protective provisions for inclusion in the DCO.

70 REPRESENTATION No. 82 – Mrs C Doyle

Relevant Representation

70.1 The following representation was received by the Infrastructure Planning Commission from Mrs C Doyle.

I am concerned about the risk of flooding to my property. The relocation of foot paths the disruption to the roads the impact on the boat club and Creek Silting up. I feel it is wasting valuable land I don't feel the sight has been researched appropriately, and the bank should remain intact in this area and an alternative sight should be used.

Applicant's Comments

70.2 The ES contains a flood risk assessment for the works in relation to the compensation site, refer to Annex 36.1 of the ES.

70.3 With regard to the diversion of the public footpath on the north bank refer to the comments on Representation No. 14

70.4 **With regard to the compensation site being a 'wasting valuable land', refer to the comments on Representation No's 1 and 2.**

70.5 With regard to the potential impacts on siltation at Stone Creek, refer to the comments on Representation No. 40.

70.6 With regard to the consideration of alternative sites, refer to Annexes 30.1 and 30.2 of the ES.

71 REPRESENTATION No. 83 – Dr John Balshaw

Relevant Representation

71.1 The following representation was received by the Infrastructure Planning Commission from Dr John Balshaw on 23rd February 2012.

I live across the Humber estuary from the proposed development. I have an interest in wildlife and frequently walk along the north bank opposite the proposed development, particularly in winter. I am aware of the importance of the Humber estuary for migratory and wintering birds, and I am very concerned that the proposed compensatory habitat would not offset the damage caused by the proposed development.

Applicant's Comments

71.2 Refer to the comments on Representation No's 1 and 2.



AMEP
APPLICANT'S COMMENTS ON THE
RELEVANT REPRESENTATIONS

Date: June 2012

APPENDIX A
Legal Agreement Relating to Compensation for ABP Development on the
Humber

Dated 30 June 2003

- Associated British Ports (1)
English Nature (2)
The Environment Agency (3)
Royal Society for the Protection of Birds (4)
Lincolnshire Wildlife Trust (5)
and
Yorkshire Wildlife Trust Limited (6)

Compensation Agreement for
Immingham Outer Harbour and Hull Quay
2005

1 THIS AGREEMENT is made the 30th day of June 2003 between:

- (1) ASSOCIATED BRITISH PORTS of 150 Holborn London EC1N 2LR ("ABP")
- (2) ENGLISH NATURE of Northminster House, Peterborough, Cambs, PE1 1UA ("English Nature")
- (3) ENVIRONMENT AGENCY of Kingfisher House, Goldhay Way, Orton Goldhay, Cambs, PE2 5ZR (the "Agency")
- (4) ROYAL SOCIETY FOR THE PROTECTION OF BIRDS of The Lodge, Sandy, Bedfordshire, SG19 2DL ("RSPB")
- (5) LINCOLNSHIRE WILDLIFE TRUST of Banovallum House, Manor House Street, Horncastle, Lincolnshire, LN9 5HF ("LWT")
- (6) YORKSHIRE WILDLIFE TRUST LIMITED of No. 10 Toft Green, York, YO1 6JT ("YWT")

2 Recitals

- 2.1 This Agreement underlines ABP's wish as port operator to play a full part in the long term sustainable management of the Humber Estuary and in particular the Humber Estuary European Sites.
- 2.2 ABP are seeking consent and authorisations under two Harbour Revision Orders ("HRO") made pursuant to Section 14 of the Harbours Act 1964 for
- (a) the Outer Harbour; and
 - (b) Quay 2005
- 2.3 In considering the impact of the proposed construction of the Outer Harbour and Quay 2005 respectively ABP have carried out Appropriate Assessments in accordance with Regulation 48 of the Habitats Regulations and have concluded that:
- (a) the effects of the Harbour Development Works are as identified in ABP's Appropriate Assessments as summarised in Schedule 1 of the Agreement and in particular will lead to an overall loss of 31ha of mudflat used by some 800 feeding and 300 roosting water birds.
 - (b) the Outer Harbour is likely to have an Adverse Effect on the integrity of the combined Phase 1 and Phase 2 Humber Estuary SPA and Ramsar Sites and on the Possible Special Area of Conservation; and
 - (c) taking into account the mitigation proposed by ABP Quay 2005 will not have an Adverse Effect;
- 2.4 In compliance with the Habitats Regulations ABP have identified the following Habitats Schemes as appropriate compensation and/or mitigation for the Harbour Development Works, namely:
- (a) In respect of the Outer Harbour:
 - (i) a managed realignment scheme at Welwick Sunk Island in the outer Humber Estuary designed to create around 45 hectares of intertidal habitat as described in Schedule 2;

- (ii) a managed realignment scheme at Chowder Ness in the inner Humber Estuary designed to create around 11 hectares of new intertidal habitat - 6 hectares of which shall be deemed to constitute mitigation for Quay 2005 as described in Schedule 3; and
- (iii) a habitat enhancement scheme of around 3 ha of inter-tidal mudflat at Doig's Creek, Pyewipe as described in Schedule 4;

all of which is designed to include in aggregate not less than 31 hectares of intertidal mudflat.

(b) In respect of Quay 2005:

- (iv) the creation of replacement roosting areas at Quay 2005 and Queen Elizabeth Dock Extension as described in Schedule 5; together with
- (v) the said 6 hectares at Chowder Ness referred to in clause 2.4(a) (ii) above;

2.5 Subject to clause 6.1 and the terms of this Agreement generally, as at the date of this Agreement, acceptable aggregate objectives to be taken as one of the measures of quality in assessing the effectiveness of the successful implementation and delivery of the Habitats Schemes include-

- (a) The creation of intertidal habitats with the ability to provide feeding habitat for in excess of 800 (peak mean over five years) feeding water birds with typical species in the following relative proportions: 60% dunlin; 20% black-tailed godwit; 10% redshank and 10% other bird species delivered through the creation of inter-tidal habitats at Welwick and Chowder Ness and enhancement of inter-tidal habitat at Doig's Creek;
- (b) Replacement roosting structures to support in excess of 300 (peak mean over five years) roosting water birds with typical species of dunlin; redshank and ringed plover delivered through artificial roosting structures adjacent to Quay 2005 and Queen Elizabeth Dock

2.6 English Nature, the Agency, RSPB, LWT and YWT are satisfied and hereby acknowledge that the delivery of the Habitats Schemes if successfully implemented in accordance with the environmental objectives set out in clauses 2.4 and 2.5 above will meet their concerns in relation to the requirements of the Habitats Regulations in terms of compensation for the Outer Harbour and mitigation for Quay 2005 as set out in the Appropriate Assessments prepared for the Harbour Development Works.

2.7 To the extent that this agreement is made between ABP and English Nature, it shall be construed as a management agreement pursuant to Regulation 16 of the Habitats Regulations.

3 Definitions

"Adverse Effect" shall mean Adverse Effect within the terms of Regulation 48 of the Habitats Regulations.

"Appropriate Assessment" shall mean an Appropriate Assessment carried out for the purposes of Regulation 48 of the Habitat Regulations.

"Environmental Statements" shall mean as appropriate -

- (a) the Outer Harbour Environmental Statement dated August 2001 and/or
- (b) the Quay 2005 Environmental Statement dated September 2000 and/or
- (c) the Reclamation East of Queen Elizabeth Dock Environmental Statement dated November 1995

"ESC" shall mean the Environmental Steering Committee referred to in clause 5.3 of this Agreement, the membership of which shall comprise ABP's Project Environmental Managers and representatives of the Agency, English Nature, the DfT, CEFAS, the relevant local authorities, RSPB, the YWT and the LWT.

"Habitats Regulations" shall mean the Conservation (Natural Habitats etc) Regulations 1994.

"Habitats Schemes" shall mean all of those schemes separately identified in clause 2.4 of this Agreement.

"Harbour Development Works" shall mean ABP's proposals for the Outer Harbour and Quay 2005.

"Humber Estuary European Sites" shall mean those sites identified in the Immingham Outer Harbour Environmental Statement.

"Implementation Plan" shall mean the Implementation Plan attached in Schedule 6 to this Agreement as may be amended from time to time with the agreement of the ESC, save that no amendment shall be made which will impact upon the Agency's Flood Defence function other than with the Agency's specific agreement.

"Monitoring Plan" shall mean the Monitoring Plan attached as Schedule 7 to this Agreement as may be amended from time to time with the agreement of the ESC.

"Outer Harbour" means ABP's proposals to construct a five berth roll on-roll off terminal at the Port of Immingham.

"Phase 1 and Phase 2 Humber Estuary SPA and Ramsar Sites" shall mean those sites identified in the Immingham Outer Harbour Environmental Statement.

"Possible Special Area of Conservation" shall mean that site identified in the Immingham Outer Harbour Environmental Statement.

"Quay 2005" shall mean ABP's proposals to construct riverside berthing at the Port of Hull.

"Queen Elizabeth Dock Extension" shall mean that area identified in the Reclamation East of Queen Elizabeth Dock Environmental Statement.

4 Effect

4.1 This Agreement becomes binding upon ABP in respect of:

- (a) those elements of the Habitats Schemes detailed in clause 2.4(i), (ii) and (iii) upon the issue of the HRO for the Outer Harbour in terms satisfactory to ABP and the decision of ABP to implement the Outer Harbour HRO; and
- (b) those elements of the Habitats Schemes detailed in clause 2.4(iv) and (v) upon the issue of the HRO for Quay 2005 in terms satisfactory to ABP and the decision of ABP to implement the Quay 2005 HRO.

4.2 For the avoidance of doubt, this Agreement is not to be construed as prohibiting or limiting ABP's rights to develop the Ports of Immingham and/or Hull pursuant to later consents issued or secured after the date of this Agreement.

4.3 If for any reason a public inquiry is convened to consider ABP's proposals for the Outer Harbour and any of the signatories to this Agreement make representations which are considered by ABP to be contrary to the terms or spirit of this Agreement, then it is accepted by all signatories that

- (a) this Agreement shall not act as a fetter or restriction on the giving of representations at the inquiry by any or all of the parties to this Agreement; and
- (b) this Agreement shall cease to have effect insofar as it relates to the Outer Harbour and those elements of the Habitats Schemes detailed in clause 2.4(i), (ii) and (iii).

4.4 Should for any reason

- (a) an HRO not be issued for the Outer Harbour and/or Quay 2005; or
- (b) an HRO be issued for the Outer Harbour and/or Quay 2005 but not in terms satisfactory to ABP; or
- (c) following issue ABP decide not to implement either or both HROs

then ABP will send written notification to each of the parties to this Agreement informing them that ABP does not intend to implement the Outer Harbour HRO and/or the Quay 2005 HRO whereupon this Agreement shall be of no effect insofar as it relates to the Outer Harbour and those elements of the Habitats Schemes detailed in clause 2.4(i), (ii) and (iii) and/or Quay 2005 and those elements of the Habitats Schemes detailed in clause 2.4(iv) and (v) as the case may be.

5 ABP hereby covenants:

5.1 Not to commence the development of the Outer Harbour or Quay 2005 until

- (a) it has sufficient proprietary interest in the relevant land required for either the Outer Harbour or Quay 2005 Habitats Schemes as appropriate to enable it to carry out the works described in the Implementation Plan; and
- (b) any consents which are required for the implementation of the relevant Habitats Schemes have been issued with the exception of the consents required for Chowder Ness which shall be secured by ABP as soon as reasonably practicable.

5.2 To deliver subject to Appropriate Assessment the relevant Habitats Schemes in accordance with the Implementation Plan and the conditions of this Agreement;

5.3 To establish the ESC as soon as may be practicable after execution of this Agreement the terms of reference of which if appropriate shall include:

- (a) the review and approval of the monitoring requirements for the Harbour Development Works and Habitats Schemes to be set out in the Monitoring Plan as summarised in Schedule 7 hereto;
- (b) the review of any environmental information collected by ABP during the life of the management of the Harbour Development Works and Habitats Schemes;
- (c) the review and approval as appropriate of any changes required in the environmental management of the Harbour Development Works and Habitats Schemes;

5.4 To arrange, as far as practicable, that the ESC meets at least twice a year - the ordinary running expenses of the members as appropriate of the ESC (which shall include travel and attendance at meetings) being borne by the respective parties.

5.5 To make available to the ESC such information as may reasonably assist the ESC to fulfil its objectives as stated in clause 5.3 above provided such information would not be prejudicial to ABP's interests and/or its statutory duties as port operator and subject always to commercial confidentiality.

- 5.6 To monitor the impacts of the Harbour Development Works and the performance of the Habitats Schemes in accordance with the Monitoring Plan which will be based on the elements outlined in Schedule 7.

6 Review Procedure

- 6.1 The measure of the performance of the Habitats Schemes and the success or otherwise in meeting their objectives including those in clause 2.5 will be a matter for review by the ESC in accordance with the Monitoring Plan at the formal review periods of 5 and 10 years after completion of the construction of the Habitats Schemes all relevant factors and prevailing conditions (including those beyond the control of ABP) having been taken into account.
- 6.2 If the ESC identifies problems in the performance of the Habitats Schemes, ABP working with the ESC will use all reasonable endeavours to overcome the problems in a way which most accurately reflects the original objectives of the schemes including those set out in clauses 2.4 and 2.5.
- 6.3 The obligations set out under clause 5 of this Agreement will continue in force for a period of ten years, or if at the expiry of that period problems have been identified with the performance of the Habitats Schemes, until such later date as it becomes clear that the said schemes are performing satisfactorily according to the ESC.

7 Covenants

- 7.1 In relation to the Outer Harbour: -
- (a) English Nature, the Agency, RSPB and the LWT hereby covenant to withdraw their objections to the Outer Harbour HRO within 21 days of the date of this Agreement, such withdrawal to be made in writing to the Secretary of State and copied to ABP
- 7.2 In respect of Quay 2005:-
- (a) English Nature, RSPB and the YWT hereby covenant to withdraw their objections to the Quay 2005 HRO within 21 days of the date of this Agreement, such withdrawal to be made in writing to the Secretary of State and copied to ABP

8 Generally

- 8.1 Nothing in this Agreement shall be construed as prejudicing English Nature's independent and separate power or obligation to discharge its functions and English Nature shall remain entitled to apply all requirements of the Habitats Regulations any statutory re-enactment thereof and any further legislation that English Nature is now responsible for discharging or that it may become responsible for discharging in the future.
- 8.2 Nothing in this Agreement shall be construed as prejudicing or affecting the exercise of any statutory ~~duties~~ *functions* of the Agency.
- 8.3 Any dispute or difference arising out of or in connection with this Agreement (including without limitation any questions regarding its existence, validity, interpretation, performance or termination) shall be referred to and finally resolved by arbitration under the rules of the London Court of International Arbitration which are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one.

IN WITNESS whereof the parties hereto have executed and delivered the Agreement as a Deed the day and year first above written.

Schedule 1

Summary of the effects of the Harbour Development Works

Further to clause 2.3 of this Agreement, a summary of the effects of the proposed construction of the Harbour Development Works are as follows:

Immingham Outer Harbour

Direct habitat loss = 22ha inside pSPA

Indirect losses= 5ha estimated

Function lost: mudflat used by feeding water birds in middle estuary

Typical species affected: shelduck, teal, ringed plover, lapwing, black-tailed godwit (126), curlew, redshank, and dunlin.

Total number affected: 603 peak mean (279 average)

Source of information: record of Appropriate Assessment April 2002.

Quay 2005

Direct habitat loss = 4ha outside SPA

Function lost: mudflat used by feeding water birds in middle estuary

Typical species: ringed plover, curlew, redshank, and dunlin

Total number affected: Peak in Feb 96 = 334

Peak in Jan 02 = 97

Mean of two peaks = 215

Function lost: loss of high tide roosting structures:

Typical species: dunlin, redshank and ringed plover

Total number affected: Peak in March 1996 = 376

Peak in Sept 2001 = 277

Mean of two peaks = 326

Source of information: Appropriate Assessment September 2002

Schedule 2 Welwick Managed Realignment Scheme

A managed realignment scheme will be undertaken on around 50ha of agricultural land at Outstray Farm, Sunk Island. The scheme will involve the following elements:

- Removal of existing flood bank and the reconstruction of new flood defences to the rear of the site. The new defences will be constructed with a minimum crest width of 4m and a minimum height of 5.6m above ODN, in line with the Agency guidance and to the Agency's reasonable satisfaction.
- Reprofiling of the site by between 0 to 1m resulting in the relocation of 94,000m³ of material which will be retained on site and incorporated into the new flood defences.
- Construction of appropriate breaches through the existing saltmarsh fronting the site.
- Re-routing of overhead power cables along the trackway to the east of the site.
- Provision of a footpath along the crest of the new defences to the rear of the site.
- Ploughing of the site prior to inundation to mitigate for any over-consolidation of sediment.

After 10 years, the scheme is predicted to create between 7-37ha of intertidal mudflat, 8-32ha of saltmarsh and 9-15ha of grassland, over a total area of 54ha.

Risks associated with the scheme some of which may be addressed through scheme design are:

- New design never tried before
- Compaction due to movement of heavy equipment may result in poor quality mudflat
- Poor quality saltmarsh due to the presence of rubble at the bank at the foot of the new sea wall

Schedule 3 Chowder Ness Managed Realignment Scheme

A managed realignment scheme will be undertaken on 13.6ha of agricultural land at Chowder Ness, Barton-on-Humber. The scheme will involve the following elements:

- Removal of existing flood bank and the reconstruction of new flood defences to the rear of the site, where required. The new defences will be constructed with a minimum crest width of 4m and a minimum height of 5.9m above ODN, in line with the Agency guidance and to the Agency's reasonable satisfaction.
- Reprofiling of the site by between 0 to 1m resulting in the relocation of 48,000m³ of material which will be retained on site and incorporated into the new flood defences.
- Provision of a footpath along the crest of the new defences to the rear of the site.
- Ploughing of the site prior to inundation to mitigate for any over-consolidation of sediment.

After 10 years, the scheme is predicted to create around 10.5ha of intertidal mudflat, 0.8ha of saltmarsh and 2.3ha of grassland.

Risks associated with the scheme some of which may be addressed through scheme design are:

- New design never tried before
- Compaction due to movement of heavy equipment may result in poor quality mudflat
- Disturbance from footpath may reduce potential bird usage of site

Schedule 4 Doig's Creek Habitat Enhancement Scheme

A habitat enhancement scheme will be undertaken on 4ha of existing intertidal area at Doig's Creek, Pyewipe. The scheme will involve the following elements:

- Closure of Doig's Sluice
- Construction of a new sluice of the face of the existing Grimsby Dock gates

The closure of the existing sluice will permit natural infilling of Doig's Creek with estuary sediment and lead to increases in the abundance and diversity of invertebrate species in the area. After 10 years, the scheme is predicted to enhance between 2-4ha of intertidal mudflat.

Schedule 5

Provision of Roosting Areas at Quay 2005 and Queen Elizabeth Dock Extension

An appropriately designed roost site will be installed at the western end of Quay 2005 to accommodate roosting birds displaced by the demolition of the West Wharf pier. The roost site will be separated from operational areas by an acoustic screen.

