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The Planning Inspectorate
3/18 Eagle Wing
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Your Ref: TR030001
Our Ref: RC.LH.A.L12-0629
Date: 8th November 2012

For the attention of Mike Harris

Dear Mr Harris

APPLICATION FOR THE PROPOSED ABLE MARINE ENERGY PARK BY ABLE HUMBER PORTS LTD

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010 – RULE 17 FURTHER INFORMATION

We refer to your letter dated 17 October seeking comments on the Planning Inspectorate's report on the integrity of the European Sites likely to be affected by the above application.

This response identifies areas where new information has become available, or where changes have occurred that affects the site integrity report supplied by the panel but that information has not, so far, been taken into account. It also addresses the effects on wild bird habitat beyond the SPA and on non-SPA bird species covered by Regulation 9A of The Conservation of Habitats and Species (Amendment) Regulations 2012.

COMMENTS ON SITE INTEGRITY REPORT

There is a minor error in the text on page 8 immediately following the table. This refers to impact significance as '*1% or less*'; this should read '*1% or more*'.

Page 14, paragraph k, refers to the issue of in-combination effects, particularly in relation to curlew. Impacts on curlew have now been addressed in EX 11.33. This report was based on discussions with Natural England (NE) regarding the projects to be examined and, following suggestions from NE, was presented in a tabular form addressing specific topics (including total area affected and total numbers affected). The conclusion of the report was that, on the basis of the data publically available, no in-combination or cumulative impacts would arise for curlew (*ie* the same as that reported previously in EX 44.1 Cumulative and In-combination Effects). The report should also have regard to EX44.2.

Page 17, paragraph b, makes reference to habitat losses. The definitive and agreed figures for these are in Annex B of the Statement of Common Ground for the shadow Habitats Regulations Assessment (SoCG sHRA). Unfortunately the first table in Annex B has been inadvertently carried over from the ES and should be ignored; it is the subsequent tables that represent the agreed immediate, medium and long term losses.

Page 17, paragraph f, makes reference to piling mitigation measures. These are included in the latest draft DCO issued on 26 October.



Page 18, paragraph g, discusses potential impacts on sea lamprey. Mitigation has been agreed and is presented in paragraph 4.3.1 of the SoCG sHRA with NE and MMO.

Page 19, second bullet, makes reference to the potential impacts of gravel disposal at HU080; the Applicant has now provided EX 10.8, '*Gravel Fraction Disposal Assessment*'. This characterises the benthic community at the disposal sites and examines the impacts of gravel disposal. It concludes that the robust nature of the in-fauna and the dispersal of the gravel will lead to only minor significant effects.

Page 19, third bullet refers to EX8.7. That document is superseded by EX8.7A issued by the Applicant on 12 October.

Page 20, paragraph k, refers to dredging of the berthing pocket. It has now been agreed that the berthing pocket will be dredged to rockhead and backfilled with rock to -11.5m CD. Subsequent maintenance dredging will be limited to -11.0m CD, allowing a permanent presence of 0.5m of silty sediment. This is reflected in the current draft DCO issued on 26 October.

Page 23, final paragraph, records the need to review the in-combination assessment of dredge disposal due to new information being provided by the MMO. The revised assessment is included in EX8.7A.

Page 36, paragraph e, refers to the number of '*roosts*' that may be lost at the Haven Pits. It is likely this should refer to '*roosting birds*'. It should be noted that the potential for birds to desert the roost site at North Killingholme Haven Pits (NKHP) is uncertain, as it will depend on the extent to which the roost is connected to the feeding grounds at North Killingholme Marsh (NKM). As a consequence of this uncertainty a Likely Significant Adverse Effect was reported.

Page 36-37, paragraph e, summarises NE's position regarding the impact on Black tailed Godwit. With regard to the final sentence, it should be noted that the full quotation as expressed in the *The Management Plan for Black-tailed Godwit (Limosa limosa) 2007-2009: Technical Report 019'* (European Commission, 2007), states that although the species is restricted to only a few sites, making conservation acute, this also make it relatively simple (our underline). In addition, the geographical range of this species in Great Britain and Ireland has continued to expand, and whilst it is still not as widespread as some other wader species it is present in nationally or internationally important numbers on 42 sites in the UK.

Page 37, paragraph f, refers to the uncertain status of Bar-tailed Godwit. This species was only recorded in significant numbers (i.e. >1% of Humber total) once, in March, and in general its use of NKM is low and transitory.

Page 38, paragraph g, refers to Drax and its impacts on Mitigation Area A. It is confirmed that the Drax option on the land has now deliberately lapsed and the issue is no longer relevant.

Page 39, paragraph j, notes that the issue of long term losses has been agreed with NE but not the EA. Our understanding is that the EA do agree with the long term losses set out in Annex B of the SoCG sHRA. Please note that the reference to 6 ha functional loss in the following paragraph (k) is wrong and arises from the fact that the first table in Annex B of the SoCG sHRA was included in error (see above); it is the subsequent table that refers to 11.6 ha of functional loss that is relevant.

Page 41, paragraph c, refers to noise disturbance in respect of river and sea lamprey. Agreed piling restrictions are now included in the draft DCO issued on 26 October.

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Page 3 of 3

**REGULATION 9A THE CONSERVATION OF HABITATS AND SPECIES (AMENDMENT)
REGULATIONS 2012 ISSUES**

Regulation 9A is concerned with preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom.

The applicant, working closely with the regulatory authorities, has undertaken an impact assessment of the effects of the project and provided mitigation for onshore effects. These are described in the original Environmental Statement (Chapter 11), and have been updated most recently in EX11.27 for non-SPA breeding birds. For SPA species onshore mitigation is provided through Mitigation Area A as described in Chapter 11 of the ES.

Where impacts on SPA birds cannot be mitigated a compensation package that includes a Regulated Tidal Exchange (RTE), wet grassland and new wet roost site has been proposed. Details of this can be found in EX28.3 Final Compensation Proposals, and are summarised in EX28.3 Part 1 (Non-Technical Summary).

As discussed above, cumulative and in-combination impacts have also been addressed and assessed as having no significant effect once mitigation is applied.

As a consequence of the iterative process of Environmental Impact Assessment (EIA) and regular consultation with the regulators, a comprehensive package capable meeting the requirements of Regulation 9A has been developed. As matters stand therefore, no additional effects or actions are anticipated.

Yours sincerely



RICHARD CRAM
Design Manager