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Dear Sirs,

PLANNING ACT 2008: APPLICATIONS FOR THE PROPOSED ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER AND FOR CERTIFICATES UNDER SECTION 127

1. I am directed by the Secretary of State to refer to the application made by your client Able Humber Ports Limited ("the applicant") on 16 December 2011 for:

- the Able Marine Energy Park Development Consent Order ("the Order") under sections 37, 114, 115, 117(4), 120 and 122 of the Planning Act 2008 ("the 2008 Act"); and
- the associated applications for certificates under section 127 of the 2008 Act ("the section 127 certificates") in relation to land owned by Associated British Ports ("ABP"), ABP in its capacity as conservancy authority for the River Humber, and Network Rail Infrastructure Limited ("NR").

2. The Order would grant development consent for a marine energy park on the south bank of the Humber Estuary at Killingholme in North Lincolnshire (referred to in this letter as "the project") and associated development including an ecological compensatory scheme on the north bank of the Humber Estuary. The section 127 certificates relate to statutory undertakers' land in or over which interests or rights are required for the purposes of the project. The proposals are described more fully in the Department's letter of 28 August 2013 ("the August letter") which may be found on the Planning Inspectorate website¹.

3. The August letter set out the Secretary of State's views on the conclusions of the Panel which had examined the Order application. That report was enclosed with the August letter and made publicly available on the Planning Inspectorate website². The conclusions of the Examining Inspector who had considered the section 127 certificates

¹ <http://snurl.com/287bru4>

² <http://snurl.com/289ycif>

were at Appendix D to the Panel's report. The Panel recommended on page ii of its report that the Order be made in the form set out in Appendix K to the report. The Examining Inspector recommended that the section 127 certificates be issued in the form set out in the relevant sections of Appendix D to the Panel's report.

4. For the reasons explained at paragraphs 17 to 23 and 40 in the August letter, the Secretary of State considered that he was not yet in a position to decide whether to accept the Panel's recommendation. He was, nevertheless, minded to agree with the Panel that he should make an Order granting development consent for the project, subject to receiving satisfactory evidence of the following:

(1) in relation to the "*substantial risk*" identified by Natural England that the ecological compensation measures will not work, confirmation from the applicant that:

(a) reasonable additional measures can be implemented to reduce that risk, or

(b) developments since the Panel examination have increased Natural England's confidence in the effectiveness of the compensation proposals such that they no longer consider the risk to be "*substantial*"; and

(2) assurance from the applicant, having consulted with NR and the Office of Rail Regulation ("ORR"), that the project will not jeopardise any future operations of the Killingholme Branch railway.

5. The applicant submitted a response to the Secretary of State on these matters on 15 October 2013. Interested parties were then given an opportunity to comment on the applicant's response. The applicant's response and the comments received from interested parties were made available on the Planning Inspectorate's website.

Summary of the Secretary of State's decision

6. **The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the project. He has decided also to issue the section 127 certificates in relation to land owned by ABP, ABP in its capacity as conservancy authority for the River Humber, and NR.** This letter must be read in conjunction with the August letter: together they serve as the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("the 2009 Regulations"). For the reasons given in paragraph 48 below, the Order, once made, will be subject to Special Parliamentary Procedure ("SPP") before it can come into force.

7. In separate letters enclosed with this letter, the Secretary of State for Energy and Climate Change has decided to issue section 127 certificates in respect of land required for the project which is owned by Centrica and E.ON. (A section 127 certificate issued by the Secretary of State for Environment, Food and Rural Affairs in respect of land required for the project which is owned by Anglian Water was enclosed with the August letter.)

Secretary of State's consideration

8. The Secretary of State's consideration of the main issues raised in responses to the August letter is set out below, followed by his consideration of other matters arising from the August letter. Unless otherwise indicated below, his assessment of the conclusions of the Panel and the Examining Inspector remains as set out in the August letter. All paragraph references prefaced by "PR" are to the Panel's report.

Compensatory measures

9. In response to the August letter, the applicant advised the Secretary of State that progress had been made on both the issues about which he had sought confirmation. On reasonable additional measures, the applicant had agreed to provide land at East Halton Marshes as further compensation, which the Panel had recommended. On the risk that the compensatory measures would be ineffective, Natural England had down-graded its assessment from a "substantial risk" to a "residual risk". The applicant provided supporting information in a report to the Secretary of State which was published on the Planning Inspectorate's website.

10. Responses to the applicant's submissions on compensatory measures were received from Natural England, the Royal Society for the Protection of Birds ("RSPB"), ABP, the Environment Agency, Lincolnshire Wildlife Trust, Yorkshire Wildlife Trust and Mr Stephen Kirkwood (an Interested Party). The Secretary of State has considered these responses in carrying out the assessment of the implications of the project that is required by the Conservation of Habitats and Species Regulations 2010 ("the Habitats Regulations"). This assessment is set out in Annex 1 to this letter and includes reference to the views expressed in the responses to the August letter. The Secretary of State's consideration of other issues raised in these responses is at paragraphs 12 to 16 below.

Habitats Regulations Assessment

11. The Secretary of State noted in the August letter that there was no dispute that the project would result in both a significant effect on, and an adverse effect on the integrity of, the Humber Estuary Special Area of Conservation, Special Protection Area ("SPA") and Ramsar site ("the European sites"). Having considered the Panel's report and all the responses to the August letter, the Secretary of State has concluded in the attached assessment that there are no realistic alternatives to the project with lesser impacts on the sites protected under the European Union Habitats Directive³; there are Imperative Reasons of Overriding Public Interest which justify giving consent for the project; and the overall coherence of the *Natura 2000* network would be protected by the applicant's proposed compensatory measures, which would be secured by the implementation of Environmental Management and Monitoring Plans ("EMMPs") (PR 17.3-4). The Secretary of State has therefore concluded, as competent authority for the purposes of the Habitats Regulations, that taking into account the whole package of compensatory measures it is permissible for him to give consent for the project in spite of the adverse effect which it would have on the integrity of the European sites.

³ Council Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora

Other comments on the applicant's further information

12. A number of those who responded considered that the applicant had not produced any significant new information so as to justify Natural England downgrading from "substantial" to "residual" the risk that the compensatory measures would not work and that Natural England had departed from the precautionary approach that it normally adopted in considering development proposals of this nature. Some, including Natural England, considered also that the applicant's reference to comparable port projects and the compensatory measures that had been approved in the past was not relevant. As explained in the attached Habitats Regulations Assessment, the Secretary of State agrees with Natural England that a number of the risks previously identified have been reduced or mitigated. He has not, however, placed any weight on the applicant's reference to precedents as every development must be assessed on its own merits and on the particular circumstances of the proposal.

13. Some respondents have criticised the applicant's changes to the compensatory measures made during the examination, the production of relevant material such as the finalised EMMPs only after the examination closed, and the adequacy of the procedure for considering the further information submitted by the applicant in response to the August letter. For these reasons some considered that the Order application should be rejected and a fresh examination held into the applicant's amended proposals.

14. On the first point, the Secretary of State agrees with the Panel that it was appropriate for the applicant to consider alternative compensatory measures in the light of criticisms of the original proposals made during the examination. He is satisfied also that it is within his powers under section 114 of the 2008 Act to make a Development Consent Order authorising the amended proposals and that the Panel ensured a fair procedure for examining the revised compensatory measures (PR 2.19, 3.9-11).