The Queen Elizabeth Dock Extension will be fronted with rock armour to provide some new long-term roosting habitat. Once these works have been completed, the existing footpath will be managed to minimise disturbance to roosting birds.

A risk associated with the scheme which may be addressed through scheme design is that the design of roosting structures may not attract the species affected by the development.

Compliance with the provisions set out in Section 4 of the Appropriate Assessment which mitigate the potential impacts of construction.

Schedule 6 Implementation Plan

The implementation plan provides details of the general mitigation measures and sets out the planned sequence of construction and timetables for the Habitats Schemes. Detailed timings will depend on the timings of consent approvals.

General Mitigation Measures During Construction

- A Code of Practice to be agreed by the ESC will be established for construction workers to ensure that they are aware of the particular sensitivities of the estuarine environment;
- Construction work will be required to adhere to the Agency's Pollution Prevention Guidelines for working on construction sites (PPG6) and other relevant Agency guidelines;
- Construction work will be suspended for any period during which there is a severe weather ban on wildfowling in force on the estuary;

Welwick Managed Realignment Scheme

It is proposed to construct the scheme over a period of two years in a number of stages. Construction works will be limited to the period April to August to avoid disturbance to over wintering waterfowl.

Year 1

- Construction of new sea defences to rear of the site using material from temporary borrow pits or from site reprofiling;
- Reprofiling of site to desired levels
- The front face of the embankment will be seeded with fast growing grass mix to promote stabilisation;
- The rear face of the embankment will be seeded with grass mix, supplemented with mowings from an area of high plant diversity from elsewhere on the North Humber bank;
- Translocation of rare plant species to new embankment from existing embankment.

Year 2

- Removal of existing sea defences in stages;
- Removal of fronting saltmarsh to create breaches;
- Ploughing of site to mitigate for any over-consolidation.

Chowder Ness Managed Realignment Scheme

It is proposed to construct the scheme over a period of two years in a number of stages. Construction works will be limited to the period June to October to avoid disturbance to bittern and minimise disturbance to over-wintering waterfowl.

Year 1

- Construction of new sea defences to rear of the site using material from temporary borrow pits or from site reprofiling;
- Reprofiling of site to desired levels
- The front face of the embankment will be seeded with fast growing grass mix to promote stabilisation;
- The rear face of the embankment will be seeded with grass mix, supplemented with mowings from an area of high plant diversity typical of the area;

Year 2

- Removal of existing sea defences in stages;
- Ploughing of site to mitigate for any over-consolidation.

Doig's Creek Habitat Enhancement

Construction of new sluices on the Grimsby dock gates can be completed within 12 months. Thereafter the existing Doig's Sluice can be closed. Sediment will then accrete naturally in Doig's Creek over a period of years until the area reaches an equivalent elevation to adjacent mudflat.

Creation of Replacement Roosting Areas at Quay 2005 and Queen Elizabeth Dock Extension

The rock armour wall for the Queen Elizabeth Dock Extension will be constructed following discussions with English Nature about the after use for this area. The construction of Quay 2005 is anticipated to require around 2 years. The roosting site will be constructed towards the end of this period.

Schedule 7 Monitoring Plan

The monitoring plan provides details of the generic environmental monitoring that will be undertaken for the Harbour Development Works and Habitats Schemes. Detailed monitoring requirements will be agreed by the ESC.

Immingham Outer Harbour

- Disturbance to waterfowl adjacent to the development;
- Suspended sediment concentrations in the vicinity of the dredging works;
- Deposition of sediment on intertidal areas in the vicinity of the dredging works;
- Deposition of sediment at and in the vicinity of the sediment placement sites;
- Deposition of sediment on intertidal areas adjacent to the sediment placement sites;
- Changes to intertidal profile upstream and downstream of Immingham Outer Harbour;
- Changes to intertidal invertebrates upstream and downstream of Immingham Outer Harbour;
- Changes in bird usage on intertidal areas adjacent to Immingham Outer Harbour;
- Monitoring of maintenance dredging disposal.

Quay 2005

- Concentrations of contaminants in the water column in the vicinity of the dredging works;
- Changes to intertidal profile upstream and downstream of Quay 2005;
- Changes in intertidal invertebrates upstream and downstream of Quay 2005;
- Changes in bird usage on intertidal areas upstream and downstream of Quay 2005

Welwick Managed Realignment Scheme

- Changes in intertidal profile within and in the vicinity of the Scheme;
- Changes in saltmarsh within, fronting and in the vicinity of the Scheme;
- Changes to intertidal invertebrates within, fronting and in the vicinity of the Scheme;
- Changes to waterfowl usage of intertidal areas within, fronting and in the vicinity of the Scheme;
- Changes to waterfowl usage of roosting areas in the vicinity of the Scheme;
- Monitoring of grassland habitats created in the Scheme;
- Monitoring of saline pools created in the Scheme;
- Monitoring of bird usage of grassland habitats created in the Scheme.

Chowder Ness Managed Realignment Scheme

- Changes in intertidal profile within and in the vicinity of the Scheme;
- Changes in saltmarsh within, fronting and in the vicinity of the Scheme;
- Changes to intertidal invertebrates within, fronting and in the vicinity of the Scheme;
- Changes to waterfowl usage of intertidal areas within, fronting and in the vicinity of the Scheme;
- Changes to waterfowl usage of roosting areas in the vicinity of the Scheme;
- Monitoring of grassland habitats created in the Scheme;
- Monitoring of bird usage of grassland habitats created in the Scheme.

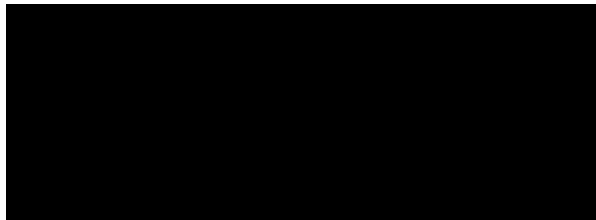
Doig's Creek Habitat Enhancement Scheme

- Changes in intertidal profile at the site;
- Changes in intertidal invertebrates at the site;
- Changes in bird usage at the site.

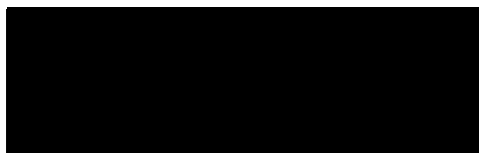
Provision of Roosting Areas at Quay 2005 and Queen Elizabeth Dock Extension

- Monitoring of bird usage of roosting areas at Quay 2005 and Queen Elizabeth Dock Extension.

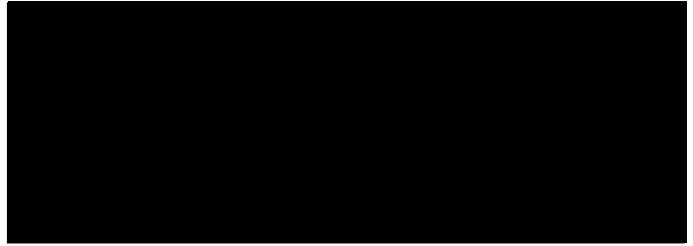
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Associated British Ports by



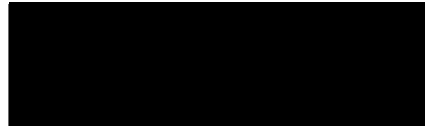
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English Nature by



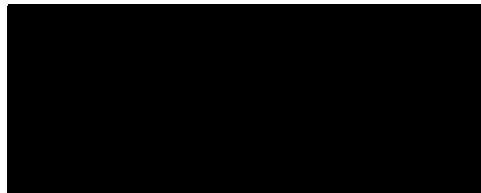
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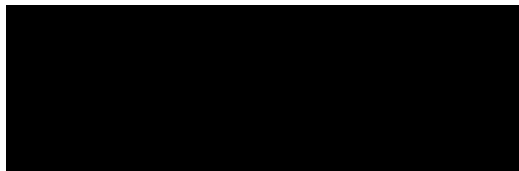
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Royal Society for the Protection of Birds by**

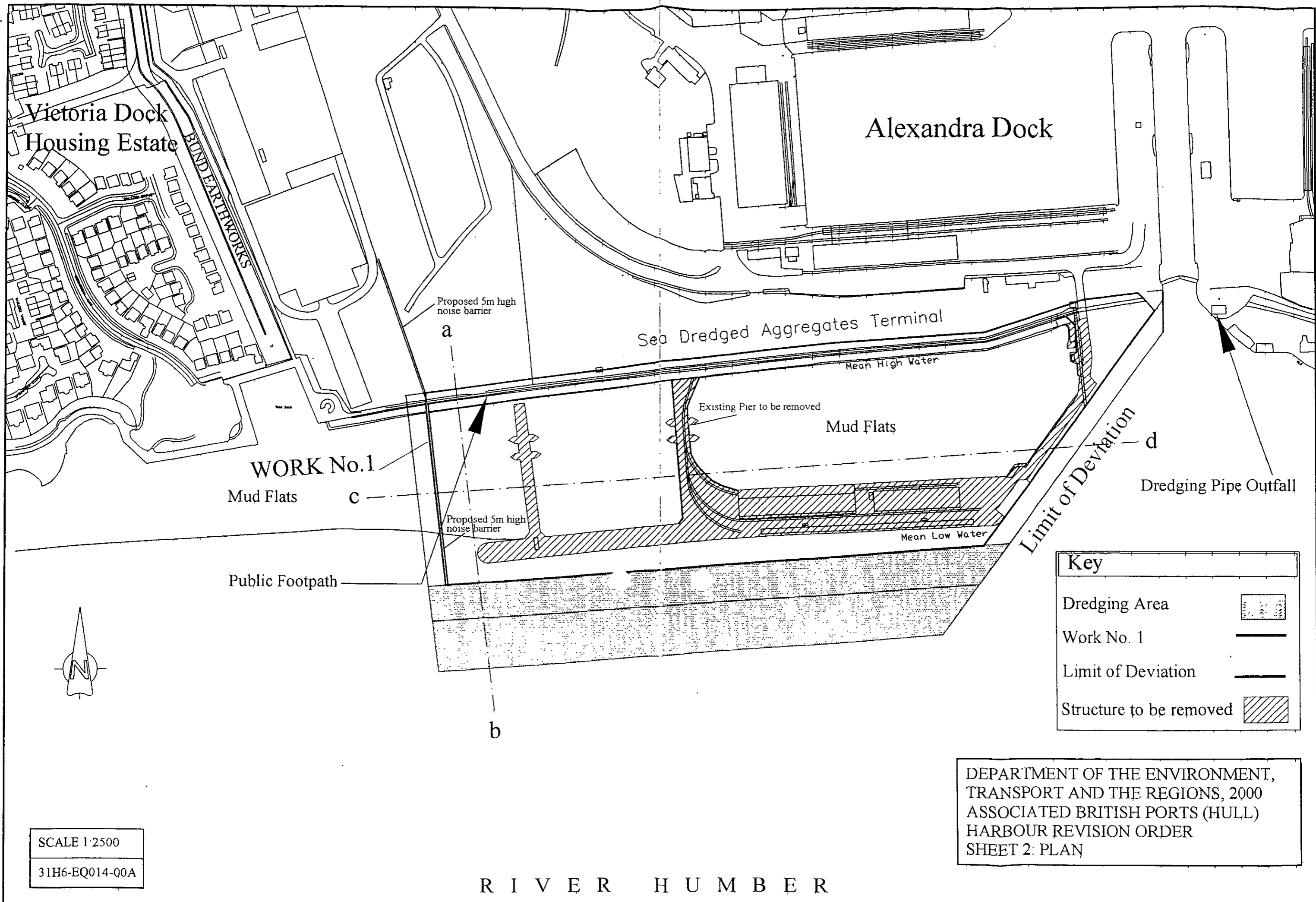





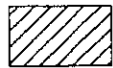
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Lincolnshire Wildlife Trust by**



**Executed as a Deed on behalf of the
Yorkshire Wildlife Trust Limited by**



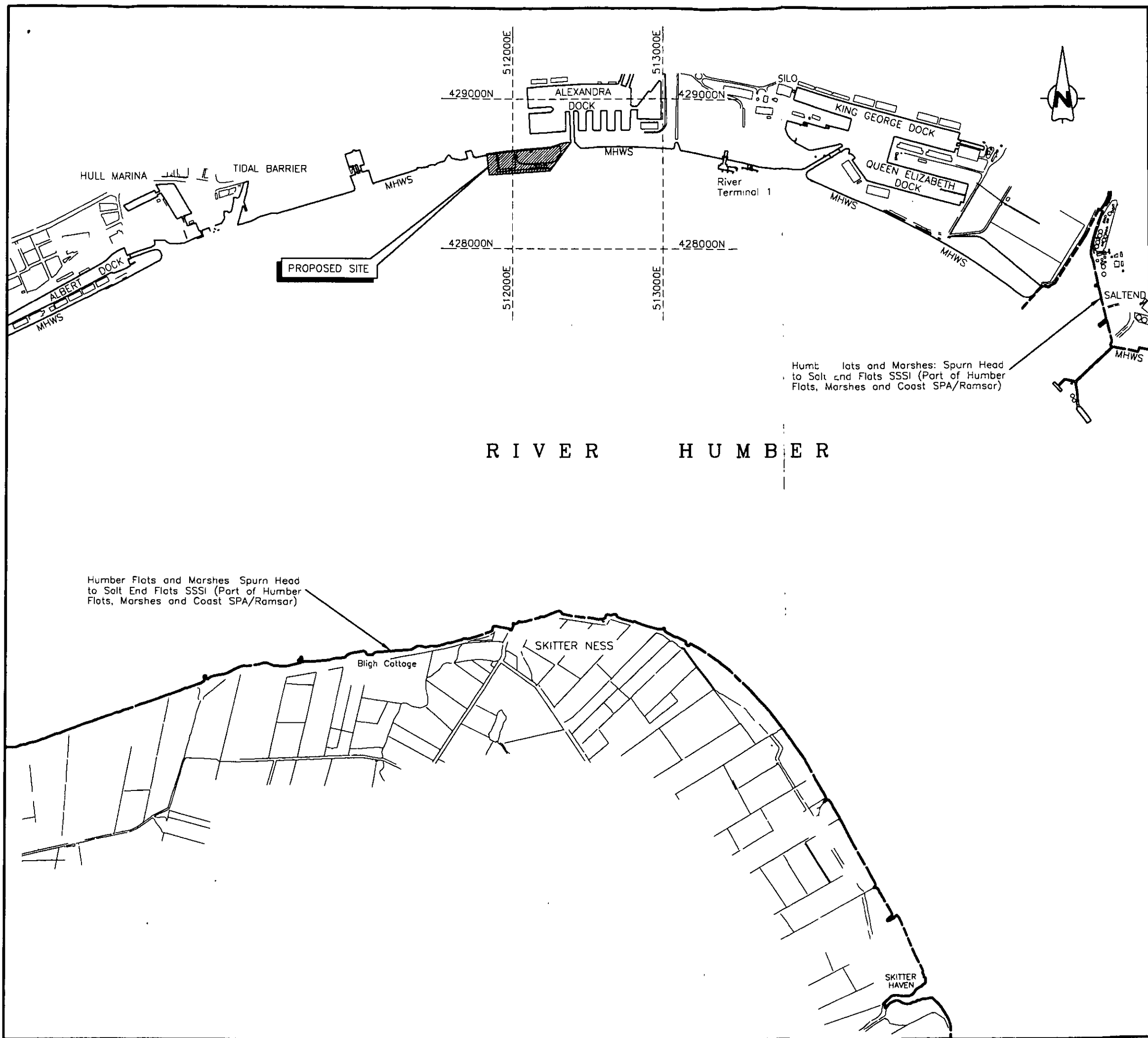


Key	
Dredging Area	
Work No. 1	
Limit of Deviation	
Structure to be removed	

DEPARTMENT OF THE ENVIRONMENT,
 TRANSPORT AND THE REGIONS, 2000
 ASSOCIATED BRITISH PORTS (HULL)
 HARBOUR REVISION ORDER
 SHEET 2: PLAN

SCALE 1:2500
 31H6-EQ014-Q0A

R I V E R H U M B E R



Notes

UNCONTROLLED COPY

A	Adjustable shore ramp remove	29/10/03	G Jacklin
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Rev.	Description	Date	Drawn
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ABP ASSOCIATED BRITISH PORTS
NORTH-EAST REGION Engineering Department

Title
**ALEXANDRA DOCK
QUAY 2005
LOCATION PLAN AND
SURROUNDING AREA**

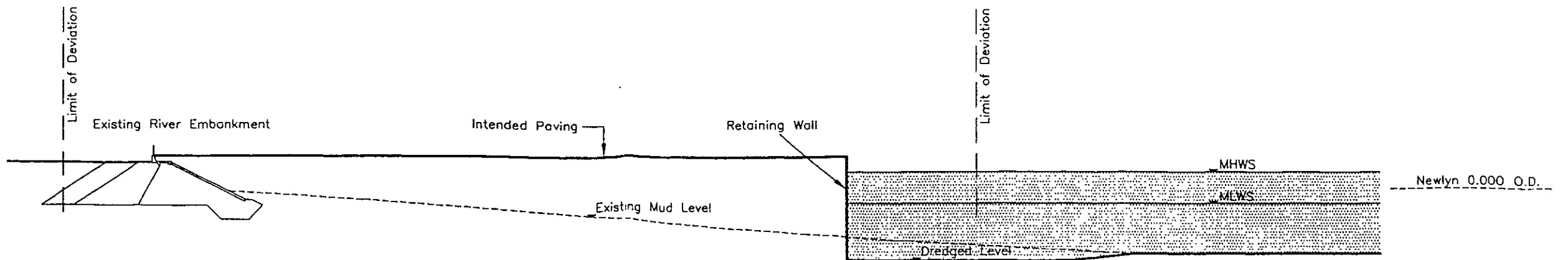
Location
Port of Hull

Drawn Graham Jacklin	Date Feb.2002
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Checked	Approved Projects Manager
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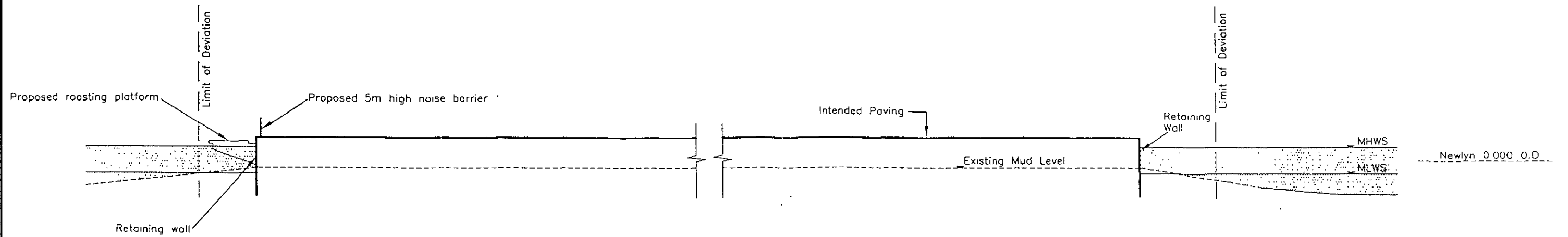
Correspondence Ref. DE/PJT/16/42	Scales 1:25000
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Contract Drawing No	Drawing No. 02/DEC/17	Revision A
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Section a:b

1:1000



Harbour Revision Order
Sheet 3 : Sections

Note
Chart Datum is 3.9m
below Ordnance Datum

00/DEC/119 B

Section c:d

1:1000



AMEP
APPLICANT'S COMMENTS ON THE
RELEVANT REPRESENTATIONS

Date: June 2012

APPENDIX B
Revised Draft Development Consent Order

Planning Act 2008
Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
Regulation 5(2)(b)
Document reference: TR030001/~~APP/9~~DCO/2

**The proposed Able Marine Energy Park
Draft Development Consent Order**

~~29 June 2012-7 December 2014~~

Revision: ~~1~~2

Bircham Dyson Bell

2012 No. XXXX

INFRASTRUCTURE PLANNING

HARBOURS, DOCKS, PIERS AND FERRIES

The Able Marine Energy Park
Development Consent Order 201~~3~~²

Made - - - - 201~~3~~²
Coming into force - - 201~~3~~²

CONTENTS

PART 1 - PRELIMINARY

1. Citation and commencement
2. Interpretation
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Able has applied for an order granting development consent to the Infrastructure Planning Commission in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

the application was examined by an Examining authority under Part 4 of the Planning Act 2008(a);

the Examining authority has considered the application and the relevant representations made in relation to it, and has reported its recommendation to the Secretary of State as decision-maker under section [74(2)(b) / 83(2)(b)] of that Act;

the decision-maker has decided under section 104 of that Act to make an order granting development consent;

the decision-maker makes the following Order under section 114 of that Act.

