

INFRASTRUCTURE PLANNING

**THE INFRASTRUCTURE PLANNING
(EXAMINATIONS PROCEDURE) RULES 2010**

THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER

TR030001

**Written Summary of the Oral Case on behalf of the Harbour Master, Humber
put at the Specific Issue Hearing on the river regime and marine matters
held on 13 September 2012**

(Rule 8 letter 31 May 2012 Annex C)

Unique Reference Number	URN10015524
Rule No.	8(1)(k) and 17
Document Ref.	SOC02
Author	Harbour Master, Humber
Date	24 September 2012
Date of revision & version number	24 September 2012 (Revision 1.0)

Winckworth Sherwood LLP
Minerva House
5 Montague Close
London
SE1 9BB

Introduction

1. This is the Written Summary of the case put by Mrs Alison Gorlov of Winckworth Sherwood LLP at the Specific Issue Hearing on 13 September 2012 on behalf of Captain P J Cowing in his 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 river Humber ("the Harbour Master, Humber").
2. This summary and the views expressed in it are separate and distinct from anything that may be received by the Examining Authority from ABP in its capacity as port operator within the Humber.
3. References below to numbered articles of and Schedules to the Order are based on the draft Order dated 3 August 2012. References to the Harbour Master's revised Order are to the revised Order appended to the written summary of the oral case on behalf of the Harbour Master, Humber put at the Specific Issue Hearing on 12 July.

Berthing pockets – deposit of backfill

4. In reply to Mr Widds' enquiry, the Harbour Master, Humber reported that he had not yet received from Able their report on the deposit of backfill material in the berthing pockets.

Outfalls

5. There was discussion of the possibility of siltation at the existing outfalls/intakes owned by Centrica and E.ON. As a departure from his response to WQ52 of the second round of written questions, the position of the Harbour Master, Humber was reserved in light of the concerns expressed by MMO.
6. In the course of the exchanges, Able's representatives stated a preference for making only passive provision for outfall/intake pipes within the quay itself but initially relying on maintenance dredging to prevent siltation and only diverting through those pipes if dredging proved to be ineffective. It was clear that Able would wish for its statutory obligations to match that very flexible arrangement. The Harbour Master, Humber is firmly of the view that all necessary protection for these outfalls/intakes must be given by way of an express statutory obligation to provide replacement of outfalls/intakes and divert through them. This should be imposed on Able from the outset. This will ensure that necessary action is taken as and when it is needed. If in the event diversion of the outfall/intakes is not required, that can always be agreed between Able and Centrica/E.ON.

Sedimentation at the Inner Dolphin

7. On behalf of Able a description was given of the walkways that are planned to be installed so as to overcome any sedimentation problem. The Harbour Master, Humber will wish to comment on these works but reserves his position until he has seen details of the proposals.

Maintenance dredging

8. At the request of the Harbour Master, Humber, Able has undertaken to provide an explanation of the way in which the tonnage figures for maintenance dredging have been reached. The Harbour Master, Humber may wish to comment further when he has considered these figures.
9. In response to enquiries about the modelling and assessment of the revised quay design and dimensions, Able undertook to meet the Harbour Master, Humber. This meeting

having taken place since the hearing, the Harbour Master is considering the information he has received. He may have further observations to pass to the Panel.

Deposit of dredgings

10. MMO explained to the Panel the difficulties it has with the figures so far provided by the Applicant. The Harbour Master, Humber reserves his position until MMO is satisfied.
11. As stated in paragraph 7 of his responses to second round of written questions, the Harbour Master, Humber is concerned that the deposit of dredgings into HU080 should not be such as to interfere with the deposit of arisings from dredging of the Sunk Dredged Channel, for which the Harbour Master, Humber is responsible. It is to be hoped that the position will become clearer when the promised further tonnage figures are provided by Able and MMO's considered views are known. However, that does not alter the position that the Order does not at the moment provide any real remedy should HU080 become overfilled in the way feared. This project may not fall within paragraph 18 of the protective provisions for the Harbour Master, Humber (Schedule 9, Part 2) and the indemnity in paragraph 19 only partially addresses the problem. The Harbour Master, Humber, urges that the Order should include express provision to protect against the possibility of HU080 becoming overused and providing for an appropriate remedy. It is suggested that the remedy should be a mechanism for requiring the Applicant to cease deposits at that site in specified circumstances. These should be related to the relationship between use by Able and pre-existing cyclical peak siltation, not simply to the total volume of deposit made by Able.
12. This issue emphasises the need to expand the scope of the plans and other documents that are to be subject to approval by the Harbour Master, Humber (Schedule 9, Part 2, paragraph 6). In the Harbour Master's revised Order, that paragraph (paragraph 8 in that draft) was amended so as to include all the items which the Harbour Master, Humber, considered fell within his jurisdiction and so ought to be subject to his approval. These changes are not included in the 3 August draft Order and at the hearing on 13 September Counsel for Able resisted this on the grounds that it gave rise to duplication, and argued that Able should only be required to submit material once to the regulator.
13. The Panel will appreciate that the MMO and the Harbour Master, Humber are two distinct statutory regulators each with their own respective functions. Approval of many of the same documents is relevant to all those functions. Neither regulator can exercise the functions of the other. It is therefore necessary and appropriate for all documents relevant to their respective functions to be subject to approval by both regulators: there will be no duplication.
14. At the hearing MMO indicated that it was happy with the proposal for erodibles to be deposited at HU080 and in-erodibles at HU082 and there was discussion as to how this might be achieved. On behalf of Able the Hearing was told that dispersal figures would be provided to interested parties including the Harbour Master, Humber.