15. For the reasons given in paragraphs 53(b) and (c) in the August letter, the Secretary of State considers that it was not necessary to invite representations on the information submitted by the applicant between the close of the examination and the issue of the August letter. He is satisfied also that the publication of the applicant's further information in response to the August letter and the time allowed for representations to be made provided a fair opportunity for interested parties to participate in the assessment of this information.

16. The Secretary of State has noted the other issues raised in responses to the applicant's further information, for example, about outstanding detailed design matters relating to the areas of wet grassland to be created at Cherry Cobb Sands and East Halton Marshes. He considers, however, that none of these affect his assessment of the adequacy of the applicant's package of compensatory measures nor need to be resolved before he decides this application.

Other environmental issues

Terrestrial ecology

17. The Secretary of State confirms that in coming to a decision on this application he has had regard to the conservation of biodiversity as required by section 40 of the Natural Environment and Rural Communities Act 2006, and to his duties under the Wildlife and Countryside Act 1981 in relation to the conservation and enhancement of Sites of Special

Scientific Interest. As regards the disturbance of European Protected Species he agrees with the Panel that, taking into account the views of Natural England, the mitigation proposed by the applicant for great crested newts and bats is a suitable strategy and that there should be no insuperable difficulty with obtaining licences under the Habitats Regulations from Natural England to allow the development to proceed (PR 10.64-67). He is satisfied also that appropriate mitigation strategies in relation to voles, badgers, breeding birds and SPA birds have been agreed between the applicant and Natural England (PR 10.68-75).

Adequacy of the Environmental Statement

18. At paragraph 25 of the August letter, the Secretary of State noted the Panel's conclusions at PR 12 on the adequacy of the environmental information for the purposes of making a decision on this application. Having considered the further information submitted in response to the August letter and the comments of interested parties, he is satisfied that the information now before him is sufficient for the purposes of making a properly informed decision in accordance with regulation 3(2) of the 2009 Regulations, and he confirms that he has taken this information into account in coming to his decision.

19. For the purposes of regulation 23(2)(d)(iii) of the 2009 Regulations, the Secretary of State considers that the main measures to avoid, reduce and, if possible, offset the major adverse environmental impacts of the project are the ecological compensatory measures at Cherry Cobb Sands as amended during the course of the examination, the requirements in Schedule 11 to the Order, the Code of Construction Practice and the three EMMPs referred to in Annex 1 to this letter.

Rail matters

20. In response to the August letter, the applicant made the following comments and provided supporting information in a report to the Secretary of State:

“Having conducted extensive consultation with both Network Rail and the Office of Rail Regulation (ORR) since 28 August, the applicant can provide the requested assurance that the project will not jeopardise the future operation of the Killingholme Branch Railway. In particular, the ORR has accepted the principle of introducing level crossings on the railway for heavy equipment, and a statement of common ground has been concluded between the applicant and Network Rail where the parties agree that the project can go ahead without prejudicing the future operation of the railway.

The provision of access across the Killingholme Branch railway will be enabled by means of the Network Change process, and the ORR and Network Rail have confirmed that, if accompanied by the appropriate safety case, they will support the applicant's proposals via this route. Again, no change is needed to the project documentation as the protective provisions in Part 4 of Schedule 9 to the Development Consent Order already provide for Network Rail's approval for any part of the authorised project affecting the railway.”

The applicant confirmed that the process to establish a Network Change was under way with the active support of the ORR and NR. The applicant also referred in its response to a feasibility study into the option known as the “Rosper Road Loop”. The applicant considered that this could serve as an alternative to NR’s “Killingholme Loop” proposals

(described in PR 14) which would entail use of the Killingholme Branch railway through the site of the project.

21. Responses to the applicant's submissions on rail matters were received from NR, C.RO Ports Killingholme Limited ("C.RO"), C.GEN Killingholme Limited ("C.GEN"), and ABP. The main issues raised in these responses are summarised below.

Network Rail

22. NR confirmed that it would continue to work with the applicant and would assist the applicant in the assessment of its proposal to cross the Killingholme Branch railway in accordance with industry processes. NR was confident that a way forward would be established which would achieve the objectives of the Secretary of State set out in the August letter. However, NR felt strongly that the protection afforded by the indemnity provision in the common form of protective provisions must be included on the face of the Order authorising the development of the Able Marine Energy Park. Only with this provision could NR be confident that adequate protection for its undertaking was in place.

C.RO

23. C.RO, which is entitled to access the Killingholme Branch railway through a connection agreement with NR, considered that the applicant's response did not provide sufficient assurance that the project would not jeopardise any future operations of the Killingholme Branch railway. C.RO explained its position as follows:

- (a) As part of any decision the Secretary of State must require that the Killingholme Branch railway remains within the operational network of NR, and in the protective provisions benefitting C.RO directly it should be confirmed that the railway will remain within the operational network of NR.
- (b) The proposed acquisition of four easements for level crossings should not be permitted since it could cause similar mischief to outright acquisition of the railway; the applicant had not established a need for the project or a need to cross the railway so as to justify the proposed crossing points. The Order should be amended to provide (at most) for modernisation of the existing level crossing to a single, signalised, protected heavy-duty crossing alone. All other crossings of the railway line should be by bridge.
- (c) The protective provisions in the Order for C.RO would not be effective in guaranteeing its future use of the railway; other provisions in the Order would compromise NR's control of the railway and would jeopardise its future operation. The requirement for NR's consent to the compulsory acquisition of easements over the railway should be re-instated and in all cases the protective provisions should require the applicant to indemnify the protected parties against loss as a result of implementing the project.
- (d) It was clear from the Statement of Common Ground submitted by the applicant that NR and the applicant had agreed certain matters in more detail than reflected in this Statement. It would be entirely appropriate and indeed necessary for the Secretary of State to inform himself further as to what the full extent of these parties' understanding and obligations towards each other were before deciding the application.

- (e) The Rosper Road Loop was a material change to the project and the mitigation that it proposes. It was in itself capable of being a Nationally Significant Infrastructure Project and would require site assembly (probably including powers of compulsory acquisition) and Environmental Impact Assessment. As such the proposals cannot be guaranteed to be acceptable and if the Secretary of State were to rely upon this, he would have to conclude that there was a reasonable prospect of its delivery, which he cannot currently do.
- (f) C.RO considered that the Rosper Road Loop might be acceptable, but only subject to the existing railway being afforded the protection sought by C.RO. As an existing beneficiary of the Killingholme Branch railway, C.RO must be properly protected, and it must be assured that rail access to its harbour facilities would not be interfered with by the unnecessary construction of level crossings.
- (g) The changes in the proposals amounted to a major variation of the project. The Secretary of State should require the applicant to resubmit its application so that it could be examined on the basis of clear and fixed proposals; C.RO and other interested parties should be given the right to be heard and to cross-examine the applicant on these matters.

C.GEN

24. C.GEN made similar representations to those of C.RO and was in particular concerned that if four level crossings were provided rail access for transporting solid fuel and other materials to the site of its proposed thermal generating station at North Killingholme (for which development consent had been applied for in March 2013) could not be guaranteed. In addition, C.GEN made the following points specific to its interests:

- (a) The proposed limitation of “up to five trains per day” on the protection afforded to C.GEN by the Order would interfere with the unloading and transporting of coal to C.GEN’s site, which would fluctuate within the predicted average of five trains per day. This would be undesirable economically and environmentally as it would lead to unnecessary prolonged use of open air storage at Immingham and would reduce the flexibility to recover from interruption of fuel deliveries.
- (b) The scope of the Network Change sought by the applicant had not been set out; the consequences for C.GEN could not therefore be understood, for example, the implications of the level crossings for train length. C.GEN considered that the applicant was unlikely in any event to achieve the agreement of all access beneficiaries required under the Network Change process.