(a) 2008 c 29, as amended

PART 1

PRELIMINARY

Citation and Commencement

1. This Order may be cited as the Able Marine Energy Park Development Consent Order 201~~2~~³ and shall come into force the day on which it is made.

Interpretation

2.—(1) In this Order—

“the 1847 Act” means the Harbours, Docks and Piers Clauses Act 1847(a);

“the 1961 Act” means the Land Compensation Act 1961(b);

“the 1965 Act” means the Compulsory Purchase Act 1965(c);

“the 1980 Act” means the Highways Act 1980(d);

“the 1984 Act” means the Road Traffic Regulation Act 1994(e);

“the 1990 Act” means the Town and Country Planning Act 1990(f);

“the 1991 Act” means the New Roads and Street Works Act 1991(g);

“the 2008 Act” means the Planning Act 2008(h);

“AB Ports” means Associated British Ports, company number ZC000195, registered at 79-91 Aldwych, London WC2B 4HN;

“area of jurisdiction” means the area shown bounded by the line described as ‘boundary of jurisdiction of the Harbour Authority’ on the plan at Schedule 10; and in the following provisions of this Order, references to the limits of the harbour shall be construed as references to the limits so shown;

“area of seaward construction activity” means the area of the sea within the Order limits shown on the land plan;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, being development within the meaning of section 32 of the 2008 Act;

“the book of reference” means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“the Company” means Able Humber Ports Limited, company number 107029, registered at Ogier House, The Esplanade, St Helier, Jersey, JE4 9WG;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“the Crown land plan” means the plan certified as the Crown land plan by the decision-maker for the purposes of this Order;

“the decision-maker” has the same meaning as in section 103 of the 2008 Act;

(a) 1847 (10 & 11 Vict) c 27, as amended at the date of the coming into force of this Order

(b) 1961 c 33, as amended at the date of the coming into force of this Order

(c) 1965 c 56, as amended at the date of the coming into force of this Order

(d) 1980 c 66, as amended at the date of the coming into force of this Order

(e) 1984 c 27, as amended at the date of the coming into force of this Order

(f) 1990 c 8, as amended at the date of the coming into force of this Order

(g) 1991 c 22, as amended at the date of the coming into force of this Order

(h) 2008 c 29, as amended at the date of the coming into force of this Order

“the dockmaster” means the dockmaster appointed by the Harbour Authority under this Order;

“the design drawings” means the design drawings submitted under regulation 5(2)(o) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and certified as the design drawings by the decision-maker for the purposes of this Order;

“the ecology plan” means the plan certified as the ecology plan by the decision-maker for the purposes of this Order;

“harbour” means the harbour constructed by the undertaker in pursuance of the powers conferred on them by this Order and includes the dredged channel also constructed under those powers, and all other works, land, buildings, ancillary works, plant, property and conveniences connected with them, as from time to time existing;

“the Harbour Authority” means the Company in its capacity as harbour authority established by article 7 (jurisdiction of the Harbour Authority);

“the harbour master” means the harbour master appointed by AB Ports to be a harbour master for an area that includes the area of jurisdiction and includes the harbour master’s deputies and assistants;

“the heritage plan” means the plan certified as the heritage plan by the decision-maker for the purposes of this Order;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the land plan” means the plan certified as the land plan by the decision-maker for the purposes of this Order;

“level of high water” means the level of mean high-water springs;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct or replace the authorised development and any derivative of “maintain” shall be construed accordingly;

“Network Rail” means Network Rail Infrastructure Ltd, company number 02904587 registered at King’s Place, 90 York Way, London N1 9AG;

“Order land” means the land shown on the land plan which is within the boundary of land required for or affected by the proposed development, and described in the book of reference;

“the Order limits” means the limits shown as such on the works plan, and are the limits within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“relevant planning authority” means the local authority for the area in which the relevant land to which the provisions of this Order apply is situated;

“requirement” means the corresponding paragraph of Schedule 11;

“the rights of way plan” means the plan certified as the rights of way plan by the decision-maker for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageway, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“tidal work” means so much of any work authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;

“tree preservation order” has the meaning given in section 198 of the 1990 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

(a) 1981 c 67, as amended at the date of the coming into force of this Order

“the undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act and articles 11 and 12;

“the undertaking” means the harbour undertaking of the undertaker as authorised from time to time;

“vessel” means every description of vessel or water-borne structure, however propelled, moved or constructed, and includes displacement and non-displacement craft, personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over or placement in water and which is at the time in, on or over water;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plan” means the plan certified as the works plan by the decision-maker for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development shall be taken to be measured along that work.

Incorporation of the Harbours, Docks and Piers Clauses Act 1847

3.—(1) With the exception of sections 6 to 23, 25, the proviso to section 28, section 31, the proviso to section 32, section 33, sections 35, 36, 38, 39, 42, 43, 45, 48 to 50, 53 to 55, 59 to 64, 66 to 69, 71 to 73, 76 and 79 to 90, 92, 97, 98 and 102, the 1847 Act is incorporated in this Order subject to the modifications stated in paragraphs (2) ~~and (3)~~.

(2) In construing the 1847 Act as so incorporated—

- (a) the expression “the special Act” means this Order;
- (b) the expressions “the Promoters of the undertaking” and “the undertakers” mean the undertaker;
- (c) the expression “the harbour, dock or pier” means the authorised development within the area of jurisdiction;
- (d) the expressions “limits” and “prescribed limits” mean the area of jurisdiction;
- (e) the expression “near the pier” does not extend beyond the area of jurisdiction;
- (f) the expression “the harbour master”, in relation to the authorised development means the harbour master as defined in article 2;
- (g) the definition of “vessel” in article 2(1) shall be substituted for the definition in section 3 of the 1847 Act; and
- (h) any requirement to comply with a notice or direction given by the harbour master shall be construed as including a requirement that, in complying with such notice or direction, a person who is subject to the notice or direction shall also comply with any relevant notice or direction given by AB Ports or the harbour master in the exercise by either or both of them of any function conferred by or under any enactment (including this Order).

Modification of enactments

4.—(1) Sections 25 and 26 of the River Humber Conservancy Act 1852(a), section 9 (licences for execution of works) of the Humber Conservancy Act 1899(b) and section 6(2) (no erections in

(a) 1852 c cxxx , as amended at the date of the coming into force of this Order

(b) 1899 c cci , as amended at the date of the coming into force of this Order

Humber below river lines or without licence above river lines) of the Humber Conservancy Act 1905(a) do not apply to the authorised development.

(2) The requirement to obtain consent under section 23(1) of the Land Drainage Act 1991(b) does not apply to the authorised development.

PART 2 PRINCIPAL POWERS

Development consent etc. granted by the Order

~~5.~~ Subject to the provisions of this Order and to the requirements in Schedule 11 (requirements) the undertaker is granted

~~(a) 5.~~ development consent for the authorised development, to be carried out within the Order limits.

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Period for completion of work

~~7.6.~~ If the authorised development is not completed within ten years from the coming into force of this Order or such extended time as the decision-maker may on the application of the undertaker allow, then on the expiration of that period or such extended time (as the case may be) the rights granted by this Order to the undertaker for making and maintaining the works shall cease except as to so much of them as is then substantially commenced.

Jurisdiction of the Harbour Authority

~~8.7.~~—(1) Without prejudice to the functions of AB Ports exercisable within its limits, the Company shall be the harbour authority for the area of jurisdiction.

(2) Without prejudice to any provision of the 1847 Act as incorporated by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847), the area within which the Harbour Authority and the dockmaster may exercise their functions under this Order shall be the area of jurisdiction.

(3) The jurisdiction of the Harbour Authority over vessels within the area of jurisdiction shall not extend to—

- (a) any vessel unless it is at anchor or otherwise moored or is causing an obstruction within the area of jurisdiction; or
- (b) signalling or any other activity connected with the movement of the vessel.

(4) Where any person referred to in paragraph (5)(a) considers that there is an actual or anticipated conflict between—

- (a) the exercise of any function of any person mentioned in paragraph (5)(a); and
- (b) the exercise of any function of any person mentioned in paragraph (5)(b),

then that person may give notice to the relevant person in paragraph (5)(b).

(5) The persons referred to in paragraph (4) are—

- (a) AB Ports and the harbour master; and
- (b) the Harbour Authority and the dockmaster.

(6) The notice referred to in paragraph (4) shall set out any requirements concerning the exercise of the relevant function by the relevant person mentioned in paragraph (5)(b).

(a) 1905 c clxxix, as amended at the date of the coming into force of this Order
(b) 1991 c 59, as amended at the date of the coming into force of this Order

- (7) The requirements referred to in paragraph (6) may—
- (a) make general provision in relation to the exercise of functions over time; or
 - (b) make specific provision about the exercise of a particular function or functions on a particular occasion.
- (8) If—
- (a) a notice sets out requirements falling within paragraph (7)(a) it must be made in writing; and
 - (b) a notice sets out requirements falling within paragraph (7)(b) it may be made in writing or in any other manner considered appropriate by the person giving the notice.
- (9) On receipt of a notice given under paragraph (4), the recipient of the notice shall comply with the notice.
- (10) Save where expressly provided elsewhere in this Order, no person mentioned in paragraph (5)(b) is obliged to seek any permission or otherwise notify any person mentioned in paragraph (5)(a) prior to exercising any function.
- (11) Subject to the requirements of any notice given under paragraph (4), the functions of the Harbour Authority and the dockmaster shall be exercised in accordance with Part 2 of Schedule 9 (for the protection of AB Ports).

Agreements entered into by Company, etc.

9.8. Any agreement or undertaking entered into by the Company before the coming into force of this Order in connection with the proposed exercise of its functions as Harbour Authority shall be binding upon the Harbour Authority notwithstanding that it was entered into by the Company before it was established as a Harbour Authority by article 7 (jurisdiction of the Harbour Authority).

Maintenance of authorised development

10.9. The undertaker may at any time maintain the authorised development and within the limits of the harbour, from time to time enlarge, relay or extend temporarily or permanently the authorised development, except to the extent that this Order or an agreement made under it provides otherwise.

Provision of works

11.10.—(1) The undertaker may from time to time within the Order limits provide and operate such harbour facilities, together with works ancillary to those facilities, as may be necessary or convenient for the construction of the authorised development or the operation of the undertaking, and for this purpose the undertaker may construct and maintain roads, railway lines, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient.

(2) Without prejudice to paragraph (1) the undertaker may within the Order limits carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the authorised development, including—

- (a) works for the accommodation or convenience of vessels (including but not limited to berthing heads, mooring posts, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons);
- (b) works to divert, remove or replace apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines; and

- (c) landscaping and other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works.

(3) Article 3 of, and Parts 11 and 17 in Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995(a) shall apply as if this Order were a grant of planning permission.

Benefit of Order

~~12.11~~. Subject to article 12 (consent to transfer benefit of Order), the provisions of this Order shall have effect solely for the benefit of the Company.

Consent to transfer benefit of Order

~~13.12~~—(1) The undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1), references in this Order to the undertaker, except in paragraph (3), shall include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

PART 3

STREETS

Street works

~~14.13~~—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

(a) SI 1995/418, as amended at the date of the coming into force of this Order

Temporary stopping up of streets

15.14.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 3 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the rights of way plan, in column (3) of that Schedule.

(4) The undertaker shall not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (3) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Access to works

16.15.—(1) The undertaker may, for the purposes of the authorised development—

- (a) form and lay out means of access to a public highway, or improve existing means of access to a public highway, in the location specified in columns (1) and (2) of Schedule 4 (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access to a public highway or improve existing means of access to a public highway, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If a relevant planning authority which receives an application for approval under paragraph (1)(b) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it shall be deemed to have granted approval.

Agreements with street authorities

17.16.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the strengthening, improvement, repair or reconstruction of any street required as a result of the exercise of the powers conferred by this Order;
- (b) any stopping up, alteration or diversion of a street authorised by this Order; or
- (c) the carrying out in the street of any of the works referred to in article 13(1) (street works).

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Public rights of way

18.17.—(1) With effect from the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard defined in the implementation plan, the section of each public right of way (being a footpath) specified in columns (1), (2) and (3) of Schedule 3 (footpaths to be diverted) is extinguished.

(2) With effect from that same date, the alternative section of each footpath specified in column (4) of Schedule 5 is created.

(3) In this article—

“implementation plan” means the written plan prepared by the undertaker and approved by the local highway authority for the creation of the agreed alternative right of way to the defined standard; and

“local highway authority” has the same meaning as in section 329(1) of the 1980 Act.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

19.18.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker shall not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

(4) The undertaker shall not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(b) (requirement for an environmental permit).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(c) (interpretation), an internal drainage board, a

(a) 1991 c 56, as amended at the date of the coming into force of this Order

(b) S I 2010/675, as amended at the date of the coming into force of this Order

(c) 1964 c 40, as amended at the date of the coming into force of this Order

joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those Regulations.

Protective work to buildings

20.19.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 58 (arbitration).

(7) The undertaker shall compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker shall compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

~~21.20~~—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) shall, if so required upon entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent shall not be unreasonably withheld.

(5) The undertaker shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Right to dredge

~~22.21~~—(1) The undertaker may, for the purposes of constructing and maintaining the authorised development and of affording access to the authorised development by vessels, from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the River Humber as adjoin or are near to the work and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part 9 of the Merchant Shipping Act 1995) from time to time dredged by them.

(2) No such materials shall be laid down or deposited—

- (a) in contravention of the provisions of any enactment as respects the disposal of waste; or

- (b) in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Marine Management Organisation pursuant to Part 2 of Schedule 8 (deemed marine licence).
- (3) The undertaker shall consult with the Humber Conservancy Board before exercising the rights conferred on them by this article.

Tidal works not to be executed without approval of Secretary of State

~~23.22.~~—(1) Unless its construction has commenced within five years of the coming into force of this Order, no tidal work shall be constructed, reconstructed, extended, enlarged, replaced or relaid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before that work is begun.

(2) If a tidal work is constructed, reconstructed, extended, enlarged, replaced or relaid in contravention of paragraph (1) or of any condition or restriction imposed under that paragraph—

- (a) the Secretary of State may by notice in writing require the undertaker at its own expense to remove the tidal work or any part of it and restore the site to its former condition; and, if on the expiration of 30 days beginning with the date when the notice is served on the undertaker it has failed to take reasonable steps to comply with the requirements of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; or
 - (b) if it appears to the Secretary of State urgently necessary so to do, the Secretary of State may remove the tidal work, or part of it, and restore the site to its former condition,
- and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the undertaker.

Abatement of works abandoned or decayed

~~24.23.~~—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the undertaker at its own expense either to repair and restore that work or any part, or to remove that work and restore the site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion of it, in any notice under this article.

(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the undertaker

Survey of tidal works

~~25.24.~~ If the Secretary of State considers it expedient to do so, the Secretary of State may order a survey and examination of a tidal work or of the site on which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the undertaker.

Lights on tidal works etc. during construction

~~26.25.~~ The undertaker shall at or near—

- (a) a tidal work, including any temporary work; or

- (b) any plant, equipment or other obstruction placed, in connection with any authorised development or any work authorised by article 10 (provision of works), within the area of seaward construction activity,

during the whole time of the construction, reconstruction, extension, enlargement, replacement or relaying, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State and the Humber Conservancy Board or, failing agreement between them, the Secretary of State may from time to time direct.

Provision against danger to navigation

~~27:26~~. In case of damage to, or destruction or decay of, a tidal work or any part of it, the undertaker shall as soon as reasonably practicable notify the Humber Conservancy Board and Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House and the Humber Conservancy Board or, failing agreement between them, the Humber Conservancy Board may from time to time direct.

Permanent lights on tidal works

~~28:27~~. After the completion of a tidal work the undertaker shall at the outer extremity of it exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as the Humber Conservancy Board and Trinity House or, failing agreement between them, the Humber Conservancy Board may from time to time direct.

Power to appropriate

~~29:28~~.—(1) Subject to articles 11 and article 13, the undertaker may from time to time set apart and appropriate any part of the harbour for the exclusive or preferential use and accommodation of any trade, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such charges and to such terms, conditions and regulations as the undertaker may think fit.

(2) No person or vessel shall make use of any part of the harbour so set apart or appropriated without the consent of the harbour master, and—

- (a) the harbour master may order any person or vessel making use of the harbour without such consent to leave or be removed; and
- (b) the provisions of section 58 of the 1847 Act (powers of harbour master as to mooring of vessels in harbour), as incorporated by this Order, shall extend and apply with the necessary modifications to any such vessel.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

~~30:29~~.—(1) The undertaker may acquire compulsorily so much of the Order land as is shown washed pink on the land plan as is required for the authorised development or to facilitate it.

(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article is subject to article 39 (temporary use of land for carrying out the authorised development).

Power to override easements and other rights

31.30.—(1) Any authorised activity undertaken by the undertaker which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title under it) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or carrying out, or maintenance of any building or work on land;
- (b) the erection, construction, or maintenance or anything in, on, over or under land; or
- (c) the use of any land.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including and any natural right to support.

(4) Nothing in this article shall authorise interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is—

- (a) a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or
- (b) a right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.

