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WRITTEN SUMMARY OF THE ORAL CASE PUT BY THE MARINE MANAGEMENT ORGANISATION AT THE ISSUE SPECIFIC HEARINGS ON THE COMPENSATION SITE AND ASSOCIATED HRA MATTERS

1.1 This is the written summary of the oral case that was put by the Marine Management Organisation ("MMO") at the issue specific hearings into the compensation site, main site and associated HRA matters for the proposed Able Marine Energy Park which took place on 11 and 12 September 2012.

1.2 Only those issues or topics on which the MMO made submissions at the hearings are included below. It should be noted that the summary of the oral case put by the MMO at the issue specific hearing into marine matters on 13 September 2012 is contained in a separate document.

2. The Compensation Site

2.1 At the beginning of the hearing on 11 September 2012, the Examining Authority ("ExA") asked the Applicant to provide an update on the provisions for the compensation site. The Applicant explained that the land originally proposed at Old Little Humber Farm was no longer being pursued and that instead an area of wet grassland would be provided adjacent to the Cherry Cobb Sands site already proposed.

2.2 The Applicant confirmed that, in relation to the Cherry Cobb Sands site, its current proposals were based on the Black & Veatch Second Interim Design Report at Appendix WR9.1 of the Applicant's Comments on Written Representations submitted on 3 August 2012. As currently envisaged, the design proposed is for three Regulated Tidal Exchange ("RTE") cells, each of approximately 15ha, with the remainder of the site classic managed realignment.

2.3 From the representations made by the Applicant and its expert witness, Mr Keiler, at the hearing, it is clear that the design for the site at Cherry Cobb Sands is still at a very early stage and the Applicant confirmed at the hearing on 13 September that a further design report would be submitted on 12 October 2012.

2.4 The MMO wishes to highlight that, given that a final design and management scheme for Cherry Cobb Sands has not yet been developed, it is difficult for the MMO to make any definitive representations at this stage. However, the MMO did make a number of comments at the hearing on 11 September.

2.5 First, whilst the final design of the site is not yet known, it is likely that a number of the activities required to build the site would be licensable activities under the Marine and Coastal Access Act 2009 ("the MCAA 2009") which would require a licence under the Deemed Marine Licence ("DML") at Schedule 8 of the proposed Development Consent Order ("DCO"). Such activities are likely to include:

- the breach required to allow water onto the site; and
- any scour prevention to prevent the breach widening.

2.6 Secondly, any dredging activities to maintain the channels and apparatus on the site will be licensable activities given that once the site becomes tidal, it will become part of the marine area. By section 66(1) it is a licensable activity to "*carry out any form of dredging within the UK marine licensing area."* S.66(4) provides that 'the UK marine licensing area' consists of the UK marine area.

2.7 The UK marine area is defined in section 42 of the MCAA 2009 as consisting of, *inter alia*, "*the area of sea within the seaward limits of the territorial sea adjacent to the United Kingdom."* By s.42(3)(a) 'sea' includes "*any area submerged at mean high water spring tide"* which, by s.42(4) itself includes:

"*waters in any area –*

(a) which is closed, whether permanently or intermittently, by a lock or other artificial means against the regular action of the tide, but

(b) into which seawater is caused or permitted to flow, whether continuously or from time to time, and

(c) from which seawater is caused or permitted to flow, whether continuously or from time to time."

2.8 Such maintenance may take the form of:

- Dredging of the newly excavated Cherry Cobb Sands Channel;
- Removal and disposal of sediments from culverts and other structures such as tidal slaps and sluices

2.9 That maintenance will need to be licensed within the terms of the DML at Schedule 8 of the DCO and will also require inclusion in any Environmental Management and Monitoring Plan ("EMMP") relating to the Compensation Site. To the extent that it was suggested by Natural England at the hearing that instead of an EMMP in relation to the Compensation Site a legal agreement may be agreed between the parties for provision of the site at Cherry Cobb Sands, the MMO stated at the hearing that it would expect to be a party to any such legal agreement.

2.10 In this context, it should also be noted all materials proposed in the construction of the RTE cells and the managed realignment site must be suitable for deposit with the marine environment given that the site will become tidal upon its breach.

2.11 Thirdly, whilst the details of any required maintenance dredging are not known at this stage, the MMO is concerned about the suggestion from Mr Keiler that it might prove necessary, in the context of 'adaptive management' to carry out dredging at Stone Creek. The Applicant had previously indicated that neither capital nor maintenance dredging was proposed at Stone Creek (see Applicant's response to MMO Relevant Representations on 5 April 2012, as confirmed in comments from the Applicant on 26 June 2012). The MMO is concerned that dredging at this location has not been included in any assessment undertaken by the Applicant (see pages 2-3 of Table 54.1 at Annex 1 to the MMO's response to the ExA's second round questions). The MMO cannot comment upon this further until detailed design and management proposals are provided by the Applicant, but wished to draw this matter to the ExA's attention.

2.12 Finally, the MMO also noted that, at the hearing, Mr Keiler indicated that the proposed RTE scheme was likely to require long-term maintenance in the form of dredging as part of an 'adaptive management' approach. It was suggested that all three of the RTE cells would need dredging after approximately 20 years in order to prevent their transition into saltmarsh. Once again, such dredging would be a licensable activity requiring a licence from the MMO. The MMO wishes to indicate at this juncture that it would have concerns were it suggested that such long-term dredging should be included in the DML. Given that such dredging would be taking place some 20 years in the future, it would be more appropriate for the Applicant to seek the required licences at that time.