ABP

25. ABP considered that the Order should, if made, include a condition that construction of the project must not commence until the Network Change process had been completed to the satisfaction of the ORR. This was essential to give certainty as to rail connectivity for the applicant and other users of the railway, given that it was unclear what rail infrastructure the applicant was now proposing to construct. ABP also drew attention to the ORR’s doubts as to whether a phased approach to development, with various triggers based on rising risk, would be workable; ABP considered that this supported the view that

a solution which safeguarded the Killingholme Branch railway must be agreed before construction of the project commenced.

26. ABP noted that, while the ORR had accepted the principle of level crossings for the movement of abnormal loads, in respect of normal road traffic ORR policy remained that new level crossings should be avoided if a grade-separated solution existed. ABP was strongly of the view that such a solution was possible in the form of a series of road bridges across the site.

27. ABP said that it did not consider that the Rosper Road Loop was a credible alternative to the Killingholme Loop for various planning, financial and operational reasons. ABP was seriously concerned that the applicant had presented the inadequate Rosper Road Loop as a response to the Secretary of State's request for assurance that the project would not jeopardise any future operations of the Killingholme Branch railway.

28. ABP considered that the Network Change process and the Rosper Road Loop proposals, which were aimed at resolving the critical rail connectivity issues, together and separately constituted a fundamental change to anything put before the Panel.

Secretary of State's conclusions on rail matters

29. The Secretary of State has considered all the representations made on this issue. He is satisfied that in the light of the further information provided by the applicant, there is sufficient assurance that authorising the proposals in the Order for access across the Killingholme Branch railway, as recommended by the Panel, will not prejudice the future operation of that railway. In particular, he attaches significant weight to the Network Change process referred to by the applicant and the confidence expressed by NR and the ORR that the process is capable of delivering an outcome that will neither prejudice the future operation of the railway nor create a safety hazard. Taking into account the safeguards afforded by that process for access beneficiaries and the protective provisions included in the Order for those parties, the Secretary of State considers that any restriction on the operation of the railway as a result of the project which could not be avoided is likely to be limited and would be outweighed by the considerable socio-economic benefits of the project identified by the Panel (PR 17.6).

30. Consequently, the Secretary of State now accepts the Panel's recommendation that the Order should confer powers on the applicant to acquire compulsorily four easements across the railway for the construction of level crossings. Having regard to section 122 of the 2008 Act, he is satisfied that those powers would facilitate the development. Weighing the potential loss from the exercise of those powers (taking into account the safeguards referred to above) against the public benefit of implementing the scheme in the manner proposed by the applicant, he is satisfied also that there is a compelling case in the public interest for conferring those powers on the applicant, as the Panel concluded at PR 18.197-198.

31. With regard to other concerns raised by the interested parties, the Secretary of State does not consider that it would be appropriate to provide in the Order that the Killingholme Branch railway must remain within the operational network of NR. Any proposal to close the railway would be subject to the Network Change process which would protect the interests of access beneficiaries affected by such a proposal. He is similarly satisfied that, subject to the modifications referred to in the next paragraph, the provisions in the Order as published with the August letter would not compromise NR's

ability to manage effectively its operational network, given the requirements of the Network Change process that would apply to works or activities under the Order which would affect the railway. He has noted also that NR has not itself expressed concern about the provisions referred to by C.RO and C.GEN in their representations.

32. The Secretary of State has considered further the representations by NR and others that the indemnity provisions which they had sought during the examination should be included in the Order. While he agrees with the Panel, as indicated at paragraph 51(l) of the August letter, that the inclusion of indemnity clauses does not prevent disputes ending up in court, he recognises the importance which NR and others attach to such provisions as a means of ensuring that their statutory undertakings are not exposed to the risk of incurring costs for loss or damage caused by third party development. Given also that indemnity provisions are commonly included in statutory orders authorising development, he has decided to include in the Order the indemnity provisions requested by NR, C.RO, C.GEN, ABP and National Grid.

33. The Secretary of State has considered C.GEN's concerns about the "5 trains per day" limitation in the protective provisions as recommended by the Panel. He considers that the applicant's commitment to protecting this level of access strikes a reasonable balance between the need for access across the railway line to achieve the full benefits of the project (accepted by the Panel at PR 18.198) against the potential transportation requirements of C.GEN's proposed generating station, which has not yet been authorised. Nevertheless, he considers that this provision would not prohibit the operation of additional trains by C.GEN, since the protective provisions require also that the applicant "must not unreasonably prevent C.GEN's access to the railway". In any event, he expects that in seeking Network Change authorisation for its detailed proposals for crossing the railway the applicant would aim to find a solution acceptable to all access beneficiaries by minimising the potential interference with use of the railway.

34. The Secretary of State has noted the conclusions of the Rosper Road Loop feasibility study referred to by the applicant. He has not given significant weight to those proposals in assessing the implications of the project for the Killingholme Branch railway as they are at an early stage of development and there is no certainty that they will be capable of delivery. He does not therefore regard the applicant's reference to the Rosper Road Loop in its further information as a change to the project which requires examination before he comes to a decision on this application.

35. The Secretary of State is satisfied that he now has sufficient information on the likely impact of the project on the Killingholme Branch railway for the purposes of his decision on this application and that he does not require any more information from the applicant, for example, about any agreements which may have been made with NR as C.RO suggests. He considers that in the light of the information provided by the applicant there is reasonable assurance that an acceptable solution for crossing the railway will be found and he is satisfied that it is unnecessary to require the Network Change process to be completed either before he makes a decision on the application or before construction of the project commences.

Representations on other matters

Harbour Master Humber

36. In two letters dated 29 November 2013, the Harbour Master Humber (“HMH”) made representations to the Secretary of State about the implications of the compulsory acquisition of the conservancy authority’s leasehold interest in the river bed for the purposes of the project and about a number of proposed textual amendments to the Order published with the August letter. In summary, the concerns of the HMH about the impact of compulsory acquisition of the conservancy authority’s interest were as follows:

- (a) This would reduce the degree to which the conservancy authority and the HMH could operate the regulatory controls over the harbour, for example, to prevent potentially harmful activities and to ensure clean up afterwards.
- (b) The applicant had not demonstrated sufficient financial worth to construct, operate and maintain the project. This increased the risk that the works might never be completed or might in the future be neglected or abandoned with the result that the works could be left ownerless with no funds to make them safe and maintain them in a safe condition or remove them. The financial burden in the event of default would fall on the conservancy authority and users of the river who pay conservancy dues.
- (c) The Order should therefore require the applicant to provide appropriate financial protections in respect of all elements of the project that are physically within or reclaimed from the river.
- (d) The financial risks to the HMH in the circumstances where an insolvent operator owned the freehold explained why the HMH preferred the option of an under-lease between HMH and Able with provision for termination in the event of insolvency.
- (e) Given the HMH’s evidence that the acquisition of the conservancy authority’s interest in the river bed would be detrimental to the carrying on of its statutory undertaking, the Secretary of State’s intention in the August letter to give a certificate under section 127(2)(b) of the 2008 Act in respect of the conservancy authority’s interests in the river bed was flawed.

37. The Secretary of State has considered the further representations of the HMH about the implications of the project for the statutory functions of the conservancy authority. He understands the HMH’s preference for an under-lease as explained in evidence to the Panel and in representations made to him since the close of the examination. However, he agrees with the Panel’s conclusion that in the absence of an agreement between the applicant and HMH for an under-lease the compulsory acquisition powers in the Order are necessary to ensure that the project can be delivered (PR 18.178-185).