(5) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right shall be extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(6) In respect of any interference, breach extinguishment, abrogated or discharged in pursuance of this article, compensation—

- (a) shall be payable under section 7 or 10 of the 1965 Act; and
- (b) shall be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where—
 - (i) the compensation is to be estimated in connection with a purchase under those acts; or
 - (ii) the injury arises from the execution of works on or use of land acquired under those acts.

(7) Nothing in this article shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

(8) Nothing in this article shall be construed as restricting the entitlement of any person to compensation.

(9) Where a person deriving title under the undertaker by whom the land in question was acquired or appropriated—

- (a) is liable to pay compensation, and
- (b) fails to discharge that liability,

the liability shall be enforceable against the undertaker.

Compulsory acquisition of land – incorporation of the mineral code

32.31. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(a) (minerals) are incorporated in this Order subject to the modification that for “the acquiring authority” substitute “the undertaker”.

Time limit for exercise of authority to acquire land compulsorily

33.32.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 35 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(b).

(2) The authority conferred by article 39 (temporary use of land for carrying out the authorised development) shall cease at the end of the period referred to in paragraph (1), but nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

34.33.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plan.

(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act, as substituted by article 37 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

(4) Any person who suffers loss as a result of the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Private rights of way

35.34.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes.

(a) 1981 c 67, as amended at the date of the coming into force of this Order
(b) 1981 c 66, as amended at the date of the coming into force of this Order

(3) Subject to the provisions of this article, all private rights of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 41 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) shall have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land,
- (ii) the undertaker's appropriation of it,
- (iii) the undertaker's entry onto it, or
- (iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs shall not apply to any right of way specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

(a) is made with a person in or to whom the right of way is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

36.35.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(a) 1981 c 66 as amended at the date of the coming into force of this Order

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

(a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and

(b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

~~37.36~~—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 29 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 37 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

~~38.37~~—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—

(a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and

(b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of six weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

39.38.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) shall not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation shall not be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

~~40.39.~~—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 6 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on that land.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land of which temporary possession may be taken, after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 6;
- (b) in the case of any Order land, after the end of the period of two years beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.

(5) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 33 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 36 (acquisition of subsoil only).

(9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised development

~~41-40.~~—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article “the maintenance period”, in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

~~42-41.~~ The undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plan within the limits of the land to be acquired and described in the book of reference;

- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the land plan and described in the book of reference; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plan and described in the book of reference.

Recovery of costs of new connections

43.42.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 41 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 41, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article shall not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6

MISCELLANEOUS AND GENERAL

Deemed marine licence

44.43. The undertaker is deemed to be granted a licence under section 66 of the Marine and Coastal Access Act 2009(a) to carry out the works described in Schedule 8, subject to the provisions set out in that Schedule, which shall be treated as licence conditions.

Felling or lopping of trees

45.44.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(a) 2009 c 23, as amended at the date of the coming into force of this Order

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

Trees subject to tree preservation orders

46.45.—(1) The undertaker may fell or lop any tree described in Schedule 7 and identified on the land plan, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

Railway and navigation undertakings

47.46.—(1) Subject to the following provisions of this article, the undertaker may not under article 13 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

(4) In this paragraph "navigation authority" means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.

Railway network

48.47.—(1) The modification of the railway network consisting of the removal of the line crossing the Order land from the network operated by Network Rail shall be treated as a minor modification for the purposes of Part 4 of the Railways Act 2005(a).

(a) 2005 c 14 as amended at the date of the coming into force of this Order

(2) The undertaker, or any person permitted by the undertaker, may operate and use the railway crossing the Order land together with any ancillary works as a system, or part of a system, for the carriage of goods.

(3) The Office of Rail Regulation, Network Rail and the undertaker may enter into agreements in connection with the operation and use of the railway crossing the Order land.

Arrangements with Her Majesty's Revenue and Customs

~~49.48.~~ The undertaker and Her Majesty's Revenue and Customs may enter into any such agreement or arrangement as they think fit to provide for, or to facilitate, the assessment, collection or recovery of charges, including an agreement or arrangement as to the provision and maintenance of accommodation at the harbour.

Application of landlord and tenant law

~~50.49.~~—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

~~51.50.~~ Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

~~52.51.~~—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance

(a) 1990 c 43, as amended at the date of the coming into force of this Order

is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974^(a); or

- (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
- (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development in accordance with a scheme of monitoring and attenuation of noise agreed with the relevant planning authority as described in requirement 19; or
 - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

53.52. Schedule 9 to this Order has effect.

Saving for Trinity House

54.53. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Disapplication of regulation 73 of the Conservation of Habitats and Species Regulations 2010

55.54.—(1) Regulation 73 of the Conservation of Habitats and Species Regulations 2010^(b) (general development orders) (“the Habitats Regulations”) shall not apply to any planning permission which relates to the works authorised by article 10 (provision of works) and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995^(c) for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

- (2) Paragraph (1) does not apply if and to the extent that those works—
- (a) do not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 61 of the Habitats Regulations (assessment of implications for European Sites and European Offshore Marine Sites) in connection with the making of this Order; and
 - (b) are not the subject of a further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

Planning, etc. jurisdiction

56.55.—(1) During the period beginning with the date when this Order comes into force and ending on the accretion date, the area within the Order limits shall, for the purposes of the Control

(a) 1974 c 40, as amended at the date of the coming into force of this Order
(b) S I 2010/400 as amended at the date of the coming into force of this Order
(c) S I 1995/418 as amended at the date of the coming into force of this Order

of Pollution Act 1974^(a) and the 1990 Act, be annexed to and incorporated with the area of the relevant planning authority.

(2) In this article, “accretion date” means the date when the works authorised by this Order have been completed or, if earlier, the date when the benefits and rights granted by this Order cease to have effect pursuant to article 6 (period for completion of work).

Certification of plans etc

~~57:56.~~—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the decision-maker copies of—

- (a) the book of reference;
- (b) the Crown land plan;
- (c) the ecology plan;
- (d) the heritage plan;
- (e) the land plan;
- (f) the rights of way plan; and
- (g) the works plan,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

~~58:57.~~—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978^(b) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(a) 1974 c 40 as amended at the date of the coming into force of this Order
(b) 1978 c 30

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement shall be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person shall give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.

(9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

Arbitration

~~59.58.~~ Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Requirements - appeals

~~60.59.~~ Section 78 of the 1990 Act shall apply to an application for any consent, agreement or approval of a local planning authority under Schedule 11 as if such consent, agreement or approval were required pursuant to a condition imposed on a grant of planning permission.

Signed by authority of the Secretary of State

[xxx] 2013

Department for Transport

SCHEDULES

SCHEDULE 1

Article 5

AUTHORISED DEVELOPMENT

NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT

1. In the district of North Lincolnshire and within the limits of deviation for Work No. 1 shown on the works plan~~Order limits~~—

Work No. 1—a quay of solid construction.

ASSOCIATED DEVELOPMENT

2. In the district of North Lincolnshire and within the limits of deviation for Work No. 2 shown on the works plan~~Order limits~~—

Work No. 2—works to the junction of Humber Road and Rosper Road;

3. In the district of North Lincolnshire and within the Order limits—

- (a) dredging and land reclamation;
- (b) the provision of onshore facilities for the manufacture, assembly and storage of components and parts for offshore marine energy and related items;
- (c) works to Rosper Road, Eastfield Road, the A160 and the A180;
- (d) surface and foul water disposal arrangements;
- (e) lighting;
- (f) parking;
- (g) ecological mitigation works; and
- (h) the re-siting of apparatus.

4. In the district of the East Riding of Yorkshire and within the Order limits, the development of compensatory environmental habitat.

SCHEDULE 2

Article 13

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
District of North Lincolnshire	Rosper Road
	Chase Hill Road

SCHEDULE 3

Article 14

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
District of North Lincolnshire	Rosper Road	Between points C and D as shown on the rights of way plan
	Rosper Road	Between points E and F as shown on the rights of way plan
	Eastfield Road	Between points G and H as shown on the rights of way plan

SCHEDULE 4

Article 15

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Subject to street works</i>
District of North Lincolnshire	Improved access from Rosper Road shown at the point marked A on sheet 2 of the rights of way plan
	New access from Rosper Road shown at the point marked A on sheet 3 of the rights of way plan

SCHEDULE 5

Article 17

FOOTPATHS TO BE STOPPED UP

<i>(1)</i> Area	<i>(2)</i> Footpath to be stopped up	<i>(3)</i> Extent of stopping up	<i>(4)</i> New footpath to be substituted
District of North Lincolnshire	Footpath 50	From point F1 to point F2 as shown in orange on the rights of way plan	A footpath between points F1 and F3 as shown in blue on the rights of way plan
District of the East Riding of Yorkshire	Paul Footpath 6	From point F4 to point F5 as shown in orange on the rights of way plan	A footpath between points F4 and F5 as shown in blue on the rights of way plan

SCHEDULE 6

Article 39

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> Area	<i>(2)</i> Number of land shown on land plan	<i>(3)</i> Purpose for which temporary possession may be taken	<i>(4)</i> Relevant part of the authorised development
District of North Lincolnshire	01001, 01002, 01003	Works to A160 / Rosper Road junction	Works to Rosper Road
	02001, 03001, 04001, 05001	Works to Rosper Road	Works to Rosper Road
	02009, 02010, 02011, 02012, 03027	Footpath diversion	Footpath diversion
	03026	Private track diversion	Private track diversion
	02013	Quay construction - access	Marine works
	06001, 06002, 06003, 06004, 06005	Installation of a sewer and works to sewage treatment works	Sewage improvement works

SCHEDULE 7

Article 45

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Identification of tree shown on ecology plan</i>	<i>(3)</i> <i>Work to be carried out</i>
District of North Lincolnshire	Marked with T1 on sheet 3 of the ecology plan	Felling to allow authorised development to proceed
	Marked with T2 on sheet 3 of the ecology plan	Felling to allow authorised development to proceed

DEEMED MARINE LICENCE

PART 1

CONSTRUCTION OF THE QUAY

Particulars of the deposit

~~1. The Company and any agent or contractor acting on their behalf is permitted to deposit the substances or articles specified in paragraph 2 within the limits of deviation for Work No. 1 as shown on the works plan.~~

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~~2. The substances or articles authorised for deposit at sea under paragraph 1 are:~~

- ~~(a) iron and steel;~~
- ~~(b) concrete;~~
- ~~(c) pipe, duct and cabling materials;~~
- ~~(d) sea dredged aggregates; and~~
- ~~(e) gravel.~~

~~3. The category of works for which the deposit of the substances or articles as specified in paragraph 2 is permitted under paragraph 1 are:~~

- ~~(a) revetment;~~
- ~~(b) dock wall; and~~
- ~~(c) pier.~~

~~4. Details of the works requiring the deposit of the substances or articles as specified at paragraph 2 are:~~

- ~~(a) Work No. 1 as described in Schedule 1.~~

~~5. Such works are as detailed in the plans below which were submitted with the application to the Infrastructure Planning Commission:~~

- ~~(a) Work No. 1 as shown on Works Plan sheets 8 and 9~~

~~6. The works shall be carried out in accordance with a works schedule to be agreed in writing between the Company and the Marine Management Organisation prior to the commencement of the works, and any changes to the works schedule are also to be agreed in writing with the Marine Management Organisation.~~

Coast protection

~~7. The Company must ensure that during the construction of the works a vessel will be used to broadcast navigational warnings, of a type and at a frequency agreed with the Marine Management Organisation.~~

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~~8. The Company must ensure that lighted cardinal buoys are provided to mark the limit of the construction site and that the works are marked and lighted in accordance with a scheme agreed with the General Lighthouse Authority.~~

~~9. No later than 10 days before the commencement of the works, the Company shall notify the following:~~

- ~~(a) AB Ports;~~
- ~~(b) local mariners' and fishermen's organisations;~~
- ~~(c) the Radio Navigational Warnings Section of the UK Hydrographic Office;~~
- ~~(d) the District Marine Officer of the Marine Management Organisation; and~~
- ~~(e) the Sea Fish Industry Authority, by means of a notice in the Kingfisher Fortnightly Bulletin.~~

~~10. No later than 10 days after the completion of the works, the Company shall notify the following:~~

- ~~(a) the Marine Management Organisation; and~~
- ~~(b) the UK Hydrographic Office.~~

PART 2

CONSTRUCTION OF THE PUMPING STATION

Particulars of the deposit

~~11. The Company and any agent or contractor acting on their behalf is permitted to deposit the substances or articles specified in paragraph 12 within parcel 09001 as shown on sheet 9 of the sheet 9 of the land plan, adjacent to parcel 03023 shown on sheet 3 of the land plan and extending extending no more than 15 metres into parcel 09001.~~

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~~12. The substances or articles authorised for deposit at sea under paragraph 11 are:~~

- ~~(a) pipes extending from a pumping station.~~

~~13. The category of works for which the deposit of the substances or articles as specified in paragraph 12 is permitted under paragraph 11 is construction of a pumping station.
pumping station.~~

~~14. Details of the works requiring the deposit of the substances or articles as specified at paragraph 12 are:~~

- ~~(a) associated development item 3(d) referred to in Schedule 1.~~

~~15. Such works are as detailed in the drawings and sectional plans detailed below which were submitted with the application to the Infrastructure Planning Commission:~~

- ~~(a) drawing AME—02009, and~~
- ~~(b) drawing AME—02010.~~

~~16. The works shall be carried out in accordance with a works schedule to be agreed in writing between the Company and the Marine Management Organisation prior to the commencement of the works, and any changes to the works schedule are also to be agreed in writing with the Marine Management Organisation.~~

PART 3

CAPITAL DREDGING

Particulars of the works

~~17. The Company and any agent or contractor acting on their behalf is permitted to dredge within the following areas:~~

- ~~(a) parcel 08001 as shown on sheet 8 of the land plan; and~~
- ~~(b) parcel 09001 as shown on sheet 9 of the land plan.~~

~~18. The permission to dredge given under paragraph 17 is to be used for the purposes of purposes of establishing access for vessels to the authorised development and for the installation installation of pipes from a pumping station.~~

~~19. The works shall be carried out in accordance with a works schedule to be agreed in writing between the Company and the Marine Management Organisation prior to the commencement of the works, and any changes to the works schedule are also to be agreed in writing with the Marine Management Organisation.~~

PART 4

MAINTENANCE DREDGING

Particulars of the works

~~20. The Company and any agent or contractor acting on their behalf is permitted to dredge within the following areas:~~

- ~~(a) the area of sea bed bounded by the south Humber shore at grid reference TA 170197, with vertices at points~~
- ~~(b) TA 173199;~~
- ~~(c) TA 176195;~~
- ~~(d) TA 177196;~~
- ~~(e) TA 181183;~~
- ~~(f) TA 184193;~~
- ~~(g) TA 188188, and~~
- ~~(h) rejoining the south Humber shore at TA 181181~~

~~21. The permission to dredge given under paragraph 20 is to be used for the purposes of purposes of maintaining the authorised development and of maintaining access for vessels to the authorised development.~~

~~22. The works shall be carried out in accordance with a works schedule to be agreed in writing between the Company and the Marine Management Organisation prior to the commencement of the works, and any changes to the works schedule are also to be agreed in writing with the Marine Management Organisation.~~

PART 5

DEPOSIT OF DREDGE ARISING

Particulars of the deposit

~~23. The Company and any agent or contractor acting on their behalf is permitted to deposit the substances or articles specified in paragraph 24 within the following areas:~~

- ~~(a) the area of sea bed known as HU080;~~
- ~~(b) the area of sea bed known as HU081;~~

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~~(e) the area of sea bed known as HU082; and~~

~~(d) the area of sea bed known as HU083.~~

~~in quantities not exceeding 981,150m³ of erodible materials in the case of HU080 and in quantities not exceeding 954,350m³ of inerodible materials in the case of HU081, HU082 and HU083.~~

~~24. The substances or articles authorised for deposit at sea under paragraph 23 are:~~

~~(a) dredge arisings from the river Humber as a result of the authorised development.~~

~~25. The works shall be carried out in accordance with a works schedule to be agreed in writing between the Company and the Marine Management Organisation prior to the commencement of the works, such schedule to include sampling and analysis of material and requirements for disposal returns, and any changes to the works schedule are also to be agreed in writing with the Marine Management Organisation.~~

~~PART 6~~

~~GENERAL~~

~~Notifications~~

~~26. The Company shall notify the Local District Marine Office of the proposed start date for an activity or individual phase of an activity authorised by this deemed licence not less than 10 working days before a it is expected to commence.~~

~~27. The Company shall notify the Local District Marine Office of the completion date for an activity or individual phase of an activity authorised by this deemed licence within 10 days of completion of that activity.~~

~~28. The Licence Holder shall inform the Marine Management Organisation of the location and quantities of material deposited each month under this deemed licence:~~

~~(a) for those deposits taking place in the months of August to January inclusive, by the date of 31 January following such deposits; and~~

~~(b) for those deposits taking place in the months of February to July inclusive, by the date of 31 July following such deposits.~~

~~Inspection of Records~~

~~29. The Company shall:~~

~~(a) permit any person who is appointed by the Marine Management Organisation to inspect, and make notes from, all books, papers, maps and other records of any kind kept by the Company in pursuance of this deemed licence or in connection with activities associated with this deemed licence; and~~

~~(b) furnish that person at all reasonable times with such information and provide him at all reasonable times with such reasonable assistance as he may request in connection with or arising out of an inspection in pursuance of this paragraph.~~

~~Rights of Access~~

~~30. Any person or persons authorised by the Marine Management Organisation shall be entitled at all reasonable times to enter into and upon any of the Company's installations, vessels or equipment used or to be used in connection with the activities authorised by this deemed licence in accordance with Chapter 2, Part 8 of the Marine and Coastal Access Act 2009.~~

~~Variation, suspension, revocation and transfer~~

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~~31. The Marine Management Organisation may by notice in writing to the Company vary, suspend or revoke this deemed licence if it appears to it that there has been a breach of any of its provisions.~~

~~32. The Marine Management Organisation may by notice in writing to the Company vary, suspend or revoke this deemed licence if it appears to it that:~~

- ~~(a) in the course of the application for this Order, any person either supplied information to the Marine Management Organisation that was false or misleading, or failed to supply information, and~~
- ~~(b) if the correct information had been supplied the Marine Management Organisation would have, or it is likely that it would have, opposed the grant of the deemed marine licence, or proposed that the deemed licence be granted on different terms.~~

~~33. The Marine Management Organisation may by notice in writing to the Company vary, suspend or revoke this deemed licence if it appears to it that the marine licence ought to be varied, suspended or revoked:~~

- ~~(a) because of a change of circumstances relating to the environment or human health;~~
- ~~(b) because of increased scientific knowledge relating to either of those matters;~~
- ~~(c) in the interests of safety of navigation; or~~
- ~~(d) for any other reason that appears to the Marine Management Organisation to be relevant.~~

~~34. In the event of the Company becoming aware that any of the information on which the granting of this deemed licence was based has changed or is likely to change, the Company shall notify the Marine Management Organisation in writing of the details at the earliest opportunity.~~

~~35. In the event that the Company wishes any of the particulars set down in this deemed licence to be altered, the Company shall notify the Marine Management Organisation in writing at the earliest opportunity.~~