Impact on other facilities

15. During the discussion of possible impacts of AMEP on users of other facilities, the Harbour Master, Humber argued that the matters that should be subject to his prior approval should include the plans and other matters related to e.g. maintenance dredging and vessel movements, all as listed in the Harbour Master's revised Order, Schedule 9, Part 2, paragraph 8.. The view was expressed on behalf of Able that, as with dredging deposits, this would result in duplication, that all approval must have the same result and that the requirements imposed on Able should not be more onerous than those imposed on other operators: reconciliation of any potential conflict between facilities would be a matter for resolution by the Harbour Master, Humber, acting fairly.

16. The position of the Harbour Master is as for dredging deposits, that he has relevant regulatory responsibilities of his own, namely sole responsibility for (a) traffic management in the river Humber and (b) conservancy i.e. the river regime. There can be no doubt that these primary functions call for the materials referred to in paragraph 15 above to be subject to the Harbour Master, Humber's prior approval. His functions are separate and distinct from the MMO's. For the reasons given in paragraph 13 above, there is no duplication.
17. As to how to effect a reconciliation between potentially conflicting requirements of two regulators each with different functions, it is not for Able to require the regulators to modify or abdicate the carrying out of their duties. It must be for Able as Applicant to satisfy the Secretary of State that the Order makes appropriate provision to enable all affected regulators to perform their statutory functions.
18. At the hearing the Harbour Master did not respond to the claim by Counsel for Able that all approvals must be the same, or perhaps he meant that they must not be inconsistent. That approach misunderstands the purpose of a regulator's approval. If one regulator accepts a set of proposals as meeting the needs of that regulator, but another requires something different for its purposes, it is not for Able to decide that one regulator overrides the other. As is the norm in these circumstances, Able will have to adjust its proposals so that both regulators are satisfied. The Order at present does not allow for that to happen. The necessary amendments to Schedules 9 and 10 are in the Harbour Master's revised Order.
19. Counsel for Able raised an express concern that the Harbour Master, Humber's functions should be exercised fairly as between Able and other operators. This was discussed in the context of claims of lack of independence between the different branches of ABP. Although this was mainly directed at ABP's independent consultant, the Harbour Master was mentioned in passing. The reference to the need for fair treatment may therefore imply a fear by Able that such treatment might not be forthcoming from the Harbour Master, Humber. If that is indeed their concern, the Harbour Master ought not to have to say that it is completely unfounded. However, he cannot emphasise strongly enough that all statutory harbour authorities have statutory responsibilities of their own which must be exercised fairly. If the Order is made this will apply to Able just as much as it applies at present to the Harbour Master (and also C.Ro).
20. C.Ro's representative mentioned he had been passed a revised vessel list and it would, clearly, be useful for the Harbour Master, Humber to see the list and satisfy himself that anything suggests that further capacity calculations should be carried out. On behalf of Able, Mr Cram declined to share the document, it appeared on the grounds of commercial confidentiality. Leaving aside that the document appears already to have been disclosed to C.Ro, this seems to be further evidence of Able's failure to accept that the Harbour Master, Humber is an independent statutory harbour authority. The Harbour Master, Humber would urge that the revised list should be made available, to him at least, as having direct relevance to the Harbour Master's functions and the Panel's examination.

Vessel movement management plan

21. In the course of exchanges regarding vessel movements, Counsel for Able indicated that the Harbour Master, Humber was accepted as having a legitimate interest in regulating vessel movements. It appears, therefore, that Able shares the Harbour Master's view that he has, at the very least, an involvement in the preparation of the vessel movement management plan required by paragraph 14 of the deemed marine licence. That is one of the documents that the Harbour Master proposed should be subject to his approval. That proposal having been previously been rejected by Able, what Counsel says indicates that Able now concurs with the Harbour Master, at least as regards this one

plan.

Winckworth Sherwood LLP
Winckworth Sherwood LLP
8 October 2012