38. With regard to the financial implications for the HMH in the event of the applicant’s insolvency, The Crown Estate has confirmed that this issue has been provided for in its agreement with the applicant for the lease of the land required for the construction of the new quay at Killingholme (referred to in paragraph 49 of the August letter). The Secretary of State understands that, in the event that the applicant enters into a lease with the Crown

Estate Commissioners, if the proposed works were not completed or were neglected or abandoned the financial burden would fall on the Crown Estate Commissioners. He considers that this supports his conclusion at paragraph 43 of the August letter that the conservancy authority's leasehold interest of the river bed can be acquired and not replaced without serious detriment to the carrying on of its statutory undertaking.

39. In its second letter, the HMH requested a number of textual amendments to the Deemed Marine Licence in Schedule 8 to the Order that was published with the August letter. The Secretary of State does not agree with the HMH that the table in paragraph 12 needs correction as the figure in the right hand column is not the total of the figures in the third column, but the total licensed tonnage in relation to maintenance dredging over the permitted 3 year period. He considers, however, that the changes to paragraphs 15, 39 and 43 relating to consultation with HMH are appropriate and that the references to the baseline document in paragraph 58 should be updated.

C.GEN

40. In its representations on rail matters, C.GEN made the following comments on other aspects of the August letter:

- (a) The legal agreement between the applicant and the Environment Agency relating to flood defence works at the main development site was of interest to C.GEN. It should be published for consideration and comment by interested parties.
- (b) The applicant's assessment of construction traffic impacts was carried out on the basis that the traffic would be entering the development site at 0700 and leaving at 1900, but this is not secured by the Order or the applicant's proposed Travel Plan.

41. On the first issue, the Secretary of State notes that the legal agreement between the applicant and the Environment Agency was published by the Planning Inspectorate with the August letter. On the second, the Secretary of State is satisfied that requirements 29 and 30 in Schedule 11 to the Order published with the August letter will ensure that appropriate arrangements will be put in place, subject to the approval of the relevant planning authority, to manage the impacts of traffic and travel during the construction of the project.

Other matters arising from the August letter:

Certificates under section 127 of the 2008 Act

Associated British Ports

42. At paragraph 42 of the August letter, the Secretary of State accepted the Examining Inspector's recommendation to issue a certificate under section 127(2)(b) of the 2008 Act in respect of the "triangle site". The Secretary of State notes that on 20 November 2013 ABP applied to the Marine Management Organisation ("MMO") for a Harbour Revision Order under the Harbours Act 1964 to authorise the Immingham Western Deepwater Jetty ("IWDJ") which would use the triangle site. While he recognises the progress made by ABP in its development of this project since the close of the examination, he remains of the view that it is appropriate to issue the section 127 certificate as it is not certain that the

IWDJ will proceed or that it must occupy the triangle site. He is accordingly satisfied that the acquisition of the triangle site for the purposes of the project would not cause serious detriment to the carrying on of ABP's undertaking. The section 127 certificate is at Annex 2.

Harbour Master Humber

43. At paragraph 43 of the August letter, the Secretary of State accepted the Examining Inspector's recommendation to issue a certificate under section 127(2)(b) of the 2008 Act in respect of the conservancy authority's leasehold interest in the part of the river bed required for the project. For the reasons given in the August letter and after consideration of the further representations from the HMH at paragraphs 36 to 39 above, he confirms his decision to issue the section 127 certificate. The certificate is at Annex 3.

Network Rail Infrastructure Limited

44. At paragraph 40 of the August letter, the Secretary of State said that he had not yet reached a conclusion on the Examining Inspector's recommendation to give a section 127 certificate in respect of the four easements for level crossings over the Killingholme Branch railway sought by the applicant pending consideration of the responses to the August letter. For the reasons given at paragraphs 29 to 35 above, the Secretary of State is satisfied that the acquisition of those easements will not cause serious detriment to the carrying on of NR's undertaking. He has therefore decided to issue the section 127 certificate in respect of NR's land. The certificate is at Annex 4.

Draft Order, requirements and obligations

45. At paragraph 51 of the August letter, the Secretary of State agreed with the Panel's conclusions on the text of the Order set out at Appendix K to the PR, subject to the qualifications and further changes detailed in that paragraph. The form of the Order which he proposed to make was, accordingly, published by the Planning Inspectorate on its website at the same time as the August letter. In paragraphs 32 and 39 above, he has indicated further changes that he intends to make in respect of the protective provisions and the Deemed Marine Licence.

46. In addition, the Secretary of State has decided to make the following changes to the requirements in Schedule 11 to the Order published with the August letter in the interests of ensuring certainty about the development that would be authorised by the Order and ensuring a fair process in regard to approval of details:

- (a) in requirement 8(3) (*Implementation and maintenance of landscaping*), to substitute "unless the relevant planning authority gives written consent to any variation" for the words "unless otherwise approved by the relevant planning authority";
- (b) in requirement 22(2) (*Code of construction practice*), to delete the words "unless otherwise agreed by the relevant planning authority";
- (c) in requirement 39(4) (*Sedimentation*), to delete the words "unless agreed otherwise by the relevant planning authority";

(d) in requirement 41(3) (*Contaminants and remediation*), to delete the words “unless otherwise agreed by the relevant planning authority”; and

(e) to delete requirement 45 (*Amendments to approved details*).

47. The Secretary of State has noted Natural England’s comment that there are inconsistencies between Schedules 8 and 11 to the Order as published with the August letter. He is however satisfied that the development programme described in the applicant’s response to the August letter is compatible with the provisions of the Order.

48. The form of the Order as the Secretary of State now proposes to make it is being published on the Planning Inspectorate’s website with this letter. He notes that the Order once made will be subject to SPP since objections made by the following statutory undertakers to the compulsory acquisition of their land have not been withdrawn: ABP, ABP in its capacity as conservancy authority for the River Humber, NR, Centrica, E.ON and Anglian Water. The Order will therefore not come into force until SPP has been completed.

49. The Secretary of State was advised by the MMO on 6 December 2013 that the applicant has requested a screening opinion under the Marine Works (Environmental Impact Assessment) Regulations 2007 in relation to a proposed variation of the disposal site for erodible dredged material specified in paragraphs 11 and 12 of the Deemed Marine Licence in Schedule 8 to the Order. Since this possible change to the proposals in the Order is at an early stage of consideration, he does not consider it necessary to amend the provisions in the Order that were previously agreed by the MMO.

Secretary of State’s overall conclusions and decision

50. At paragraphs 34 and 35 of the August letter, the Secretary of State said that he had not yet reached a view on the Panel’s conclusions and recommendations on the case for giving development consent for the project. Having considered the further information submitted by the applicant in response to the August letter and the comments of interested parties on that information, he has now reached the following conclusions on this matter.

51. The Secretary of State agrees with the Panel that the application satisfies all legal and regulatory requirements, including the international obligations of the United Kingdom Government and that the project can proceed without putting the UK Government in breach of the Habitats Directive (PR 17.2 and 4). With regard to section 104(7) of the 2008 Act, he agrees with the Panel that the benefits of the project, if fully realised, in terms of its contribution to the local, regional and national economy, its contribution to sustainable energy and carbon reduction, and the creation of employment opportunities in a disadvantaged area, are of major significance. The Secretary of State is satisfied that these benefits would outweigh significantly the residual adverse impacts of the project after mitigation and after taking in to account the proposed ecological compensatory measures. He therefore agrees with the Panel’s recommendation that development consent should be given for the project.