~~36. If the Marine Management Organisation receives notification under either of paragraphs 34 or 35, then it may vary the terms of this deemed licence in accordance with the notification and shall inform the Company in writing of any such variation to this deemed licence.~~

~~37. The Marine Management Organisation may make a reasonable charge for making changes to changes to this deemed licence that are requested by the Company under paragraph 35.~~

Force majeure

~~38. If by reason of force majeure any substances or articles are deposited otherwise than at the construction or disposal sites specified at paragraphs 1, 11 and 23 of this deemed licence then the licence then the full details of the circumstances of that disposal must be notified to the Marine Management Organisation with 48 hours of the incident occurring, and for the purposes of this paragraph force majeure shall be deemed to apply when, due to stress of weather or any other cause, the master of a vessel determines that it is necessary to deposit the substances or articles otherwise than at the specified disposal sites because the safety of human life or of the vessel is threatened.~~

Licence conditions binding other parties

~~39. All conditions attached to this deemed marine licence apply to any person who for the time being owns, occupies or enjoys any use of the works for which this licence has been deemed granted in relation to those marine activities authorised under item 7 in section 66(1) of the Marine and Coastal Access Act 2009.~~

Persons responsible for the deposit of the substances or articles

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~~40. The details of the Master of any vessel engaged in any of the activities permitted by this deemed licence, or where the Company intends to engage an agent, contractor or sub-contractor to carry out the activities permitted by this deemed licence the details of such agent or contractor, shall be submitted by the Company for the approval of the Marine Management Organisation (such approval not to be unreasonably withheld or delayed).~~

~~41. All parties approved under paragraph 40 shall acknowledge their acceptance of the terms of the terms of this deemed licence in writing prior to engaging in any activity to which this deemed licence relates.~~

~~42. The name, type, and registration number of each vessel or vehicle which will be used to carry out the activities permitted by this deemed licence shall be submitted by the Company for the approval of the Marine Management Organisation (such approval not to be unreasonably withheld or delayed).~~

~~43. Only the agents, contractors, sub-contractors, vessels and vehicles which are approved under paragraphs 40 to 42 may operate under the terms of this deemed licence.~~

~~44. The Master or the Officer of the Watch of each of the vessels undertaking deposit activities permitted under this deemed licence must maintain a written log of operations recording, in the English language, the following information:~~

- ~~(a) the name of the vessel;~~
- ~~(b) the quantity and type of each substance or article loaded for deposit;~~
- ~~(c) the date and time of departure from the port or site at which the substances or articles are loaded for deposit in the sea and time of arrival (and date if different) at the disposal site on each occasion that it proceeds to and from such area;~~
- ~~(d) latitude and longitude position (in degrees and minutes and decimal of a minute to at least one decimal place) of the vessel at intervals of not more than 20 minutes throughout the course of any disposal, the duration of such disposal for the purpose of this deemed marine licence to be considered to be from the commencement of loading each consignment of material for deposit in the Sea to the completion of that material at the disposal site;~~
- ~~(e) the time taken to complete the disposal operation and a statement for the reasons for any delays;~~
- ~~(f) courses and speeds together with any alterations throughout each consignment disposal (multiple changes to be recorded as "various");~~
- ~~(g) the rate of deposit, together with any variations, throughout the disposal;~~
- ~~(h) weather, sea state, wind and tidal set and rate throughout the disposal; and~~
- ~~(i) the signature of the Master at the foot of each log sheet or page of the record.~~

Distribution of copies of this deemed licence

~~45. The Company is required to ensure that a copy of this deemed licence and any subsequent revisions or amendments to it, are given to~~

- ~~(1) all agents and contractors as approved under paragraph 40; and~~
- ~~(2) the masters of all vessels and transport managers responsible for the vehicles employed in the pursuance of this deemed licence as approved under paragraph 42.~~

~~46. Copies of this deemed licence shall also be available at the following locations:~~

- ~~(1) the registered address of the Company;~~
- ~~(2) at any site office, located at or adjacent to the site of the works authorised by this deemed licence, used by the Company, agents, contractors or sub-contractors responsible for the carrying out of the activities authorised by this licence; and~~

~~(3) on board each vessel or at the office of any transport manager with responsibility for vehicles approved under paragraph 42 of this deemed licence.~~

Supplementary Conditions

~~47. The Company must ensure that information regarding the origin of any new rock material is supplied to the Marine Management Organisation before any deposit of such material.~~

~~48. The Company must ensure that any new rock material used is inert and contains minimal fines.~~

~~49. The Company must ensure as far as practicable that the resuspension of sediment during the activities authorised by this deemed licence is minimised.~~

~~50. The Company must ensure that any equipment, temporary works and debris associated with the activities authorised by this deemed licence are removed from the foreshore upon completion of the works.~~

~~51. The Company must ensure that best practice is in place for operating machinery to reduce unnecessary noise.~~

~~52. The Company must ensure that suitable bunding, storage facilities, etc. are employed to prevent as far as practicable the release of fuel oils, lubricating fluids etc. associated with the plant and machinery used to carry out the activities authorised by this deemed licence.~~

~~53. The Company must ensure that the risk of contamination of the water or foreshore from wet concrete or mortar products is minimised.~~

~~54. In this schedule:~~

~~(1) "the Company" means the undertaker.~~

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DEEMED MARINE LICENCEPART 1INTRODUCTORYInterpretation1. (1) In this Schedule:—

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“the approach channel” means the area bounded by co-ordinates (53°39.57’N, 00°13.43’W), (53°39.61’N, 00°13.30’W), (53°39.40’N, 00°12.90’W), (53°39.03’N, 00°12.41’W) and (53°38.94’N, 00°12.60’W) and shown on sheet xx of the works plan;

“the berthing pocket” means the area bounded by co-ordinates (53°39.55’N, 00°13.48’W), (53°39.57’N, 00°13.43’W), (53°38.94’N, 00°12.60’W) and (53°39.92’N, 00°12.64’W) and shown on sheets 4, 8 and 9 of the works plan;

“the Centrica outfall” means the area bounded by co-ordinates xxx, xxx, xxx and xxx and shown on sheet 5 of the works plan;

“clay” means dredged materials with a diameter of less than 31.25 micrometres;

“the E.ON outfall” means the area bounded by co-ordinates xxx, xxx, xxx and xxx and shown on sheet 5 of the works plan;

“flood wall at Cherry Cobb Sands” means the area bounded by co-ordinates xxx, xxx, xxx and xxx and shown on sheets 10, 11, 12 and 13 of the works plan;

“gravel” means dredged materials with a diameter of at least 2 and less than 64 millimetres;

“HU080” means the area bounded by co-ordinates (53°36.95’N, 00°03.47’W), (53°36.55’N, 00°00.42’E), (53°36.30’N, 00°00.62’W) and (53°36.47’N, 00°02.32’W);

“HU082” means the area bounded by co-ordinates (53°37.47’N, 00°02.27’W), (53°37.25’N, 00°00.80’W), (53°36.97’N, 00°00.81’W) and (53°37.12’N, 00°02.29’W);

“licensable activity” means an activity licensable under section 66 of the 2009 Act;

“licensed activity” means any activity described in Part 2 of this Schedule;

“licensed undertaker” means the Company and any agent or contractor acting on its behalf;

“MMO” means the Marine Management Organisation;

“mean high water springs” means the average of high water heights occurring at the time of spring tides;

“named vessel” means a vessel whose name and type has been notified to the MMO in writing;

“the North Killingholme Haven Pits sluice site” means the area bounded by co-ordinates xxx, xxx, xxx and xxx and shown on sheet 5 of the works plan

“the pumping station site” means the area bounded by co-ordinates xxx, xxx, xxx and xxx and shown on sheets 3 and 9 of the works plan;

“the quay limits” means the area bounded by co-ordinates (53°39.46’N, 00°13.68’W), (53°39.54’N, 00°13.45’W), (53°38.95’N, 00°12.67’W), (53°38.88’N, 00°12.75’W) and (53°38.98’N, 00°13.18’W) and shown on sheets 8 and 9 of the works plan;

“sand” means dredged materials with a diameter of at least 62.5 micrometres and less than 2 millimetres;

“sea bed” means the ground under the sea;

“silt” means dredged materials with a diameter of at least 31.25 and less than 62.5 micrometres; and

“turning area” means the area bounded by co-ordinates (53°39.40’N, 00°12.90’W), (53°39.41’N, 00°12.53’W), (53°39.11’N, 00°12.26’W) and (53°39.03’N, 00°12.41’W) and shown on sheets 8 and 9 of the works plan.

(2) Unless otherwise specified, all geographical co-ordinates given in this Schedule are in latitude and longitude degrees and minutes to two decimal places.

Addresses

2. (1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this schedule is the Marine Management Organisation, Marine Licensing Team, PO Box 1275, Newcastle upon Tyne, NE99 5BN.

(2) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this schedule is marine.consent@marinemangement.org.uk.

PART 2

LICENSED ACTIVITIES

3. The activities set out in this Part are able to be carried out by the licence holder as if licensed under the 2009 Act.

Construction of the quay

4. (1) The licence holder is permitted to construct a quay and carry out associated land reclamation within the quay limits and according to the following specification:—

- (a) approximately 550 tubular and 1100 sheet steel perimeter piles may be driven into the bed of the estuary to form the external face of the quay, where such piles are to be installed from named vessels moored in the estuary;
- (b) two return walls may be constructed between the ends of the quay and the existing flood defence wall, comprising approximately 23,000 steel piles driven into the bed of the estuary from named vessels and also earthwork revetments with approximately 75,000 tonnes of rock armour protection, such revetments and rock armour to be constructed using land-based plant;
- (c) approximately 450 flap anchor piles may be fixed to the landward face of the perimeter piles and seated in a trench on the bed of the estuary, to be installed from named vessels moored in the estuary;
- (d) approximately 70 steel anchor piles may be driven into the bed of the estuary and fixed to perimeter piles, to be installed from named vessels moored in the estuary;
- (e) the area of estuary approximately 50 metres landward of the quay perimeter piles may be reclaimed by depositing marine dredged sands and gravels from named vessels using rainbowing techniques;
- (f) the remaining area of estuary enclosed by the quay perimeter piles and the two return walls may be reclaimed using marine dredged sands and gravels by constructing two

granular dams that extend from the existing flood defence wall to the area reclaimed under paragraph (f), so that the dams divide the remaining reclaim area into three approximately equal cells, whereupon named vessels shall pump fluidised granular material into each cell in sequence, allowing estuarine water that is retained within each cell to overflow the dams as the fluidised material is deposited and settles within the cell, such activity to continue until all cells attain their design levels; and

(g) steel plates may be attached to the perimeter piles by welding and bolting, whereupon a fender may be attached to each steel plate by bolts, all such works being undertaken from a man basket suspended from a crane located on land.

(2) Drainage outfalls and cooling water outfalls may be incorporated into the quay.

(3) Monitoring equipment fixed to buoys shall be deployed at locations in the estuary during the piling works permitted by sub-paragraph (1) in accordance with a mitigation and monitoring plan to be submitted to and approved by the MMO following consultation with the Environment Agency and Natural England.

Temporary dolphins

5. (1) The licence holder is permitted to construct and remove up to seven temporary dolphins within the berthing pocket, such that each dolphin comprises three tubular steel piles driven into the bed of the estuary from named plant moored in the estuary, whereupon the piles shall be braced with interconnecting steelwork.

(1) The dolphins constructed under sub-paragraph (1) may be used to moor named vessels involved in the carrying out of any of the other activities listed in this Part.

(2) Monitoring equipment fixed to buoys shall be deployed at locations in the estuary during the piling works permitted by sub-paragraph (1) in accordance with a mitigation and monitoring plan to be submitted to and approved by the MMO following consultation with the Environment Agency and Natural England.

(3) Each temporary dolphin must be removed as soon as practicable once the activities for which they have been constructed have been completed.

Berthing pocket infill

6. Following or during the dredging of the berthing pocket, the licence holder must deposit up to 250,000 tonnes of gravel and rock from named vessels into the berthing pocket so that its depth does not exceed -11 metres chart datum.

Pumping station

7. (1) The licence holder is permitted to construct a pumping station at the pumping station site according to the following specification:—

(a) a temporary steel cofferdam containing six drainage pipes may be installed through the existing flood defence and extend onto the foreshore, whereupon the flood defence wall shall be reinstated to its original seaward profile using inert soil materials and concrete;

(b) a section of drainage channel may be created by excavating the foreshore seawards from the outfall pipe, whereupon material shall be removed down to the invert level of the drainage pipes over the width of the pipes and up to 50 metres seawards of the pipes;

(c) a stone mattress may be placed within the drainage channel created under (b) over a distance of 20 metres seawards of the outfall pipes; and

(d) a pumping station may be constructed such that its seaward extend it above the stone mattress.

(2) Works outside the cofferdam shall be undertaken using land based plant operating from a berm formed within the south-eastern return wall of the quay.

Compensation site creation

8. The licence holder is permitted to remove a 250 metre section of the existing flood wall at Cherry Cobb Sands under the following conditions:—

- (a) a new flood defence shall have been constructed landward of the existing flood defence;
- (b) a channel shall have been excavated from the site of the breach to the foreshore at the level of the breach;
- (c) all material is to be removed using land-based plant;
- (d) all excavated material is to be disposed of in the intertidal area created between the old and new flood defences; and
- (e) the amount of excavated material shall not exceed xxx.

North Killingholme Haven Pits sluice

9. The licence holder is permitted to carry out works to the existing sluice at the North Killingholme Haven Pits sluice site according to the following specification:—

Capital dredging

10. (1) The licence holder is permitted to carry out capital dredging at the following locations:—

- (a) the quay site to a depth of xxx;
- (b) the berthing pocket to a depth of -11 metres Chart Datum;
- (c) the approach channel to a depth of xxx;
- (d) the turning area to a depth of xxx;
- (e) the E.ON outfall to a depth of xxx;
- (f) the Centrica outfall to a depth of xxx;
- (g) the pumping station channel to a depth of xxx; and
- (h) the Cherry Cobb Sands channel to a depth of xxx.

(2) The materials must be dredged in the approximate quantities and deposited at the locations according to the following table:

<u>Location</u>	<u>Material</u>	<u>Tonnage per year</u>	<u>Deposit location</u>	<u>Total licensed tonnage</u>
<u>Quay site</u>	<u>Gravel</u>		<u>HU080</u>	
	<u>Sand</u>			
	<u>Silt</u>			
	<u>Clay</u>		<u>HU082</u>	
<u>The berthing pocket</u>	<u>Gravel</u>		<u>HU080</u>	
	<u>Sand</u>			
	<u>Silt</u>			
	<u>Clay</u>		<u>HU082</u>	
<u>The approach channel</u>	<u>Gravel</u>		<u>HU080</u>	
	<u>Sand</u>			
	<u>Silt</u>			
	<u>Clay</u>		<u>HU082</u>	
<u>The turning area</u>	<u>Gravel</u>		<u>HU080</u>	
	<u>Sand</u>			
	<u>Silt</u>			
	<u>Clay</u>		<u>HU082</u>	
<u>The E.ON outfall</u>	<u>Gravel</u>		<u>HU080</u>	
	<u>Sand</u>			
	<u>Silt</u>			
	<u>Clay</u>		<u>HU082</u>	
<u>The Centrica outfall</u>	<u>Gravel</u>		<u>HU080</u>	
	<u>Sand</u>			
	<u>Silt</u>			
	<u>Clay</u>		<u>HU082</u>	
<u>The pumping station channel</u>	<u>Gravel</u>		<u>HU080</u>	
	<u>Sand</u>			
	<u>Silt</u>			
	<u>Clay</u>		<u>HU082</u>	
<u>The Cherry Cobb Sands channel</u>	<u>Gravel</u>		<u>HU080</u>	
	<u>Sand</u>			
	<u>Silt</u>			
	<u>Clay</u>		<u>HU082</u>	

Maintenance dredging

11. (1) The licence holder is permitted to carry out maintenance dredging at the following locations:—

- (a) the quay site;
- (b) the berthing pocket;
- (c) the approach channel;
- (d) the turning area;
- (e) the E.ON outfall;
- (f) the Centrica outfall;
- (g) the pumping station channel; and
- (h) the Cherry Cobb Sands channel.

(2) The dredging under sub-paragraph (1) may only be carried out for the purpose of:—

- (a) maintaining the authorised development;
- (b) maintaining access to the authorised development; and
- (c) removing siltation caused by the authorised development;

and the dredged depths may not exceed those set out in paragraph 7(1).

(3) The materials must be dredged in the approximate quantities and deposited at the locations according to the following table:

<u>Location</u>	<u>Material</u>	<u>Tonnage per year</u>	<u>Deposit location</u>	<u>Total licensed tonnage</u>
<u>Quay site</u>	<u>Gravel</u>		<u>HU080</u>	
	<u>Sand</u>			
	<u>Silt</u>			
	<u>Clay</u>		<u>HU082</u>	
<u>The berthing pocket</u>	<u>Gravel</u>		<u>HU080</u>	
	<u>Sand</u>			
	<u>Silt</u>			
	<u>Clay</u>		<u>HU082</u>	
<u>The approach channel</u>	<u>Gravel</u>		<u>HU080</u>	
	<u>Sand</u>			
	<u>Silt</u>			
	<u>Clay</u>		<u>HU082</u>	
<u>The turning area</u>	<u>Gravel</u>		<u>HU080</u>	
	<u>Sand</u>			
	<u>Silt</u>			
	<u>Clay</u>		<u>HU082</u>	
<u>The E.ON outfall</u>	<u>Gravel</u>		<u>HU080</u>	
	<u>Sand</u>			
	<u>Silt</u>			
	<u>Clay</u>		<u>HU082</u>	
<u>The Centrica outfall</u>	<u>Gravel</u>		<u>HU080</u>	
	<u>Sand</u>			
	<u>Silt</u>			
	<u>Clay</u>		<u>HU082</u>	
<u>The pumping station channel</u>	<u>Gravel</u>		<u>HU080</u>	
	<u>Sand</u>			
	<u>Silt</u>			
	<u>Clay</u>		<u>HU082</u>	
<u>The Cherry Cobb Sands channel</u>	<u>Gravel</u>		<u>HU080</u>	
	<u>Sand</u>			
	<u>Silt</u>			
	<u>Clay</u>		<u>HU082</u>	

PART 3

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CONDITIONS

General conditions

12. (1) The conditions set out at paragraphs 10 to xxx are licence conditions attached to the deemed marine licence granted by article 43.

(1) For such of the licensed activities that involve the construction, alteration or improvement of works in or over the sea or on or under the sea bed, the conditions shall apply to any person who for the time being owns, occupies or enjoys any use of the licensed activity.

13. The MMO must be notified by the licence holder at least five working days before the commencement of any licensed activity of its acceptance of the provisions of this Schedule and that the company and any agents or contractors employed by it to carry out the licensed activities have knowledge of the provisions of this Schedule.

14. The MMO must be notified by the licence holder at least five working days before the commencement of each licensed activity that that such licensed activity is about to commence.