3. Examining Authority's Topics

Topic 2 – conservation objectives and implications of RSS Policy HE1

3.1 During discussions on this topic the ExA asked the MMO to provide an update on progress with the proposed East inshore and offshore areas Marine Plan. The MMO confirmed that the Marine Plan is due to go out to consultation but that this is unlikely to occur until the end of 2012/beginning of 2013. Key documents in relation to the preparation of the Marine Plan are now available on the MMO's website at the following address:
http://www.marinemanagement.org.uk/marineplanning/areas/east_key.htm

3.2 The documents listed are:

(1) Seascape Character Area Assessment, August 2012;
(2) Options Generation: Initial Options, August 2012;
(3) Options Workshop Summary, August 2012;
(4) Draft Vision and Objectives for East Marine Plans: Update, May 2012;
(5) Revised Statement of Public Participation, May 2012;
(6) Evidence and Issues Report, February 2012;
(7) Sustainability Appraisal of East Inshore and East Offshore Marine Plans: Questions and Answers, October 2011;
(8) Marine Planning for the East of England, September 2011;
(9) The East Marine Plan Area: Maximising the Socio-Economic Benefits of Marine Planning, July 2011;

(10) Statement of Public Participation, April 2011;

(11) Marine Planning – A Summary, February 2011;

(12) Decision on First Marine Plan Areas, October 2010.

3.3 It is anticipated that documents (1) – (4) will be of particular interest to the ExA and therefore, for ease of reference, those documents have been annexed to this Written Summary. However, all of the above documents are available to view at the web address provided above.

Topic 4 – In-combination Effects

3.4 The MMO's comments on the in-combination effects are to be found in the Written Summary of the oral case put by the MMO at the Issue Specific Hearing on Marine Matters.

3.5 However, in relation to comments made by the Applicant at the hearing regarding the delay experienced in receiving comments back from the Statutory Nature Conservation Bodies ("SNCBs") on supplementary information submitted by the Applicant, the MMO observed that a substantial amount of supplementary information had been submitted by the Applicant since the application had been made. The MMO has repeatedly requested a sign-posting document from the Applicant as the late submission of the information and a lack of clarity in the initial Environmental Statement and shadow Habitats Regulation Assessment submitted has meant that it is not clear where a number of impacts have been assessed by the Applicant, if at all.

3.6 That sign-posting document has not, yet, been forthcoming. However, the MMO welcomes the agreement from the ExA at the hearing that such a document would be useful to all parties and the Applicant's agreement to provide such a document. The MMO looks forward to receiving that document in due course.

Topic 5 – Mitigation Measures

3.7 In relation to an issue raised by Natural England regarding River Lamprey, the MMO confirmed that it is deferring to the views of Natural England and the Environment Agency as far as potential impacts on River Lamprey and other species are concerned. However, the MMO explained that on-going discussions are continuing with the Applicant, Environment Agency and Natural England concerning appropriate conditions to provide mitigation to lamprey, and other species, from the potential affects of piling activities. Those discussions are at an advanced stage and, once agreed, those conditions will be reflected in the terms of the DML at Schedule 8 of the DCO.

Topic 7 – Environmental Management and Monitoring Plan

3.8 The MMO confirmed that it received the drafts of the Marine and Terrestrial EMMPs submitted in August 2012 and supported the position put forward by Natural England at the hearing that it was for the Applicant to populate those drafts with the required detail. The MMO has not yet been asked for its input into those documents, but will engage proactively with the Applicant and SNCBs in agreeing the content of the EMMPs. It is understood from representations made by the Applicant at the hearing that the MMO will be invited to a workshop on the provisions of the EMMPs in the near future and the MMO welcomes this opportunity to participate.

3.9 However, the MMO noted that whilst progress was being made on the Terrestrial and Marine EMMPs, the MMO was very far away from being able to sign anything in relation to the compensation site at Cherry Cobb Sands, whether that be via a separate EMMP or a legal agreement. As noted above, the MMO is concerned with the detailed design and maintenance of the site in light of the fact that the construction and management of the site is likely to involve licensable activities which will need to be reflected in the DML and any EMMP or legal agreement. Until the Applicant provides the parties with its proposals for the detailed design and management of the compensation site it will not be possible to draw up an appropriate EMMP or legal agreement.

Topic 8 – Any Other Matters

3.10 In light of a concern raised by the Royal Society for the Protection of Birds as to when the Applicant would be providing further detailed design for the compensation site, the MMO noted that, given that the design of the compensation site is still at an early stage, it might not be possible to have all necessary licensable activities included in the DML by the time of the Issue Specific Hearing into the DCO on 22 October 2012.

3.11 In response to a query from the ExA as to whether the proposed quay and compensation site would be within the purview of the MMO once developed, the MMO noted that, for reasons explained more fully above, post-breach the compensation site would become part of the marine environment and hence within the remit of the MMO. By contrast, once constructed, the quay would become part of the terrestrial domain and therefore not within the MMO's remit. However, it should be noted that any works required to the quay and other facilities post-construction which are below the level of Mean High Water Springs and which are not identified within the DML may require a separate application for a marine licence from the MMO.

3.12 Finally, the representative from Hull City Council raised a concern that the piling conditions required in relation to the Green Port Hull planning application were not consistent with those being required of the Applicant in this case where the piling conditions are less restrictive. The MMO noted that there are differences between the two projects, most notably in terms of additional receptors at Green Port Hull.

3.13 The MMO also reiterated the Environment Agency's comments that the piling conditions which are being required in this case are appropriate to the development proposed. What the ExA needs to be concerned with is that the conditions proposed are appropriate for the project in this case. The relevant agencies are generally satisfied, subject to finalising certain details, with the conditions proposed and that they are appropriate in this case.