52. At paragraphs 36 to 39 of the August letter, the Secretary of State said that he agreed with the Panel’s conclusions on the compulsory acquisition provisions in the Order (at PR 18), subject to the exclusion of certain plots from the book of reference and land plans, and subject to the applicant’s review of the four proposed easements over NR’s land. Having considered the responses to the August letter on rail matters he confirms

that he agrees with the Panel's conclusion that the tests for compulsory acquisition in sections 122 and 123 of the 2008 Act have been met and that the Order should include the compulsory acquisition powers sought by the applicant.

53. For all the reasons in this letter and the August letter, the Secretary of State has concluded that there is a compelling case for authorising the project, taking into account the substantial public benefits that it would be likely to achieve and the comprehensive range of mitigation and compensatory measures that would be implemented to offset the adverse impacts of the project. The Secretary of State has accordingly decided to accept the Panel's recommendation (at page ii of the PR), and will shortly make the Order granting development consent and imposing the requirements as proposed by the Panel, but subject to the modifications referred to at paragraphs 45 and 46 above. He confirms that, in reaching this decision, he has had regard to the local impact reports submitted by affected local authorities and to all other matters which he considers important and relevant to his decision as required by section 104 of the 2008 Act (decisions in cases where National Policy Statement has effect).

Challenge to decision

54. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at Annex 5 to this letter.

Publicity for decision

55. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the 2009 Regulations.

Yours faithfully,

Martin Woods

PLANNING ACT 2008: APPLICATION FOR THE PROPOSED ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER

THE SECRETARY OF STATE'S ASSESSMENT IN ACCORDANCE WITH THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010

Introduction

1. The Secretary of State for Transport ("the Secretary of State") has considered the report dated 24 February 2013 of the Panel which examined the application for the Able Marine Energy Park Development Consent Order ("the Order"). He agrees with the Panel that, on the basis of the evidence submitted to the Panel, the proposed Able Marine Energy Park ("AMEP") development at North Killingholme in North Lincolnshire is likely to have a significant effect on the Humber Estuary Special Area of Conservation, Special Protection Area and Ramsar site ("the European sites") which is not directly connected with or necessary to the management of the European sites. Accordingly, under regulation 61(1) of the Conservation of Habitats and Species Regulations 2010 ("the Habitats Regulations") he is required as competent authority to make an appropriate assessment of the implications of the development for the European sites in view of their conservation objectives.

2. This Annex records the assessment that the Secretary of State has made to fulfil the requirements of the Habitats Regulations. In carrying out this assessment he has had regard to:

- the findings of the shadow Habitats Regulations Assessment ("sHRA") submitted by the applicant with the Order application;
- the Statement of Common Ground ("SoCG") agreed between Able Humber Ports Limited ("the applicant"), Natural England and the Marine Management Organisation ("MMO") dated 24 August 2012;
- the Report on the Implications for European Sites dated October 2012 prepared by the Panel which conducted an examination into the above application;
- the responses of the interested parties to that document;
- the Panel's findings in section 10 of its report on the examination of the Order application;
- the legal agreements that the applicant has made with Natural England and the Environment Agency since the examination of the Order application closed;
- the additional information submitted by the applicant to the Secretary of State on 15 October 2013 about the level of uncertainty and risk associated with the proposed compensatory measures; and
- the comments of interested parties on that additional information.

3. This assessment should be read in conjunction with the Panel's report ("PR") to which cross-reference is made below. References in this assessment to the Order are to the version of the Order at Appendix K to the PR.

4. In carrying out this assessment, the Secretary of State has taken into account the conservation objectives of the European sites, Natural England's advice on the Humber

Estuary European Marine Site and the European Commission's advice on the implementation of the Birds and Habitats Directive in estuaries and coastal zones (2011)⁴ and on the application of article 6(4) of the Habitats Directive⁵ as well as Defra's guidance on the application of article 6(4) of that Directive. He has had regard also to the effects of the AMEP development on the Humber Estuary Site of Special Scientific Interest ("SSSI") and the Killingholme Haven Pits SSSI which are referred to in the SoCG. He notes that at paragraph 6.2.6 of the SoCG Natural England agreed that the additional impacts on the SSSIs identified in the SoCG and the sHRA can be mitigated as proposed by the applicant.

5. With regard to the appropriate assessment of the implications of the AMEP development for the European sites, the Secretary of State notes that the Panel consulted all interested parties including Natural England on the Report on the Implications for European Sites referred to in paragraph 2 above. He considers that this fulfils the requirement of regulation 61(3) of the Habitats Regulations for the appropriate nature conservation body to be consulted for the purposes of this assessment.

The nature and extent of the impacts

6. The Secretary of State notes that it is agreed between the applicant, Natural England and the MMO that the AMEP development alone would have a likely significant effect on the European sites (PR 10.12). He notes also from the sHRA (3.25) that all other European sites have been screened out as they are too distant from the AMEP development to be affected. He agrees with the Panel that, taking into account the conclusions of the screening assessment recorded in the SoCG, the issues that need to be addressed for the purposes of this assessment are as follows:

In relation to the Humber Estuary Special Area of Conservation ("SAC"):

- the effects of permanent direct loss of 13.5 hectares of estuarine habitat from the footprint of the AMEP development;
- the effects of capital and maintenance dredging on estuarine habitats and inter-tidal mudflats;
- the effects of disposal of dredged material on estuarine habitats and inter-tidal mudflats;
- the effects of the permanent direct loss of 31.5 hectares of inter-tidal mudflat from North Killingholme Mudflats due to the footprint of the AMEP development;
- the effects of the permanent loss of 2 hectares of saltmarsh at Cherry Cobb Sands due to breach of the seawall for the compensation site;
- the effects of indirect habitat changes on qualifying habitats (estuarine habitat, inter-tidal mudflat and saltmarsh); and
- the effects of underwater noise from piling on the feeding behaviour of grey seals and the migratory movements of river lamprey;

In relation to the Humber Estuary Special Protection Area ("SPA"):

- the effects of the permanent direct loss of estuarine and specifically inter-tidal mudflats from North Killingholme Mudflats on the waterfowl that it supports;

⁴ http://ec.europa.eu/environment/nature/natura2000/management/docs/guidance_doc.pdf

⁵ http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/new_guidance_art6_4_en.pdf

- the functional loss of 11.6 hectares of mudflat habitat as a result of disturbance;
- the effects on the use of North Killingholme Haven Pits as a roost if the feeding areas on the North Killingholme Mudflats are lost;
- the disturbance effects on birds due to piling activities during construction of the new quay;
- the disturbance effects on birds using North Killingholme Haven Pits from construction activities other than piling, and operation of the AMEP; and
- the effects of loss of terrestrial habitat within the AMEP site at North Killingholme which is used by SPA birds (predominantly curlew).

7. The Secretary of State notes also the agreement between the applicant, Natural England and the MMO that as the qualifying interest features of the Humber Estuary Ramsar site broadly align with those of the SAC and SPA, there is no need to consider separately the impacts of the AMEP development on the Ramsar site (PR 10.17-18).

Mitigation measures

8. In relation to the terrestrial area of the AMEP development at North Killingholme, the Secretary of State has taken into account the mitigation measures proposed by the applicant that are relevant to the qualifying features and conservation objectives of the SPA. The measures, which would be secured by the Terrestrial Environmental Management and Monitoring Plan (“EMMP”), include the provision of two mitigation areas within the project site boundary to mitigate the loss of habitat as a result of the AMEP development. Mitigation Area A will provide wet grassland habitat for the use of feeding and roosting birds from the SPA assemblage (predominantly curlew) as well as for farmland birds. Mitigation Area B will include new ponds for use by great crested newts (which are not qualifying features of the SPA or the SAC.) In addition, in order to safeguard the significant numbers of SPA bird populations supported by the North Killingholme Haven Pits SSSI from visual and noise disturbance, measures to control the use of land adjacent to the SSSI will be secured by requirement 42 in Schedule 11 to the Order (PR 10.53-62).