15. The MMO must be notified by the licence holder in writing of any agents, contractors or sub-contractors that will be carrying out any licensed activity on behalf of the licence holder at least five working days before the commencement of the licensed activity.

16. The licence holder must ensure that a copy of this Schedule and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or sub-contractors that will be carrying out any licensed activity on behalf of the licence holder.

17. The MMO must be provided with notification of any vessel being used to undertake any licensed activity no less than 24 hours before the commencement of the licensed activity, such notification setting out

- (a) the vessel type,
- (b) the vessel International Maritime Organization (IMO) number; and
- (c) the vessel owner or operating company.

18. The licence holder must ensure that a copy of this Schedule and any subsequent revisions or amendments has been provided to, read and understood by the master of any vessel being used to undertake any licensed activity, and that a copy of this Schedule is held on board any such vessel.

19. Should the licence holder become aware that any of the information on which the granting of this deemed marine licence was based has changed or is likely to change, the licence holder must notify the MMO at the earliest opportunity.

20. Any breach of the conditions of this deemed marine licence may be treated as the breach of a marine licence over which the MMO may take enforcement action under the 2009 Act.

Project wide conditions

21. The works shall be carried out in accordance with a works schedule to be agreed in writing between the licence holder and the MMO prior to the commencement of the works, and any changes to the works schedule are also to be agreed in writing with the MMO.

Piling conditions

22. (1) No operations consisting of piling shall commence until a piling method statement has been submitted to and agreed in writing by the MMO, following consultation with the Environment Agency and Natural England, such statement to include the following:—

- (a) the use of pile pads,
- (b) the use of pile shrouds,
- (c) the specification of piles to be used,
- (d) soft start procedures to be followed after any cessation of piling of more than 10 minutes that ensure an incremental increase in pile power over a set time period until full operational power is achieved, over a period of not less than 20 minutes,
- (e) marine mammal observation, and
- (f) implementation of an active monitoring scheme under paragraph 23.

(2) Percussive piling shall only be carried out in accordance with the relevant piling method statement.

23. No development shall be commenced until an active monitoring scheme has been submitted to and agreed in writing by the MMO, to include the following details:—

- (a) the location of active monitoring buoys and the depth and design of sensors,
- (b) details of the frequency of measurement of temperature and dissolved oxygen,
- (c) 24-hour monitoring of noise,

- (d) when monitoring shall commence and cease, to include a two-week period of pre- and post-construction monitoring to establish baseline conditions and the return to baseline conditions respectively.
- (e) a log of the number and approximate locations of piling rigs that are in operation on any given day, and
- (f) details of how the monitored information will be accessed by or communicated to the site contractor and the MMO as necessary.

(2) The development shall be carried out in accordance with the relevant active monitoring scheme.

(3) No percussive piling shall take place while the data from the relevant active monitoring scheme shows either the temperature to be above 21.5 degrees Celsius or dissolved oxygen to be below 5 milligrams per litre.

24. No percussive piling shall take place between 7 April and 1 June inclusive in any calendar year.

25. (1) Percussive piling shall be restricted at other times as follows:—

- (a) from 2 June to 22 July inclusive in any year, the maximum amount of percussive piling permitted within any four-week period shall not exceed:—
 - (i) 100 hours where a single piling rig is in operation, or
 - (ii) a total of 168 hours where two or more rigs are in operation;
- (b) from 23 July to 10 September inclusive in any year, the maximum amount of percussive piling permitted within any four-week period shall not exceed:—
 - (i) 25 hours where a single piling rig is in operation, or
 - (ii) a total of 42 hours where two or more rigs are in operation;
- (c) from 11 September to 31 October inclusive in any year, the maximum amount of percussive piling permitted within any four-week period shall not exceed:—
 - (i) 134 hours where a single piling rig is in operation, or
 - (ii) a total of 224 hours where two or more rigs are in operation.
- (d) from 1 November in any year to 4 April in the following year inclusive, the maximum amount of percussive piling permitted within any eight-week period shall not exceed:—
 - (i) 336 hours where a single piling rig is in operation, or
 - (ii) a total of 560 hours where two or more rigs are in operation.

(2) For the purposes of calculating hours of operation under this paragraph, these shall be calculated to be the time elapsed between the first and last percussive strikes during any one day.

26. No percussive piling shall take place on a Sunday, or before 0600 hours or after 2200 hours on any other day.

27. The maximum diameter of marine piles shall be 2.1 metres.

Dredge and disposal conditions

28. Conditions 29 to xxx shall apply to licensed activities consisting of dredging and disposal.

29. (1) The licence holder must agree a dredge and disposal strategy with the MMO before the commencement of any licensed activities.

(1) The dredging and disposal must be carried out in accordance with the dredge and disposal strategy.

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF NATURAL ENGLAND

1. For the protection of Natural England the following provisions shall, unless otherwise agreed in writing between the undertaker and Natural England, have effect.

Biodiversity enhancement and monitoring

2. No stage of the authorised development shall commence until a biodiversity enhancement and monitoring plan has been prepared for that stage by the undertaker and approved by Natural England.

3. Each stage of the authorised development shall be carried out and monitoring undertaken in accordance with the relevant biodiversity enhancement and monitoring plan.

Sediment transport and geomorphological effects

4. No tidal work shall commence until a post-construction plan for the monitoring of indirect sediment transport and geomorphological effects caused by that work development has been prepared by the undertaker and approved by Natural England.

5. The undertaker will carry out post-construction monitoring as detailed in the plan agreed under paragraph 4.

PART 2

FOR THE PROTECTION OF THE HUMBER CONSERVANCY

Interpretation

6. In this Part—

“the Conservancy Authority” means AB Ports Humber Estuary Services in its role as harbour authority for the Humber Conservancy;

“the Able Dockmaster” means the dockmaster appointed by the Able Harbour Authority under this Order;

“environmental document” means—

- (a) the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental statement or other document so prepared by way of clarification or amplification of the environmental statement; and
- (b) any other document containing environmental information provided by the Able Harbour Authority to the Secretary of State or the Conservancy Authority for the purposes of any tidal works approval under article 22 (tidal works not to be constructed without approval of the Secretary of State) or this Schedule; and

“the Able Harbour Authority” means Able Humber Ports Ltd in its role as harbour authority for the Able Marine Energy Park;

“the Humber Harbour Master” means the harbour master appointed by the Conservancy Authority to be a harbour master for an area that includes the area of jurisdiction and includes the harbour master’s deputies and assistants; and

“the river” means the River Humber.

General

7.—(1) The provisions of this Schedule shall, unless otherwise agreed in writing between the Able Harbour Authority and the Conservancy Authority, have effect for the protection of the Conservancy Authority and the users of the river.

(2) For the purposes of this Schedule, the definition of “tidal work” shall be taken to include—

- (a) any projection over the river outside the area of jurisdiction by booms, cranes and similar plant or machinery, whether or not situated within the area of jurisdiction; and
 - (b) any authorised work which affects the river or any functions of the Conservancy Authority, whether or not that authorised work is within the limits of the Conservancy Authority,
- but shall not include any maintenance dredging.

Tidal Works: approval of detailed design

8.—(1) Before—

- (a) submitting any plans and sections for any tidal work to the Secretary of State for her approval under article 22 (tidal works not to be constructed without approval of the Secretary of State);
 - (b) commencing any operation for the construction of a tidal work where approval of the Secretary of State under article 22 is not required; or
 - (c) commencing any operation for the maintenance of a tidal work,
- the Able Harbour Authority shall submit to the Conservancy Authority plans and sections of the tidal work or operation and such further particulars as the Conservancy Authority may, within 28 days from the day on which plans and sections are submitted under this sub-paragraph, reasonably require.

(2) No application for the Secretary of State’s approval under article 22 shall be made in respect of a tidal work until plans and sections in respect of that tidal work submitted under sub-paragraph (1) have been approved by the Conservancy Authority.

(3) Any tidal work not requiring the Secretary of State’s approval under article 22 shall not be constructed, and no tidal work shall be maintained, except in accordance with such plans as may be approved in writing by the Conservancy Authority or determined under paragraph 25.

(4) Any approval of the Conservancy Authority required under this paragraph shall not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the Conservancy Authority may make for the protection of—

- (a) traffic in, or the flow or regime of, the river;
- (b) the use of its operational land or the river for the purposes of performing its functions; or
- (c) the performance of any of its functions connected with environmental protection.

(5) Requirements made under sub-paragraph (4) may include conditions as to—

- (a) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the tidal work; and
- (b) the expiry of the approval if the Able Harbour Authority does not commence construction of the tidal work approved within a prescribed period.

(6) Subject to sub-paragraphs (8) and (9), any such approval shall be deemed to have been refused if it is neither given nor refused within 42 days of the specified day.

(7) Before making a decision on any such approval, the Conservancy Authority shall take into account any opinion on plans and sections provided to it by the Environment Agency.

(8) Accordingly, an approval of the Conservancy Authority under this paragraph shall not be deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (6) has not been given pending the outcome of any consultation on the approval in question that the Conservancy Authority is obliged in the proper exercise of its functions to carry out provided that during the course of such consultation, the Conservancy Authority has acted with all due expedition.

(9) In this paragraph “the specified day” means, in relation to any tidal work—

- (a) the day on which plans of that work are submitted to the Conservancy Authority under sub-paragraph (1); or
- (b) the day on which the Able Harbour Authority provides the Conservancy Authority with all such particulars of the work as have been reasonably requested by the Conservancy Authority under that sub-paragraph;

whichever is the later.

(10) Whenever the Able Harbour Authority provides the Secretary of State with an environmental document it shall at the same time send a copy to the Conservancy Authority.

9. Any operations for the construction of any tidal work approved in accordance with this Order shall, once commenced, be carried out by the Able Harbour Authority with all reasonable dispatch and to the reasonable satisfaction of the Conservancy Authority so that river traffic, the flow or regime of the river and the exercise of the Conservancy Authority’s functions shall not suffer more interference than is reasonably practicable, and the Conservancy Authority shall be entitled by its officer at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

Discharges, etc.

10.—(1) The Able Harbour Authority shall not without the consent of the Conservancy Authority—

- (a) deposit in or allow to fall or be washed into the river any gravel, soil or other material; or
- (b) discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise.

(2) Any consent of the Conservancy Authority under this paragraph shall not be unreasonably withheld but may be given subject to such terms and conditions as the Conservancy Authority may reasonably impose.

(3) Any such approval shall be deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 35 days of the day on which the request for consent is submitted under sub-paragraph (1).

(4) In its application to the discharge of water into the river, article 18 (discharge of water) shall have effect subject to the terms of any conditions attached to a consent given under this paragraph.

11. The Able Harbour Authority shall not, in exercise of the powers conferred by article 18, damage or interfere with the beds or banks of any watercourse forming part of the river unless such damage or interference is approved as a tidal work under this Order or is otherwise approved in writing by the Conservancy Authority.

Obstruction in river

12. If any pile, stump or other obstruction to navigation becomes exposed in the course of constructing any tidal work (other than a pile, stump or other obstruction on the site of a structure comprised in any permanent work), the Able Harbour Authority shall, as soon as reasonably practicable after the receipt of notice in writing from the Conservancy Authority requiring such action, remove it from the river or, if it is not reasonably practicable to remove it—

- (a) cut the obstruction off at such level below the bed of the river as the Conservancy Authority may reasonably direct; or
- (b) take such other steps to make the obstruction safe as the Conservancy Authority may reasonably require.

Removal, etc. of the Conservancy Authority moorings and buoys

13. If—

- (a) by reason of the construction of any tidal work it is reasonably necessary for the Conservancy Authority to incur reasonable costs in temporarily or permanently altering, removing, re-siting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by the Conservancy Authority, or laying down and removing substituted moorings or buoys, or carrying out dredging operations for any such purpose, not being costs which it would have incurred for any other reason; and
- (b) the Conservancy Authority gives to the Able Harbour Authority not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the Able Harbour Authority may make in response to the notice within 14 days of the receipt of the notice,

the Able Harbour Authority shall pay the costs reasonably so incurred by the Conservancy Authority.

Navigational lights, buoys, etc.

14. In addition to any requirement under articles 25 (lights on tidal works during construction) and 27 (permanent lights on tidal works), the Able Harbour Authority shall, at or near every tidal work, and any other work of which the Able Harbour Authority is in possession in exercise of any of the powers of this Order (being in either case a work which is below mean high water level forming part of the river), exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the Conservancy Authority may from time to time reasonably require.

Removal of temporary works

15. On completion of the construction of any part of a permanent authorised work, the Able Harbour Authority shall as soon as practicable remove—

- (a) any temporary tidal work carried out only for the purposes of that part of the permanent work; and
 - (b) any materials, plant and equipment used for such construction,
- and shall make good the site to the reasonable satisfaction of the Conservancy Authority.

Protective action

16.—(1) If any tidal work—

- (a) is constructed otherwise than in accordance with the requirements of this Schedule or with any condition in an approval given pursuant to paragraph 8(4); or
- (b) during construction gives rise to sedimentation, scouring, currents or wave action detrimental to traffic in, or the flow or regime of, the river,

then the Conservancy Authority may by notice in writing require the Able Harbour Authority at the Able Harbour Authority's own expense to comply with the remedial requirements specified in the notice.

(2) The requirements that may be specified in a notice given under sub-paragraph (1) are—

- (a) in the case of a tidal work to which sub-paragraph (1)(a) applies, such requirements as may be specified in the notice for the purpose of giving effect to the requirements of—
 - (i) this Schedule; or
 - (ii) the condition that has been breached; or
- (b) in any case within sub-paragraph (1)(b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river.

(3) If the Able Harbour Authority does not comply with a notice under sub-paragraph (1), or is unable to do so then the Conservancy Authority may in writing require the Able Harbour Authority to—

- (a) remove, alter or pull down the tidal work, and where the tidal work is removed to restore the site of that work (to such extent as the Conservancy Authority reasonably requires) to its former condition; or
- (b) take such other action as the Conservancy Authority may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

(4) If a tidal work gives rise to environmental impacts over and above those anticipated by any environmental document, the Able Harbour Authority shall, in compliance with its duties under any enactment and, in particular, under section 48A of the 1964 Act, take such action as is necessary to prevent or mitigate those environmental impacts and in so doing shall consult and seek to agree the necessary measures with the Conservancy Authority.

(5) If the Conservancy Authority becomes aware that any tidal work is causing an environmental impact over and above those anticipated by any environmental document, the Conservancy Authority shall notify the Able Harbour Authority of that environmental impact, the reasons why the Conservancy Authority believes that the environmental impact is being caused by the tidal work and of measures that the Conservancy Authority reasonably believes are necessary to counter or mitigate that environmental impact. The Able Harbour Authority shall implement the measures that the Conservancy Authority has notified to the Able Harbour Authority or shall implement such other measures as the Able Harbour Authority believes are necessary to counter the environmental impact identified, giving reasons to the Conservancy Authority as to why it has implemented such other measures.

Abandoned or decayed works

17.—(1) If any tidal work or any other work of which the Able Harbour Authority is in possession in exercise of any of the powers of this Order (being in either case a work which is below mean high water level) is abandoned or falls into decay, the Conservancy Authority may by notice in writing require the Able Harbour Authority to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as the Conservancy Authority reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river, the Conservancy Authority may by notice in writing require the Able Harbour Authority to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or
- (b) if the Able Harbour Authority so elects, to remove the tidal work and (to such extent as the Conservancy Authority reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the Able Harbour Authority has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, the Conservancy Authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing shall be recoverable from the Able Harbour Authority.

Facilities for navigation

18.—(1) The Able Harbour Authority shall not in the exercise of the powers granted by this Order interfere with any marks, lights or other navigational aids in the river without the agreement of the Conservancy Authority, and shall ensure that access to such aids remains available during and following construction of any tidal works.

(2) The Able Harbour Authority shall provide at any tidal works, or shall afford reasonable facilities at such works (including an electricity supply) for the Conservancy Authority to provide

at the Able Harbour Authority's cost, from time to time, such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation of users of the river in general as the Conservancy Authority may deem necessary by reason of the construction of any tidal works, and shall ensure that access remains available to apparatus during and following construction of such works.

(3) The Able Harbour Authority shall comply with the directions of the Humber Harbour Master from time to time with regard to the lighting on the tidal works or within the harbour, or the screening of such lighting, so as to ensure safe navigation on the river.

Survey of riverbed

19.—(1) Before the commencement of construction of the first tidal work to be constructed following approval pursuant to article 22 (tidal works not to be constructed without approval of the Secretary of State), the Conservancy Authority may, at the Able Harbour Authority's reasonable expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action that might result from the construction of such of the authorised works as would constitute tidal works if they were to be constructed, for the purposes of establishing the condition of the river at that time.

(2) Before the commencement of construction of any other tidal work approved pursuant to article 22, the Conservancy Authority may, at the Able Harbour Authority's reasonable expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action resulting from that tidal work for the purpose of establishing the condition of the river at that time.

(3) The Conservancy Authority may carry out such surveys of the river as are reasonably required during the construction of any tidal work to ascertain the effect of that tidal work on the river and the Conservancy Authority shall make available to the Able Harbour Authority the results of any such survey in electronic and paper format.

(4) After completion of, respectively, any tidal work and all the tidal works constructed under this Order, the Conservancy Authority may, at the Able Harbour Authority's expense carry out a further survey of the parts of the river which were surveyed prior to the construction of that work, or as the case may be a survey of the completed tidal works as so constructed, for the purpose of establishing the condition of the river and the effect that the tidal work is, or as the case may be the tidal works are, having on navigation, the flow and the regime of the river and the exercise of the Conservancy Authority's functions.

(5) The Conservancy Authority shall not under this paragraph carry out a survey of any part of the river as respects which the Able Harbour Authority has provided to the Conservancy Authority survey material which the Conservancy Authority is reasonably satisfied establishes the condition of the river, and in the case of a survey under sub-paragraph (3), the effect of the tidal work, or as the case may be the tidal works.

Sedimentation, etc.: remedial action

20.—(1) This paragraph applies if any part of the river becomes subject to sedimentation, scouring, currents or wave action which—

- (a) is, during the period beginning with the commencement of the construction of that tidal work and ending with the expiration of 10 years after the date on which all the tidal works constructed under this Order are completed, wholly or partly caused by a tidal work; and
- (b) for the safety of navigation or for the protection of works in the river, should in the reasonable opinion of the Conservancy Authority be removed or made good.

(2) The Able Harbour Authority shall either—

- (a) pay to the Conservancy Authority any additional expense to which the Conservancy Authority may reasonably be put in dredging the river to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to the tidal work; or

(b) carry out the necessary dredging at its own expense and subject to the prior approval of the Conservancy Authority, such prior approval not to be unreasonably withheld or delayed;
and the reasonable expenses payable by the Able Harbour Authority under this paragraph include any additional expenses accrued or incurred by the Conservancy Authority in carrying out surveys or studies in connection with the implementation of this paragraph.

