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Our Ref: TR030001

Date: 4 July 2012

Dear

APPLICATION FOR THE PROPOSED ABLE MARINE ENERGY PARK

**SPECIFIC ISSUE HEARING ON THE DRAFT DEVELOPMENT CONSENT ORDER
INCLUDING THE DRAFT DEEMED MARINE LICENCE**

You were informed on 15 June 2012 of the intention to hold a Specific Issue Hearing on the draft Development Consent Order (DCO) including the draft Deemed Marine Licence (DML) on 12 July 2012 in the Humber Royal Hotel, Grimsby.

As Lead Member of the Panel I am writing to you in advance of this meeting to advise you on the procedure which the Panel intends to follow in this hearing to assist you with your preparation. You will be aware that the Panel intends to hold two hearings on the draft DCO, the second hearing being scheduled for 16 October 2012.

The main purposes of the first meeting on 12 July 2012 are to:

- (a) clarify any issues around how the draft DCO and draft DML are intended to work – what is to be consented, the extent of the powers proposed and what requirements are proposed;
- (b) identify any possible issues of prevention, mitigation or compensation not yet covered by the draft DCO;
- (c) establish or confirm the views of other Interested Parties as to the appropriateness, proportionality or efficacy of the provisions and requirements proposed.

As a related exercise the Panel also wishes to clarify what any of the parties consider might be necessary as possible s.106 agreement(s) outside the draft DCO to make the proposed scheme acceptable. The meeting will be divided into two sessions.

Session 1 - Issues of principle

In the morning session, the Panel intends to ask questions and hear submissions about possible issues of principle relating to the draft DCO. These issues might include:

1. The definition and description of the proposed development;
2. The extent to which the draft DCO restricts the proposed development of the port to wind farm-associated manufacturing;
3. The extent to which the draft DCO might or should need to restrict the port to this purpose;
4. The nature and extent of provisions relating to the railway network;

5. The adequacy of provisions relating to the control of design and other matters to be discharged by Local Planning Authorities or other agencies;
6. The time scales proposed for land acquisition, start of development and completion of development;
7. The need for and adequacy of provisions relating to a Construction and Environmental Management Plan (CEMP).

The Panel does not expect each party to seek to address all these issues. If any parties or persons representing the parties wish to make oral submissions on the above points these oral submissions should be in summary only. Each party should assume that they will be allowed a maximum speaking time of fifteen minutes in total for all submissions that they wish to make in this session.

Session 2 - Issues of detail

In the afternoon session the Panel intends to look in more detail at the working of the draft DCO/DML. The Panel does not intend to use this session to discuss drafting or textual amendments but to seek preliminary oral responses to the questions in **Annex A** which relate to specific articles and requirements. In addition, the discussion of any possible s106 requirements will also take place during this session.

All parties should be aware that the Applicant has already submitted proposed amendments to the draft DCO and a new draft DML. The Applicant will be expected to submit a further full draft DCO incorporating any amendments necessary to address points arising as the examination progresses. However, if at this stage Interested Parties and others wish to propose amendments to specific articles or requirements these should be submitted by Monday 23 July with the written summaries of any oral submissions made at the hearing.

In the second round of questions the Panel may ask further questions in relation to the draft DCO/DML and there will be a further opportunity for Interested Parties to provide written submissions on articles, schedules and requirements and to propose amendments to the draft DCO in advance of the 16 October DCO hearing. The Panel will provide notification of that meeting and an agenda in due course.

Administrative arrangements

Registration for the meeting will commence at 0930, the meeting will start at 1000 and will close by 1630. The Panel would be grateful if parties intending to attend would give prior notice of who will attend, who will speak and which points (using the annotation used above) for the morning session they wish to address. This notice should be sent to Mike Harris, Case Manager, at either the post or email address at the top of this letter.

Yours sincerely,

Robert Upton

Robert Upton
Lead Member of the Panel

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.

Article 3 – The effect of incorporating the 1847 Clauses Act but substituting article 28 for s33 is that a general right to use the harbour is replaced by the undertaker's ability to allocate the use of berths to particular companies. Should the DCO specifically restrict the use to tenants? Note queries below in relation to article 28.

Article 4 - A DCO may lawfully modify enactments (see s120(5)). This is however subject to s150 and when the modification obviates the need for other authorisations the consent of the relevant body who would ordinarily give that consent/authorisation is required. The Explanatory Memorandum does not indicate whether consenting bodies under the local Acts and Land Drainage Act 1991 referred to in this article have given their consent; confirmation is sought.

Article 5 - 'authorised development' – please clarify what development as defined by s32 of the Planning Act 2008 (PA 2008) (not being development described in Schedule 1) is authorised?

Article 8 – According to the Explanatory Memorandum this is aimed primarily at Associated British Ports (ABP). Are ABP aware of this and content?

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

Article 13 – Schedule 2 – Are North Lincolnshire Council content with this?

Article 14 – Schedule 3 – Are North Lincolnshire Council content with this?

Article 20 – Is 14 days' notice a reasonable provision?

Article 23 – Whose judgement is to be exercised as to 'decay' or 'abandoned'? Should it be the Humber Conservancy or the Secretary of State? See also Schedule 9 Part 2 article 17.

Article 28 - Section 33 of the 1847 Clauses Act provides that, "upon payment of the rates made payable by this and the special Act, and subject to the other provisions thereof, the harbour, dock, and pier shall be open to all persons for the shipping and unshipping of goods, and the embarking and landing of passengers". This is replaced by article 28 which limits the use of the berths. In view of the impact on public benefit, what is the justification for limiting use of the berths in this way?

Article 39 – As Article 20 – Is 14 days adequate notice?

Article 47 - Further justification for this article is required by reference to the relevant paragraph of s120 (5). Further explanation is required about the grounds on which the proposed closure could be eligible to be treated as a minor modification under s35 of the Railways Act and whether application of other statutory provisions in s35 should explicitly be applied (for example the requirement to publish and to notify the Office of Rail Regulation). It is also noted that the power to revoke a determination (as a minor modification) under s35 (9) is not expressly applied. What are the implications of this?

Article 48 – Are Her Majesty's Revenue and Customs (HMRC) aware of and content with this provision?

Article 52 – Schedule 9 – progress in completion?

Article 59 - The article has the effect of applying the provisions of s78 of the 1990 Act giving rise to a right to appeal against a decision under a requirement as though it were a planning condition. However, it does not apply s79 of the 1990 Act which provides for the

determination of an appeal and does not apply the secondary legislation which provides for the procedure. The views of the Applicant and Local Planning Authorities are invited to clarify the legal and procedural position concerning this article and confirm that the relevant (and sufficient) statutory provisions are being applied to enable the Secretary of State to determine any appeal arising.

Deemed Marine Licence – To identify the changes in the revised version submitted by AMEP on 28 June 2012

Requirements 14 and 15 – Are these together meant to be a 'construction and environmental management plan'?

Requirement 17 – Should this include Natural England given sensitivity of sites?

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