9. The Secretary of State notes Natural England’s opinion that Mitigation Area A, taken with the management and monitoring measures to be agreed under the Terrestrial EMMP, is sufficient to avoid an adverse effect on the site integrity of the SPA (PR 10.68). He notes also the Panel’s view that the draft Terrestrial EMMP submitted at the end of the examination formed a firm basis for finalising measures that would fully mitigate the impacts on habitats and species of the AMEP development on land at North Killingholme (PR 10.76-78). Since the details of this and the other EMMPs have now been agreed between the applicant and Natural England, the Secretary of State is satisfied that the Terrestrial EMMP will ensure that the objectives of the mitigation measures relevant to the SPA (as well as other habitats and species) will be achieved.

Assessment of likely significant impacts on the European sites: Humber Estuary SAC

10. In relation to the Humber Estuary SAC as a whole, the Secretary of State agrees with the Panel’s assessment that, having regard to the size of the SAC, the loss of ecological function as a result of the AMEP development will be small, and that the habitats are types that are found over a wide area. He agrees, therefore, that the loss of

inter-tidal and estuarine habitat at North Killingholme (which cannot be mitigated) in itself will have a very minor effect on the SAC overall (PR 10.79-81).

11. The Secretary of State agrees with the Panel that the AMEP development will not have adverse effects on the qualifying features of the European sites (including the SPA and Ramsar site) directly from capital dredging. He agrees also that the potential for adverse in-combination or cumulative effects over the long-term from maintenance dredging and the disposal of materials from capital and maintenance dredging can be avoided by compliance with the monitoring regime under the Marine EMMP. This will be secured by condition 15 of the proposed Deemed Marine Licence in Schedule 8 to the Order (“the DML”) and requirement 17 in Schedule 11 to the Order (10.85). He is similarly satisfied that the adverse effects on grey seals and river lamprey can be avoided by the controls on piling during the construction phase specified in conditions 37 to 43 of the DML and in the Code of Construction Practice to be approved under requirement 20 in Schedule 11 to the Order.

Humber Estuary SPA and Ramsar site

12. The Secretary of State agrees with the Panel that the AMEP development is likely to have a significant adverse effect on the Humber Estuary SPA and Ramsar site, having regard to the core purpose of their designations, namely the protection of habitats of importance for migratory birds. He notes that construction of the new quay will lead to a reduction in the extent and distribution of estuarine and inter-tidal habitat, including the loss of food supply from 31.5 hectares of inter-tidal mudflat; and that an additional 11.6 hectares of mudflats is likely to have reduced functionality as a result of disturbance.

13. The Secretary of State recognises that the impacts of this on the internationally important population of Black Tailed Godwit (“BTG”) are of particular concern given that during the period of the autumn moult they make use of the inter-tidal mudflats at North Killingholme Marshes in their thousands (the peak count of 2,566 representing 66% of the SPA population). During this period even higher numbers of BTG use the nearby North Killingholme Haven Pits as a secure roost, which are likely to be lost if the associated feeding areas are lost. The Secretary of State therefore agrees that the compensatory measures necessary to satisfy the requirements of the Habitats Regulations must include the provision of suitable nutritional resource for BTG and a roost site in proximity to that nutritional resource (PR 10.82-84).

14. With regard to the disturbance effects on SPA birds during the construction and operational phases of the AMEP development as a result of noise, lighting and visual effects, the Secretary of State notes from section 4.3 of the SoCG that Natural England and the MMO agree that those adverse effects can be avoided by the inclusion of appropriate mitigation. He is satisfied that appropriate mitigation of those effects will be secured by the controls on piling under conditions 37 to 43 of the DML, and by the controls on lighting and noise and the proposed operational buffers adjacent to Mitigation Area A and North Killingholme Haven Pits provided for in requirements 22, 24, 25 and 42 of Schedule 11 to the Order. The Secretary of State is satisfied also that, with the establishment of replacement roosting and foraging habitat to be provided in Mitigation Area A, which will be secured by the Terrestrial EMMP referred to above, there will be no adverse effect due to the loss of terrestrial habitat.

Examination of alternative solutions

15. The Secretary of State agrees with the Panel that the applicant has comprehensively addressed the question of alternative solutions in the sHRA, and has satisfied the test for derogation in article 6(4) of the Habitats Directive of an “absence of alternative solutions”, for the reasons given at PR 10.24-32. In particular, he accepts the applicant’s conclusion in the sHRA (7.4) that the “do-nothing” option - which in this context would mean either not including a quay in the AMEP development or not building the development at all - can be discounted. He agrees that the development of large turbines for the offshore wind sector is firmly rooted in European policy and direct access to a quay is essential for next generation offshore wind turbine manufacturing facilities because the turbines are not transportable by road or rail. The zero option would clearly fail the objectives of the development to decarbonise the means of electricity production, to provide secure energy supplies for the UK and to improve EU competitiveness by creating jobs and growth in a sector in which European business is a global leader.

16. The Secretary of State agrees with the Panel that the scale of the opportunity offered by the AMEP development to transform the Humberside economy by establishing a super cluster of marine energy activities, and the inclusion of manufacturing facilities at AMEP, are important and distinctive features which set it apart from other schemes. He agrees further that the application site is the only one on the east coast that could host such a major development and that a number of smaller schemes such as Green Port Hull developed over a wider geographical area cannot reasonably be viewed as an alternative to the AMEP development. Like the Panel, the Secretary of State has concluded that there are no alternative solutions which would secure the aims and objectives of the AMEP development while being less damaging to the *Natura 2000* network; and he is satisfied that the applicant’s approach to the examination of alternatives was realistic and appropriate (PR 10.32, 47-50).

The Imperative Reasons of Overriding Public Interest (“IROPI”) Test

17. The Secretary of State agrees with the Panel for the reasons given at PR 10.33-10.45 that the evidence provided by the applicant in its Environmental Statement and sHRA fully demonstrates that there are IROPI for allowing the AMEP development to proceed. Specifically, he accepts that the applicant has made a compelling case that the overriding public interest in decarbonising the means of energy production, securing energy supplies from indigenous sources, manufacturing large scale offshore generators, increasing the UK’s manufacturing base, and regenerating the Humber sub-region together outweigh the loss of 45 hectares of a *Natura 2000* site. He is satisfied that the AMEP development will make a significant contribution to meeting these imperative needs in the long term and will provide benefits for society as a whole. In this context, he agrees with the Panel that the AMEP site provides a unique opportunity to support the offshore renewable energy industry while making a major contribution to employment and the economy.

Protecting the overall coherence of Natura 2000

18. The Secretary of State has considered the Panel’s assessment at PR 10.87-101 of what is necessary and appropriate by way of compensation to satisfy the obligation in article 6(4) of the Habitats Directive and regulation 66 of the Habitats Regulations to protect the overall coherence of *Natura 2000*. He notes that on this matter there was a substantial degree of agreement between the applicant, Natural England and the RSPB

about the significance of the European sites for one particular species, the BTG, and that the objective of the compensation proposals should be to replace the ecological function that would be lost as a result of the AMEP development, although Natural England and the RSPB use the word “replicate” rather than “replace”.