Indemnity

21.—(1) The Able Harbour Authority shall be responsible for and make good to the Conservancy Authority all reasonable financial costs or losses not otherwise provided for in this Schedule which may reasonably be incurred or suffered by the Conservancy Authority by reason of—

(a) the construction or operation of the authorised works or the failure of the authorised works;
(b) anything done in relation to a mooring or buoy pursuant to paragraph 13; or
(c) any act or omission of the Able Harbour Authority, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised works or dealing with any failure of the authorised works;
and the Able Harbour Authority shall indemnify the Conservancy Authority from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission.

(2) The fact that any act or thing may have been done—

(a) by the Conservancy Authority on behalf of the Able Harbour Authority; or
(b) by the Able Harbour Authority, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Conservancy Authority, or in a manner approved by the Conservancy Authority, or under its supervision or the supervision of its duly authorised representative;
shall not (if it was done or required without negligence on the part of the Conservancy Authority or its duly authorised representative, employee, contractor or agent) excuse the Able Harbour Authority from liability under the provisions of this paragraph.

(3) The Conservancy Authority shall give the Able Harbour Authority reasonable notice of any such claim or demand as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand shall be made without the prior consent of the Able Harbour Authority.

Statutory functions

22.—(1) Subject to article 4(1) and this paragraph, any function of the Able Harbour Authority or any officer of the Able Harbour Authority, whether conferred by or under this Order or any other enactment, shall be subject to—

(a) any enactment relating to the Conservancy Authority;
(b) any byelaw, direction or other requirement made by the Conservancy Authority or the Humber Harbour Master under any enactment; and
(c) any other exercise by the Conservancy Authority or the Humber Harbour Master of any function conferred by or under any enactment.

(2) The Able Harbour Authority or Able Dockmaster shall not take any action in the river outside the area of jurisdiction under sections 57 and 65 of the 1847 Act as incorporated by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847) except with the consent of the Humber Harbour Master, which shall not be unreasonably withheld.

(3) The Able Dockmaster shall not give or enforce any special direction to any vessel under section 52 of the 1847 Act, as incorporated by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847), if to do so would conflict with a special direction given to the same vessel by the Humber Harbour Master.

(4) The Conservancy Authority shall consult the Able Harbour Authority before making any byelaw which directly applies to or which could directly affect the construction, operation or maintenance of the Able Marine Energy Park.

(5) The Conservancy Authority or the Humber Harbour Master (as appropriate) shall consult the Able Harbour Authority before giving any general direction which directly affects the construction, operation or maintenance of the Able Marine Energy Park.

Consideration for dredged material

23.—(1) Subject to any agreement concluded between the Able Harbour Authority, the Conservancy Authority and any other party benefiting from material dredged by the Conservancy Authority, the Able Harbour Authority shall pay the Conservancy Authority for material dredged by the Conservancy Authority under this Order from so much of the river as is vested in the Conservancy Authority, consideration calculated at a rate agreed between them and otherwise in accordance with this paragraph.

(2) The Able Harbour Authority shall pay reasonable consideration under sub-paragraph (1) as respects material dredged in the course of the construction of the works authorised by article 21 (right to dredge) based on the quantity of such material that—

- (a) is not used for the construction of—
 - (i) the authorised works;
 - (ii) any other works related to the construction of Able Marine Energy Park; or
 - (iii) the related development; and
- (b) is not owned by the undertaker, and
- (c) is sold by the Able Harbour Authority or by any other person exercising any powers under this Order.

Removal of wrecks and obstructions, etc.

24.—(1) Before exercising any power under section 252 of the Merchant Shipping Act 1995(a) or under section 56 of the 1847 Act, the Able Dockmaster shall notify the Humber Harbour Master.

(2) The Able Dockmaster shall comply with any reasonable instructions that the Humber Harbour Master may give in relation to the exercise of the powers referred to in sub-paragraph (1).

Disputes

25. Any dispute arising between the Able Harbour Authority and the Conservancy Authority under this Schedule shall be determined by arbitration as provided in article 66 (arbitration).

PART 3

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

26. For the protection of the Environment Agency, the following provisions shall, unless otherwise agreed in writing between the undertaker and the Environment Agency, have effect.

27. The requirement for consent under section 109 of the Water Resources Act 1991 and byelaw 27 of the Anglian Region Land Drainage and Sea Defence Byelaws 1987 shall not be required for the authorised development subject to the conditions contained in paragraphs 7 to 10.

28. The authorised development should be carried out to ensure minimum obstruction to flows in the watercourse at all times.

29. The requirements set out in the Environment Agency's Pollution Prevention Guideline 5 (Works and Maintenance in or near Water) must be complied with to ensure that the works are carried out in a proper manner and do not adversely affect the watercourse.

30. On completion of the works, all debris and surplus material shall be removed from the banks of the watercourse and that the banks are left in a stable condition with adequate protection provided to avoid erosion, to the satisfaction of the Environment Agency.

31. The Company must bring the conditions contained in paragraphs 7 to 9 to the attention of any agent or contractor responsible for carrying out the authorised development.

PART 4

FOR THE PROTECTION OF THE HIGHWAYS AGENCY

32. For the protection of the Highways Agency, no part of the authorised development shall be occupied until improvements to the following junctions (or alternatives approved in writing by the local planning authority in consultation with the Highways Agency) have been implemented in accordance with details approved by the local planning authority in consultation with the Highways Agency:

- (a) A160/A1173/Humber Road (Manby Road Roundabout),
- (b) A160/Top Road/Habrough Road,
- (c) A160/A1077 Ulceby Road,
- (d) A160/Eastfield Road (signalised junction), and
- (e) A180/A160 Merge/Diverge (Brocklesby Interchange).

PART 5

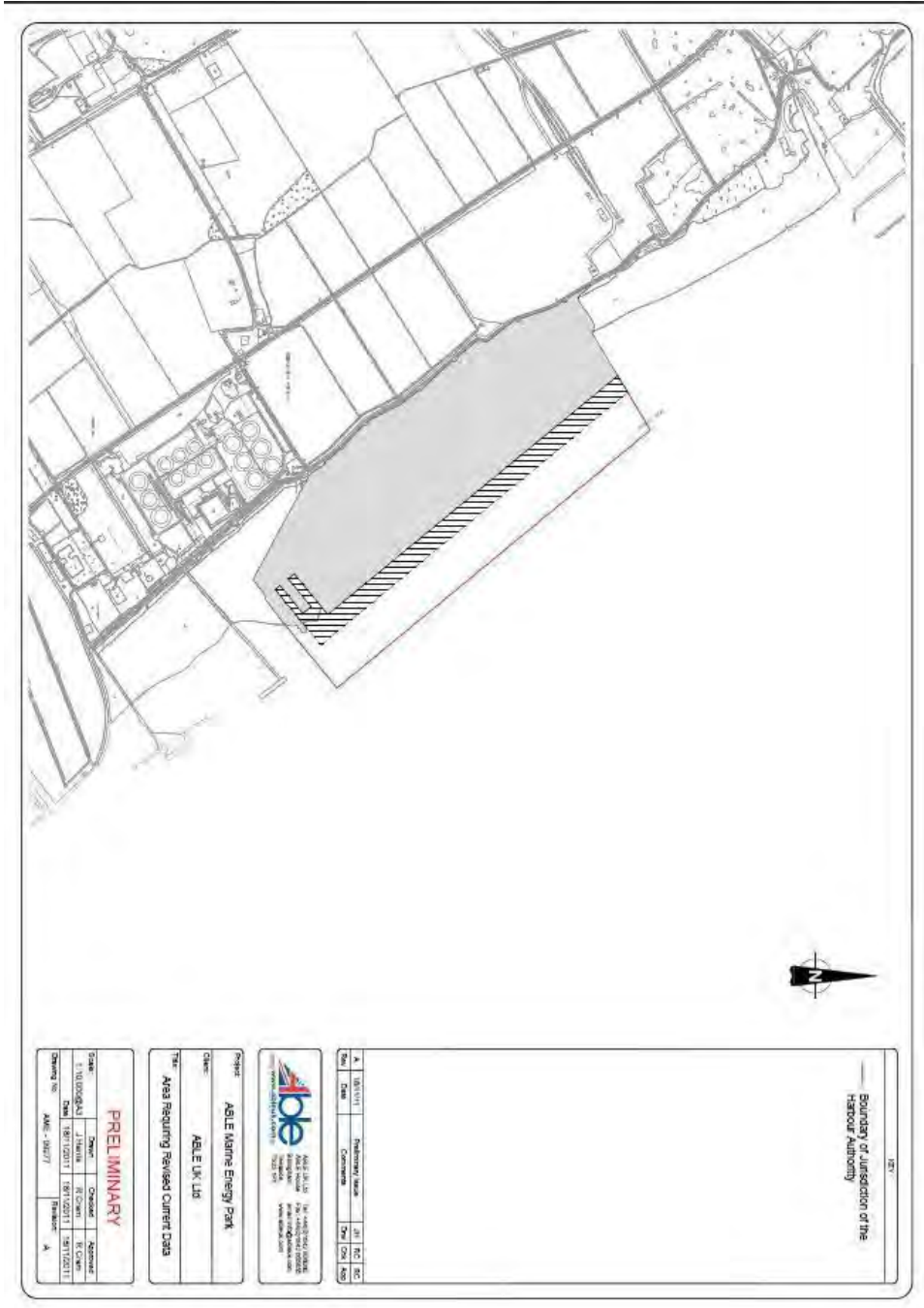
FOR THE PROTECTION OF NETWORK RAIL

33. For the protection of Network Rail, the following provisions shall, unless otherwise agreed in writing between the undertaker and Network Rail, have effect.

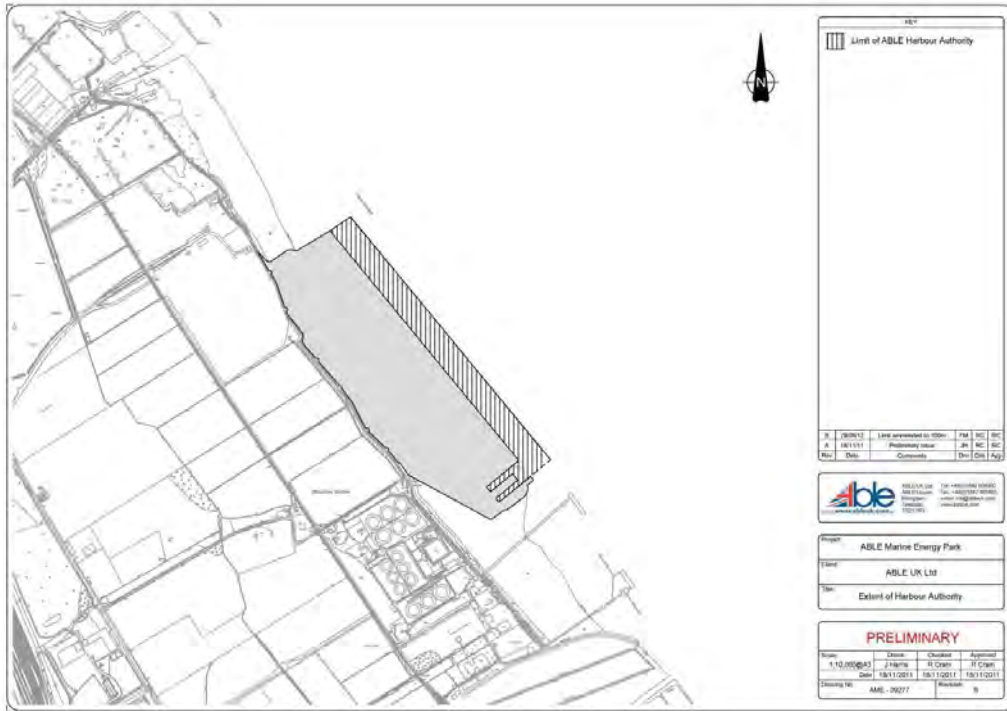
SCHEDULE 10

Article 2

LIMITS OF HARBOUR



LIMITS OF HARBOUR



SCHEDULE 11

Article 15

REQUIREMENTS

1. In this Schedule—

“the 1990 Act” means the Town and Country Planning Act 1990;

“the 2008 Act” means the Planning Act 2008;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“environmental statement” means the statement submitted under regulation 5(2)(a) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a), together with any supplementary statement;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the relevant planning authority” means North Lincolnshire Council for land in that council’s area and East Riding of Yorkshire Council for land in that council’s area;

Time limits

2. The authorised development must be begun within 7 years of the date of this Order.

Stages of the development

3. No part of the authorised development shall commence until a written scheme setting out all the stages of the authorised development has, after consultation with the highway authority, been submitted to and approved by the relevant planning authority.

Detailed design approval

4. The authorised development shall be carried out in accordance with the design drawings unless otherwise approved in writing by the relevant planning authority.

Provision of landscaping

5. No stage of the authorised development, other than tidal works, shall commence until a written landscaping scheme has been submitted to and approved by the relevant planning authority. The landscaping scheme must include details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (g) proposed and existing functional services above ground, including drainage, power and communications cables and pipelines and supports;

(a) S I 2009/2264

- (h) details of existing trees to be retained, with measures for their protection during the construction period;
- (i) retained historic landscape features and proposals for restoration, where relevant; and
- (j) implementation timetables for all landscaping works.

Implementation and maintenance of landscaping

6.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under requirement 5 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(2) The landscaping works must be carried out in accordance with implementation timetables approved under requirement 5.

(3) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

Trees

7. No stage of the authorised development, other than tidal works, shall commence until written details of any proposed tree planting and the proposed times of planting have been approved in writing by the relevant planning authority; and all tree planting shall be carried out in accordance with those details and at those times.

Highway access

8.—(1) No stage of the authorised development shall commence until for that stage, written details of the siting, design and layout of any new permanent or temporary means of access to a public highway to be used by vehicular traffic, or any alteration to an existing means of access to a public highway used by vehicular traffic, has, after consultation with the relevant highway authority, been submitted to and approved by the relevant planning authority.

(2) The public highway accesses must be constructed, or, as the case may be, altered, in accordance with the approved details.

(3) No stage of the authorised development shall commence until for that stage, a written scheme (the “Access Management Scheme”) has, after consultation with the relevant highway authority, been submitted to and approved by the relevant planning authority.

(4) The Access Management Scheme must be carried out in accordance with the approved details.

Public rights of way

9.—(1) No stage of the authorised development shall commence that would affect North Lincolnshire Footpath 50 or East Riding of Yorkshire Paull Footpath 6 until a written implementation plan and specification for the making up of an alternative right of way has, after consultation with the relevant highway authority, been submitted to and approved by the relevant planning authority.

(2) The alternative Footpath 50 and Paull Footpath 6 shall be implemented in accordance with the relevant approved plan and specification.

Fencing and other means of enclosure

10.—(1) No stage of the authorised development shall commence until, for that stage, written details of all proposed permanent and temporary fences, walls or other means of enclosure have been submitted to and approved by the relevant planning authority.

(2) Any temporary fencing must be removed on completion of the authorised development.

(3) Any approved permanent fencing of the authorised development must be completed before the authorised development is brought into use.

Surface water drainage

11.—(1) No stage of the authorised development shall commence until, for that stage, written details of the surface and foul water drainage system (including means of pollution control and funding arrangements) have, after consultation with the sewerage and drainage authority, been submitted to and approved by the relevant planning authority.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details.

Contaminated land

12.—(1) No stage of the authorised development shall commence until a written scheme applicable to that stage, to deal with the contamination of any land, including groundwater and ground gas, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) The scheme shall include an investigation and assessment report, prepared by a suitably qualified person, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) Remediation must be carried out in accordance with the approved scheme.

Archaeology

13.—(1) No stage of the authorised development shall commence until, for that stage, a written scheme for the investigation of areas of archaeological interest as identified in chapters 18 and 40 of the environmental statement has been submitted to and approved by the relevant planning authority.

(2) The scheme shall identify areas where fieldwork and/or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the scheme must be by a suitably qualified person or body.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

Ecological mitigation

14.—(1) No stage of the authorised development shall commence until a written ecological management plan for that stage reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement, after consultation shall be submitted to and approved by the relevant planning authority.

(2) The ecological management plan shall include an implementation timetable and must be carried out as approved.

Code of construction practice

15.—(1) No stage of the authorised development shall commence until a code of construction practice for that stage has been submitted to and approved by the relevant planning authority.

(2) All construction works shall be undertaken in accordance with the approved code, unless otherwise agreed by the relevant planning authority.

Design of roads

16.—(1) No stage of the authorised development consisting of the construction or alteration of a street which is a trunk road, including any traffic management and control measures, shall

commence until written details of the design of the street have been submitted to and approved by the Highways Agency.

(2) The authorised development construction or alteration of the street or the taking of traffic management and control measures shall be carried out in accordance with the approved design.

External lighting

17. No stage of the authorised development, shall commence until written details of any external lighting to be installed at any of the construction sites within that stage, including measures to prevent light spillage, have, after consultation with the highway authority, been submitted to and approved by the relevant planning authority; and any approved means of lighting must subsequently be installed and retained for the duration of the construction period.

Construction traffic

18.—(1) No stage of the authorised development shall commence until written details of the preferred route for that stage to be used by construction traffic on public highways, after consultation with the highway authority, is submitted to and approved by the relevant planning authority.

(2) Notices shall be erected and maintained throughout the period of construction at every construction site exit to a public highway, indicating to drivers the route agreed by the relevant planning authority for traffic entering and leaving the site.

Control of noise during construction

19.—(1) No stage of the authorised development shall commence until a written scheme for noise management during construction and maintenance of that stage has been submitted to the relevant planning authority.

(2) The scheme shall set out the particulars of—

- (a) the works, and the method by which they are to be carried out;
- (b) the noise attenuation measures to be taken to minimise noise resulting from the works, including any noise limits; and
- (c) a scheme for monitoring the noise during the works to ensure compliance with the noise limits and the effectiveness of the attenuation measures.

(3) The approved noise management scheme must be implemented before and maintained during construction and maintenance of the relevant stage of the authorised development.

(4) The construction and maintenance works must be undertaken in accordance with the approved noise management scheme.

Control of emissions

20.—(1) No stage of the authorised development shall commence until a written scheme for that stage—

(a) for the management and mitigation of emissions of—

- (i) odour,
- (ii) artificial light,
- (iii) dust,
- (iv) smoke, and
- (v) steam; and

(b) to ensure the prevention of infestation or emanation of insects

from the authorised development has been submitted to and approved by the relevant planning authority.

(2) The approved scheme must be implemented before and maintained during the construction, operation and decommissioning of the relevant stage of the authorised development.

(3) For the purposes of this requirement, “insects” excludes insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981^(a) (animals which are protected), unless they are included in respect of section 9(5) of that Act only.

Travel plan

21.—(1) No stage of the of the authorised development shall commence until, for that stage, after consultation with the highway authority, a travel plan, which must include details of the expected means of travel to and from the authorised development and any parking to be provided, has been submitted to and approved by the relevant planning authority.

(2) No part of the authorised development shall be brought into use until, after consultation with the highway authority, a travel plan, which must include details of the expected means of travel to and from the authorised development and any parking to be provided, has been submitted to and approved by the relevant planning authority.

