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Sent: Monday, July 23, 2012 11:54 AM
To: Able Marine Energy Park
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Subject: Summary of Environment Agency's Oral Representations made at the DCO/DML hearing on 12th July 2012

Please find attached a summary of the oral representations made at the above hearing, by Miss Carol Bolt, on behalf of the Environment Agency.
Kind regards,
Annette Hewitson
Principal Planning Advisor

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**Able Humber Ports Ltd
Marine Energy Park
Proposal to build a quay and associated development on
the south bank of the River Humber**

Planning Inspectorate Reference: TR030001

**Summary of Oral Representations made at the
Development Consent Order/Deemed Marine Licence
Hearing on 12 July 2012**

**On behalf of
The Environment Agency**

Ref No. removed

23 July 2012

At the hearing on 12 July Miss Bolt made the following submissions on behalf of the Environment Agency (EA).

Session 1

There were four main outstanding issues of principle for the EA.

These were

- (1) Flood risk issues
- (2) Mitigation for protection of the salmon and lamprey populations in the Humber Estuary
- (3) Hydrogeological and morphological issues
- (4) Water Framework Directive issues.

At least some of these would need to be covered by requirements/protective provisions in the DCO or a side agreement before the EA would be content for the proposed development to proceed. Provided these matters can be resolved to the EA's satisfaction the EA would have no objection to the application for the DCO for the Able Marine Energy Park (AMEP) being granted.

The Definition and Description of the Proposed Development

Mr McCracken on behalf of ABP said that there was a disconnect between the draft DCO and the development as described in the application. The EA supported this concern and pointed out that the applicant's case for the need for the development and also its case that there were Imperative Reasons of Overriding Public Interest the development should proceed in relation to habitats issues were predicated on the specific basis that the development would serve the offshore wind farm industry. The description of the development in the DCO must match what has been assessed in the Environmental Statement.

Various parties made the point that any restriction to wind farm associated manufacturing should exist in perpetuity as any change to that use would require further environmental assessment. This is particularly important given, as stated above, the need case is based on the development of the port for wind farm associated manufacturing and that the Habitats Directive is engaged due to the presence of European sites in the Humber Estuary. The EA supported these submissions and agreed that any future application to amend the development authorised should be determined nationally rather than locally given the importance of the Humber Estuary from a Habitats Directive perspective.

Need for a Construction and Environmental Management Plan

The EA does not have any particular view on whether or not the project should be required to provide a CEMP or an Environmental Management and Monitoring Plan (EMMP). However, the suggestion made by Natural England to have three plans, one covering the Terrestrial EMMP, one covering marine EMMP and one for the compensation site would appear to make this rather complex project manageable.

Although the EA is not a lead authority on these plans, we request that the need to consult us on these plans is included within the relevant requirement.

Session 2

The EA stated that as it is not a local planning authority, it does not have the benefit of s 106 Town and Country Planning Act 1990 but that it can use local legislation to enter into similar agreements. As the AMEP site is in the Anglian Region of the EA the act applicable is the Anglian Water Authority Act 1977. The compensation site at Cherry Cobb Sands is in the Yorkshire Region of the EA and so the relevant local legislation is the Yorkshire Water Authority Act 1986.

Schedule 8 – Deemed Marine Licence (DML)

The EA's main concern is the piling conditions with respect to the impact on migratory fish and lamprey. We are currently liaising with the applicant, the Marine Management Organisation (MMO) and Natural England (NE) on this issue and identifying whether further compensation will be needed in addition to merely restricting piling in some respects. The conditions that are included in the current draft of the DML are of the type and level of detail that will be required but they are not yet fully agreed.

Article 9 – Follows model provisions but are 'enlarge' and 'extend' necessary and appropriate in the context of this DCO?

Points were made by other parties that the words 'enlarge' and 'extend' could result in changes to the development, that would not require the need to obtain planning permission, and could affect the estuary, sedimentation and have Habitats Regulations implications. The EA supports these submissions. It is our opinion that such vague wording should be avoided and we request that this Article is redrafted.

Schedule 9 – Protective Provisions

We have so far not agreed any of the protective provisions in the draft DCO, and we have not given our consent under the Water Resources Act 1991 and Anglian Region Land Drainage and Sea Defence Byelaws 1987.

The EA, in its Written Representations, has requested more detailed protective provisions than those that presently appear in the draft DCO. However, there are also issues that will need to be dealt with through legal agreements - flood defence standards, maintenance etc. We anticipate these will take the form of side agreements linked to the DCO.

We have requested an urgent meeting with the applicant's solicitors and hope to make rapid progress on the resolution of these issues so far as is possible.

Schedule 11 – Requirements

The EA does not agree that Requirement 29 is an appropriate requirement. We do not know where it has come from – we did not suggest it or seek it. The issue of

design and construction of flood defences is not one for the Local Planning Authority, but is entirely within the remit of the EA and so any requirement of this kind would need to be for the benefit of the EA. We will endeavour to resolve this point with the applicant when we discuss the protective provisions and legal agreements we have requested.

We are seeking a meeting with the applicant's solicitors urgently to discuss the legal mechanisms by which the EA's concerns may be addressed. We are hopeful that these outstanding issues can be resolved by negotiation.

Ruling on Suspension

The EA asked if any ruling that the Panel might choose to make on suspension of the proceedings could be communicated to those involved in the examination as soon as possible. Some members of the EA team working on AMEP are also involved in incident duty on flood risk management matters. The EA is currently experiencing unprecedented demands on staff resources due to the recent heavy rainfall and extensive flooding that has occurred (and is continuing to occur) over the summer. The team working on the AMEP application is already experiencing difficulty in meeting the required deadlines given the considerable quantity of supplementary information recently produced by the applicant and the flooding is exacerbating this difficulty. Any suspension which is considered appropriate would assist the EA staff concerned greatly in meeting the considerable demands of dealing appropriately with this information.

23 July 2012