19. The Secretary of State notes that those parties further agreed that, in the particular context of North Killingholme, the specific objective of compensation should be to meet the feeding needs of BTG, which would also ensure that the feeding needs of seven other species of SPA/Ramsar water-birds would also be adequately catered for if the more specific needs of the BTG were met. This would be achieved by providing inter-tidal mudflat to support the feeding requirements of a substantial majority of the Humber population of BTG in the autumn moulting period, with adjacent or readily accessible high quality roosting sites. The Secretary of State notes further that this function was considered by those parties to be an important element in maintaining patterns of international migration of BTG (PR 10.102-107).

20. The Secretary of State accordingly agrees with the Panel’s conclusion that protecting the overall coherence of *Natura 2000* in the context of the AMEP development means replacing the critical ecological function that would be lost from the North Killingholme Marshes, in particular the foreshore, and the ecological function performed by the North Killingholme Marshes for BTG during the autumn moult. He agrees with the Panel that this would be protected if the compensation site were designed with the specific objective of meeting the feeding needs of BTG during the autumn passage (PR 10.108-111).

Compensatory measures

21. The Secretary of State notes that the applicant’s compensatory measures changed during the course of the examination because the applicant had concluded that the original proposals contained in the Order application would not deliver the necessary compensation. At the end of the examination the compensation proposals comprised:

- (a) a Managed Realignment and Regulated Tidal Exchange (“RTE”) scheme providing some 101.5 hectares of inter-tidal area at Cherry Cobb Sands on the north bank of the Humber Estuary directly opposite the AMEP site; this would provide replacement, managed mudflat habitat that is sustainable in the long term and would provide a feeding area for wading birds to replace the ecological function that would be lost as a result of the AMEP development;
- (b) a 38.5 hectare compensatory habitat at Cherry Cobb Sands adjoining the RTE; this would comprise approximately 26 hectares of wet grassland, open water and two islands of approximately 0.4 hectares as roosting areas for BTG, plus a further roost in a water-filled scrape; this was outside the red line boundary of the Order application and was the subject of a separate application for planning permission to the East Riding of Yorkshire Council (“ERYC”) which was approved on 16 May 2013; and
- (c) a 38.8 hectare site in the applicant’s ownership at East Halton Marshes on the south bank of the Humber Estuary which the applicant said during the examination could be converted to wet grassland if the Secretary of State considered it necessary to compensate for any time lag between loss of existing

habitat and establishment of compensatory habitat; this would not require planning permission to be developed.

22. In relation to (a), the RTE area comprises four 18 hectare cells with sluices to allow seawater to enter each cell directly and to provide a means to transfer seawater between cells. Ponded areas and reduced functionality due to bed levelling mean that there would normally be 60 hectares of managed mudflats available as a foraging area for BTG and other SPA birds, dropping to 45 hectares during neap tides. The compensation proposals at Cherry Cobb Sands are further described at PR 10.126-129, 132-136 and 150-156, and those at East Halton Marsh are described at PR 10.158-163.

23. The RTE scheme and associated wet grassland site at Cherry Cobb Sands are designed to have a comparable relationship to that between North Killingholme Haven Pits and the North Killingholme Marshes foreshore. They are included in the Compensation EMMP dated March 2013 which was agreed by the applicant and Natural England after the close of the examination.

24. The applicant envisages that while the Managed Realignment and RTE scheme would be provided on a permanent basis, the other two compensatory schemes would be provided for as long as required, that is, until the habitat created by the RTE scheme is fully functional. Natural England, however, considers that the wet grassland site at Cherry Cobb Sands will be required in perpetuity as it will mimic the roost site at North Killingholme Haven Pits in terms of closeness to the North Killingholme Marshes foreshore and will provide a further food source for the BTG and other SPA birds (10.154). The Secretary of State agrees with the Panel that this is an essential part of the project (PR 10.156). As regards the permanency of wet grassland site, he notes that Natural England said in its letter of 1 May 2013 that this matter would be determined by the applicant following consultation with the Steering Group to be established under the agreed Compensation EMMP and in accordance with the achievement of the compensation targets specified in that EMMP. He considers that this is an acceptable approach to the issue of permanency.

25. The Panel recommended that the East Halton Marshes scheme should be included as a compensatory measure to provide as much available feeding ground as possible, given the disagreement between the applicant, Natural England and the RSPB during the examination about how much food-stock was required to replace the existing resource at North Killingholme Marshes (PR 10.158-164). Although the East Halton Marshes scheme was not included in the Compensation EMMP dated March 2013, the Secretary of State notes from the applicant's further information submitted on 15 October 2013 that it has now agreed to provide its land at East Halton Marshes for compensation. The applicant has also proposed improvements to its design proposals for the site to benefit BTG and other estuary birds such as surface water features and islands in scrapes to serve as secure roosts in winter. The applicant has agreed that delivery of these proposals could be secured by an amendment to the Compensation EMMP, which will have to be finally approved by Natural England under requirement 17(1) of Schedule 11 to the Order.

Adequacy of the compensatory measures

26. In its overall conclusion on the compensatory measures (at PR 10.234-237), the Panel noted that developing the necessary mechanism for delivering the compensation became the primary focus for the examination. It noted further that at the end of the examination many issues remained unresolved to the satisfaction of the key statutory

consultees (Natural England, the Environment Agency and the MMO), together with the continuing concern or opposition of the RSPB. The Panel nevertheless concluded that the compensatory provisions proposed by the applicant, coupled with the three EMMPs (then in draft) satisfied the criteria specified in the relevant European Commission guidance on Managing Natura 2000 sites⁶ to ensure the coherence of the *Natura 2000* network, namely that:

- (a) they would address in comparable proportions the habitats and species negatively affected;
- (b) they concern the same bio-geographical region in the same Member State; and
- (c) there was adequate assurance that they would provide functions comparable to those for which the European sites at North Killingholme had been selected.

27. The Department for Transport's letter of 28 August 2013 to the applicant explained that while the Secretary of State agreed with the Panel's approach to the assessment of the compensation proposals as set out in its report, he remained concerned by Natural England's opinion expressed in submissions to the Panel that there was a "substantial risk" that those proposals would not work. This was in particular because of the obligation on the Secretary of State as competent authority under the Habitats Regulations to secure that the necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected. He therefore invited the applicant to provide further information to provide further assurance that that obligation could be met. In coming to a conclusion on the adequacy of the compensatory measures, the Secretary of State has considered the further information provided by the applicant on 15 October 2013 and the responses to it from interested parties.

The Secretary of State's assessment of the compensatory measures

28. The Secretary of State has noted the Panel's description of the complex conditions in the Humber Estuary against which the likely effects of the AMEP development and the compensation proposals have to be assessed (PR 10.79). He recognises that the Humber Estuary is highly dynamic, both as a result of the natural characteristics of an estuary with a high tidal range and the added consequences of rising sea levels associated with climate change. He notes also that the habitats affected by the AMEP development are subject to continuous change through natural and man-induced processes of erosion, including dredging and deposition.

29. For these reasons, the Secretary of State agrees with the Panel that predicting how the estuarine processes and ecosystems will respond to the introduction of man-made structures and the likely success of the compensatory measures with any degree of precision requires a "more than human skill" (PR 10.198-200). He also agrees with the Panel that in assessing the likely effectiveness of the compensatory measures it would not be reasonable to apply a test of "no reasonable scientific doubt". In this context he notes Natural England's observation that there must always be a risk associated with any project that compensatory measures might fail and that it does not consider that European Law includes a test of "no reasonable scientific doubt" in relation to the success of those compensatory measures (PR10.170-176).