(3) The plan approved under paragraph (1) must be implemented during the construction of the authorised development and the plan approved under paragraph (2) must be implemented within one month of the authorised development being brought into use and shall continue to be implemented for as long as the authorised development is used.

European protected species

22.—(1) No stage of the authorised development shall be begun that is likely to affect a European protected species until, after consultation with Natural England and the Secretary of State for the Environment, Food and Rural Affairs, a scheme of protection and mitigation measures for that species has been submitted to and approved by the relevant planning authority; and the authorised development shall be carried out in accordance with the approved scheme.

(2) “European protected species” has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010.

Requirement for written approval

23. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be given in writing.

Amendments to approved details

24. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details shall be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

Requirement for consent of Civil Aviation Authority and Ministry of Defence

25. No stage of the authorised development shall commence until for that stage, after consultation with the Civil Aviation Authority and the Ministry of Defence, written details for the operation of the authorised development and its effect on radar have been submitted to and agreed by the relevant planning authority.

Flood warning and evacuation plan

26. No building of the authorised development shall be occupied until, after consultation with the relevant planning authority, written details of a flood warning and evacuation plan, which must include details of expected means of evacuation or safe refuge during a tidal flood event, has been submitted to and approved by the relevant planning authority.

Listed buildings

27. No stage of the authorised development shall commence until a listed building management plan applicable to that stage, which must include details of protection of any building referred to

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(a) 1981 c 69, as amended at the date that this Order comes into force

from vibration damage and the renovation or re-use of the building, has been submitted to and approved by the relevant planning authority in consultation with English Heritage.

Tall structures

28. No structure shall be erected over 45 metres in height above finished ground level until written details of a lighting scheme applicable to that structure has been submitted to and approved in writing by the relevant planning authority following consultation with the Civil Aviation Authority.

Flood and sea defences

29. No stage of the authorised development shall commence until a written scheme applicable to that stage, to deal with the design and construction of tidal defences, has been submitted to and approved by the relevant planning authority after consultation with the Environment Agency.

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EXPLANATORY NOTE

(This note is not part of the Order)

This order authorises the construction and operation of a quay, associated onshore facilities and other development, to be situated on the south bank of the River Humber to the north east of Immingham, together with the creation of a compensatory environmental habitat on the north bank of the River Humber to the north east of the quay.

STATUTORY INSTRUMENTS

2012 No. XXXX

INFRASTRUCTURE PLANNING

HARBOURS, DOCKS, PIERS AND FERRIES

The Able Marine Energy Park
Development Consent Order 2012

BIRCHAM DYSON BELL LLP
50 Broadway
London SW1H 0BL
Solicitors and Parliamentary Agents
8222187.1 — 30.11.11



AMEP
APPLICANT'S COMMENTS ON THE
RELEVANT REPRESENTATIONS

Date: June 2012

APPENDIX C
National Grid Representation

Infrastructure Planning Commission
Temple Quay House
Temple Quay
Bristol
BS1 6PN

Land and Development

Vicky Stirling
Town Planner
Land & Development

Direct tel:

www.nationalgrid.com

SUBMITTED VIA EMAIL TO:

ablemarineenergypark@infrastructure.gsi.gov.uk

02 April 2012

Our Ref: XX_TE_Z5_F_09829

Your Ref: TR030001

Dear Sir/Madam

RELEVANT REPRESENTATIONS BY NATIONAL GRID

The Proposed Able Marine Energy Park Development Consent Order IPC Application Reference: TR030001

I refer to the above application. Having reviewed the DCO application documents relating to the proposal, I would like to submit the following representations:

National Grid objects to this application on the grounds that there may be adverse impacts on the integrity of National Grid's operational infrastructure located within the site order limits, whether temporary or permanent, unless protective provisions are included within the DCO.

National Grid requires the inclusion of protection provisions in the DCO which should provide the right to retain our apparatus in situ and the right of access by National Grid to inspect, maintain, renew and repair such apparatus located within the site order limits as well as appropriate safeguards that ensure that the integrity and safe operation of National Grid's apparatus is maintained at all times.

Details of National Grid infrastructure affected by the proposal and requiring protective provisions are as follows:

National Grid infrastructure within the application site/order limits

A National Grid high voltage electricity overhead transmission line crosses the site order boundary to the North West in Plot SP5 shown on the Indicative Masterplan. A National Grid transmission tower is also located within the site order boundary within Plot SP5. This overhead line and tower form essential parts of the electricity transmission network in England and Wales.

Details of the overhead line are as follows:

- 2AJ 400kV Killingholme Substation to Humber Refinery Substation

We wish to set out the following points which should be taken into account by the IPC in considering the application and in making protective provisions in the DCO:

- National Grid's tower is protected by a Deed of Easement Agreement which provides a full right in perpetuity for access to inspect, maintain, repair, renew and retain our asset. National Grid's approach is always to seek to retain our existing overhead lines in situ.
- Statutory electrical safety clearances must be maintained at all times. These distances are set out in EN 43 – 8 Technical Specification for “overhead line clearances Issue 3 (2004) outlined at the following webpage:
http://www.nationalgrid.com/uk/LandandDevelopment/DDC/devnearohl_final/appendixIII/applIII-part2
- The proposal in its current design would place restrictions on any future refurbishment works on our electricity transmission overhead line and tower (2AJ006) in terms of working areas required for the replacement of conductors. National Grid would be happy to meet to discuss alternative designs and layout in order to meet the requirements of both parties.
- Schedule 11, Section 6 of the draft Development Consent Order makes reference to the requirement for the submission of a landscaping scheme to the Local Planning Authority prior to the commencement of the development. National Grid requests to be consulted where it is proposed to alter the ground level in vicinity of our overhead line. Planting can take place subject to adequate maintenance access to the overhead line being provided. However, it is important that appropriate species are selected for locations below and adjacent to the transmission route to ensure that safety clearances are maintained and that the species that have been planted do not grow to heights that would infringe the safety clearances.
- The relevant guidance in relation to working safely near to existing overhead lines is contained within the Health and Safety Executive's (www.hse.gov.uk) Guidance Note GS 6 “Avoidance of Danger from Overhead Electric Lines.”
- Plant, machinery, equipment, buildings or scaffolding should not encroach within 5.3 metres of any of our high voltage conductors at the point where the conductors are under their maximum ‘sag’ or ‘swing’ conditions. Overhead Line profile drawings should be obtained using the above contact details.
- Drilling or excavation works should not be undertaken if they have the potential to disturb or adversely affect the foundations or “pillars of support” of our towers. These foundations extend beyond the base of the tower. Pillar of Support drawings should be obtained using the contact details above.
- To promote the successful development of sites crossed by existing overhead lines, and the creation of well-designed places, National Grid has produced ‘A Sense of Place’ guidelines, which look at how to create high quality development near overhead lines and offer practical solutions which can assist in avoiding the unnecessary sterilisation of land in the vicinity of high voltage overhead lines. To view the National Grid Policy's for our Sense of Place Document: <http://www.nationalgrid.com/uk/LandandDevelopment/DDC/>
- Further guidance on development near electricity transmission overhead lines is available here: <http://www.nationalgrid.com/NR/rdonlyres/C185DC83-F57F-41A6-B4F1-6E28B3510E59/34674/02APTElectricityOHLGuidanceV12.doc>

In addition, National Grid has the following high pressure gas transmission assets crossing the proposed ‘Temporary Managed Grassland Compensation Area’ as shown on the Key Development Statistics Plan 2 at Old Little Humber Farm:-

- Feeder 01 – Easington to Paull

National Grid is a trading name for:
National Grid Electricity Transmission plc
Registered Office: 1-3 Strand, London WC2N 5EH
Registered in England and Wales, No 2366977

National Grid is a trading name for:
National Grid Gas plc
Registered Office: 1-3 Strand, London WC2N 5EH
Registered in England and Wales, No 2006000

- Feeder 09 – Easington to Paull
- Feeder 24 - Easington to Paull

These gas transmission pipelines are owned and operated by National Grid and form an essential part of the National Gas Transmission System.

We wish to set out the following points which should be taken into account by the IPC in considering the application and in making protective provisions in the DCO:

- National Grid has a Deed of Easement for each pipeline which prevents change to existing ground levels, and the storage of materials. It also prevents the erection of permanent / temporary buildings, or structures over the easement strip. Access to our pipelines must be ensured at all times during and after construction.
- Before any tree planting is carried out on or within close proximity to a gas pipeline easement, written approval must be obtained from National Grid. Any approval granted by National Grid to plant trees on the easement shall be subject to retaining the rights to remove, at any time in the future, all trees which in the opinion of National Grid Engineers might become a danger to the pipeline.
- Written permission from National Grid is required before any works commence within the National Grid easement strip. A National Grid representative shall monitor any works within close proximity to the pipeline to comply with National Grid specification T/SP/SSW22 (see below).
- Where existing roads cannot be used, construction traffic should ONLY cross the pipeline at locations agreed with a National Grid engineer. All crossing points will be fenced on both sides with a post and wire fence and with the fence returned along the easement for a distance of 6 metres.
- The pipeline shall be protected, at the crossing points, by temporary rafts constructed at ground level. No protective measures including the installation of concrete slab protection shall be installed over or near to the National Grid pipeline without the prior permission of National Grid. National Grid will need to agree the material, the dimensions and method of installation of the proposed protective measure. The method of installation shall be confirmed through the submission of a formal written method statement from the contractor to National Grid.
- In addition, the Health and Safety Executives guidance document HS(G) 47 "Avoiding Danger from Underground Services", and National Grid's specification for Safe Working in the Vicinity of National Grid High Pressure gas pipelines and associated installations - requirements for third parties T/SP/SSW22 should be taken into account. To view the SSW22 Document, please use the link below:

<http://www.nationalgrid.com/uk/LandandDevelopment/DDC/GasElectricNW/safeworking.htm>

Further Advice

If we can be of any assistance to you in providing further information please do not hesitate to contact us at the address below.

National Grid
Land & Development Stakeholder and Policy Manager
Land & Development Team

National Grid is a trading name for:
National Grid Electricity Transmission plc
Registered Office: 1-3 Strand, London WC2N 5EH
Registered in England and Wales, No 2366977

National Grid is a trading name for:
National Grid Gas plc
Registered Office: 1-3 Strand, London WC2N 5EH
Registered in England and Wales, No 2006000

National Grid House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

In addition, the following publications which are relevant to the issues outlined above are available from our web site:

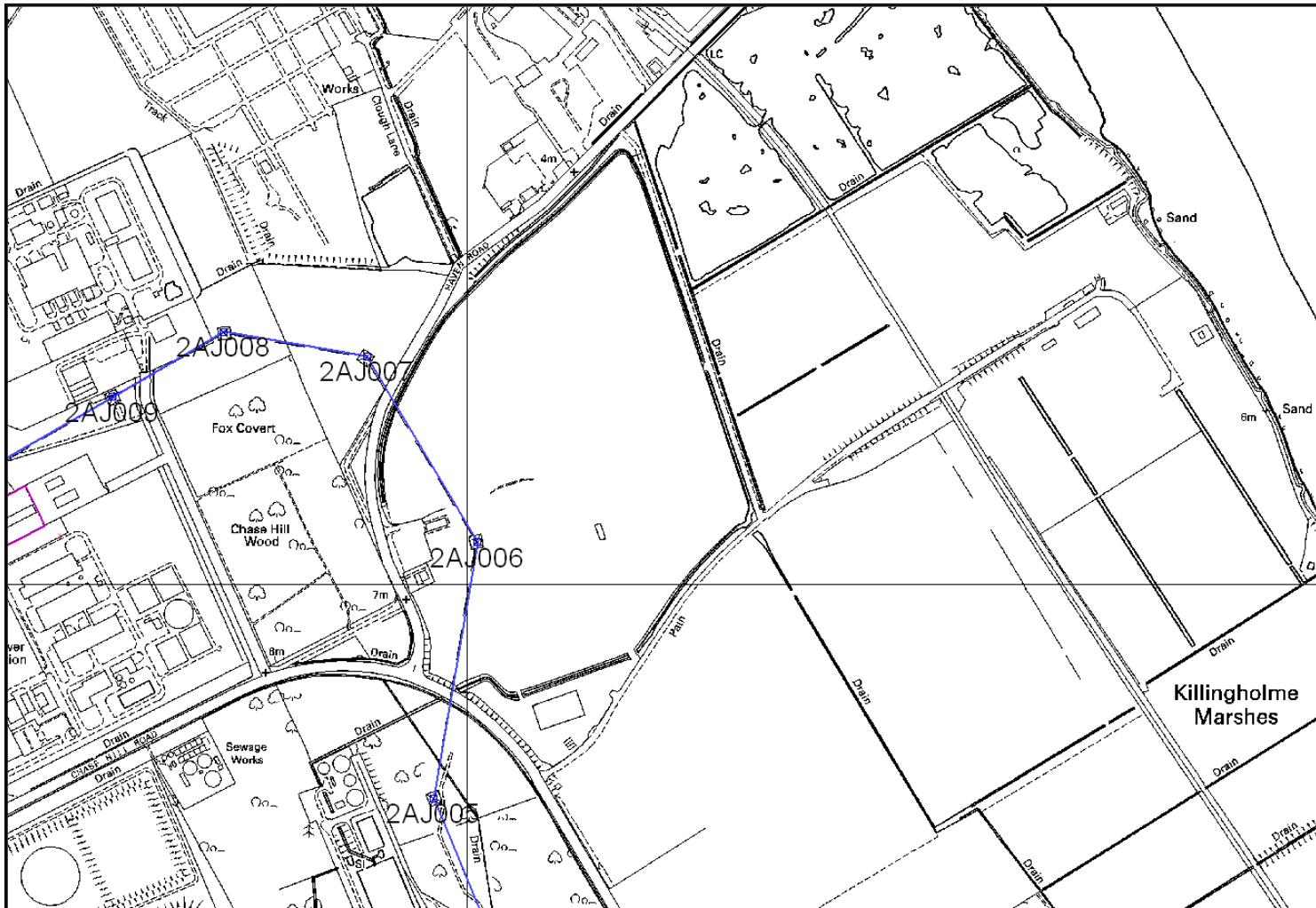
- National Grid Electricity Transmission plc, Electricity Act 1989 – Schedule 9 Statement, preservation of amenity
- A sense of place – Design guidelines for development near high voltage overhead lines
- Development near overhead lines

www.nationalgrid.com/uk/landanddevelopment

I hope the above information is useful. If you require any further information please do not hesitate to contact me.

Yours sincerely,

Vicky Stirling
Land and Development Team
(Submitted Electronically)



nationalgrid

National Grid Assets

- Towers and OHL**
 - Towers
 - Tower Label
- Line**
- Substations and AGIs**
- Cable and Accessories**
 - Cables
 - Cables No Ellipse Link
 - Cable Pilot
 - Cable Decommissioned
 - Cable DecommissionedNoEllipseLink
 - Cooling Station
 - Cooling Pipe
- Gas Pipe and Accessories**
- Raster and OSMM**

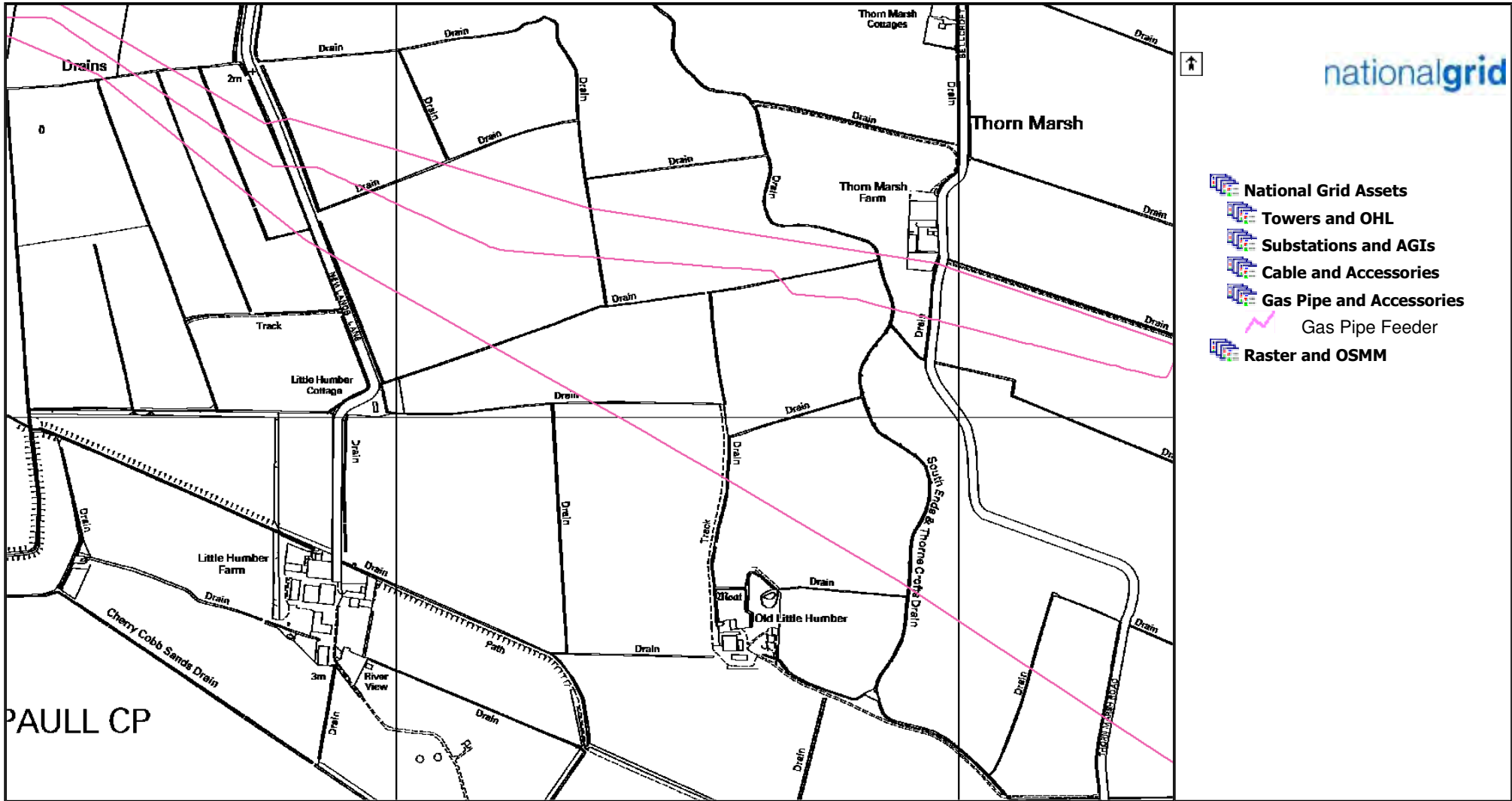
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National Grid UK Transmission. The asset position information represented on this map is the intellectual property of National Grid PLC, Warwick Technology Park, Warwick, CV346DA



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National Grid UK Transmission. The asset position information represented on this map is the intellectual property of National Grid PLC, Warwick Technology Park, Warwick, CV346DA