⁶ http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/provision_of_art6_en.pdf

30. The Secretary of State considers that a key issue in assessing the adequacy of the applicant's compensatory measures is the degree of risk associated with the proposals and the adequacy of the measures to manage and mitigate that risk. In this regard he has noted Natural England's advice in its letter of 15 November 2013 that although there has been some reduction in risk since the examination there remains a "residual risk" that the RTE scheme may not deliver the agreed compensatory habitat (in extent and quality) which it may not be possible to resolve through adaptive management.

31. The Secretary of State has therefore considered the following areas of risk associated with the applicant's compensatory measures as they now stand:

- (a) the risk that the compensatory measures will not be delivered;
- (b) the risk that the compensatory measures (in particular the RTE scheme) will fail on technical grounds; and
- (c) the risk that the compensatory measures will not achieve the desired objectives in terms of the replacement ecological function.

(a) Risk that the compensatory measures will not be delivered

32. Given the uncertainties of predicting the outcome of the applicant's compensation proposals in a challenging environment – and in particular how BTG will respond - the Secretary of State agrees with the Panel that the concept of adaptive management is highly relevant in this case. He notes that the use of adaptive management is highlighted as particularly useful in the European Commission's Guidelines on the Implementation of the Birds and Habitats Directives in estuaries and coastal zones (PR 10.188-195). The Secretary of State therefore agrees with the Panel that substantial weight must be placed on the EMMPs (described at PR 10.204-217) and the Steering Group to be established under the Plans, as the mechanism for delivering effective compensation and for making adjustments as necessary to deal with unforeseen adverse effects and to respond to the results of monitoring (PR 10.220-224).

33. The Secretary of State has therefore assessed whether, taking into account developments since the close of the examination, the delivery mechanisms for the compensatory and mitigation measures described above are legally secure. His conclusions on the delivery mechanisms are as follows:

(a) Cherry Cobb Sands Managed Realignment and RTE scheme

Implementation will be authorised by the making of the Order. The applicant has an option to acquire the land from The Crown Estate.

(b) Cherry Cobb Sands Wet Grassland Site

Planning permission has been granted for these proposals by ERYC. The applicant has an option to acquire the land from The Crown Estate.

(c) East Halton Marshes

The applicant has planning permission from North Lincolnshire Council to create a wet grassland site at East Halton. The land is in the ownership of the applicant.

(d) Terrestrial EMMP

The terms of the Terrestrial EMMP have been agreed by the applicant and Natural England and incorporated into a Management Agreement between them signed on 29 April 2013. Under requirement 17 in Schedule 11 to the Order, the AMEP development cannot commence until this EMMP has been approved by Natural England after consultation with the Environment Agency and the relevant planning authority.

(e) Compensation EMMP

The terms of the Compensation EMMP have been agreed by the applicant and Natural England and incorporated into a Management Agreement between them signed on 29 April 2013. The EMMP does not include the applicant's compensation proposals at East Halton Marshes. However, under requirement 17 in Schedule 11 to the Order, the AMEP development cannot commence until this EMMP has been approved by Natural England after consultation with the Environment Agency and the relevant planning authority.

(f) Marine EMMP

The terms of the Marine EMMP have been agreed by the applicant and Natural England and incorporated into a Management Agreement between them signed on 29 April 2013. Under requirement 17 in Schedule 11 to the Order, the AMEP development cannot commence until this EMMP has been approved by the MMO after consultation with Natural England, the Environment Agency and the relevant planning authorities.

(g) Steering Group

The applicant will be legally obliged under the Management Agreement signed on 29 April 2013 to establish the Steering Group which would oversee implementation of the EMMPs.

(h) Deemed Marine Licence conditions and the requirements in Schedule 11 to the Order

The provisions of the Order which the Secretary of State proposes to make will secure the conclusion of the EMMPs, limit the time lag in the delivery of the compensatory measures and secure the delivery of other mitigation measures which the Panel considered necessary.

34. The Secretary of State attaches considerable weight to developments since the close of the examination – in particular the applicant's conclusion of legal agreements with Natural England and the Environment Agency and the granting of planning permission for the Cherry Cobb Sands Wet Grassland Site. In the light of these developments he is confident that there are robust and reliable mechanisms in place (particularly the EMMPs)

to ensure that the mitigation and compensatory measures will be delivered. He notes also Natural England's view in its letter to the applicant of 11 October 2013 that the risk in relation to implementation of the compensation measures has been **mitigated**. The Secretary of State has accordingly concluded that any residual risk associated with the delivery mechanisms is **acceptable**.

(b) Risk that the compensatory measures will fail on technical grounds

35. The Secretary of State has considered the main areas of risk in terms of technical certainty which contributed to Natural England's assessment of "substantial risk" and the developments since the close of the examination, as set out below:

(a) Quality of mudflats at Cherry Cobb Sands as replacement functional habitat

Natural England considers that the further details and clarification provided by the applicant about the Managed Realignment and RTE management measures provide more certainty about the design and operation of the scheme. The applicant has also confirmed that the water management operations at the RTE would be adjusted to ensure that a minimum depth of 150 millimetres of mud would be available for benthic invertebrates as advised by Natural England. Natural England considers that the additional information has **mitigated** the concerns which it raised during the examination about technical certainty. However in the light of the applicant's Autumn 2013 survey of benthic invertebrates at Killingholme Marshes (which shows much greater concentrations of key invertebrate prey than the 2010 survey), Natural England considers that the approach to target setting for benthic invertebrates at the compensation site must be reviewed and the targets within the Compensation EMMP revised. This is to ensure that the targets reflect the quality of the existing habitat and are capable of supporting the large numbers of birds which will be displaced by the AMEP development.

(b) Quality of roost and wet grassland habitat at Cherry Cobb Sands

The applicant has provided detailed designs which give an increased level of certainty in the delivery of a functional roost and functional wet grassland habitats. The applicant has made further assessments of water quality in the Keyingham Drain and has proposed works to secure its suitability as a source of water for supplementing water levels in the roost and wet grassland. The Environment Agency has confirmed that it has no objection in principle to abstracting water from the Keyingham Drain. The applicant has provided evidence that wind pumps will be effective to move water round the site. Natural England considers that in the light of this further information the risk has been **mitigated**, but has said that including a commitment to back-up motorised pumps in the Compensation EMMP would increase confidence in the proposals.

(c) Quality of wet grassland at East Halton Marshes

The applicant has amended the detailed design for the wet grassland habitat to meet the needs of SPA birds and has provided information on possible sources of water to sustain wet grassland habitat. Natural England considers that this has **reduced** the technical risk, but is concerned that if the land at East Halton Marshes is used as compensation for the AMEP development it must not conflict with the

legal requirement to provide mitigation as set out in the planning permission for the Able Logistics Park (“ALP”). Natural England is also concerned that the applicant should follow its advice on the provision of a buffer of sufficient width around the core area of habitat.

36. The Secretary of State considers that in the light of the further information provided by the applicant and Natural England’s response, the remaining risks that the compensatory measures will fail on technical grounds are **acceptable**. As regards Natural England’s comments on target setting for benthic invertebrates at the RTE site and the provision of back-up motorised pumps at the Cherry Cobb Sands Wet Grassland Site, he considers that these issues can be investigated after the Order has been made in discussion with Natural England and the Steering Group established under the Compensation EMMP. He does not consider that resolution of these issues is a necessary requirement before authorising the AMEP development.

37. As regards the wet grassland site at East Halton Marshes, the Secretary of State does not consider it necessary to amend the Order as suggested by Natural England to prevent the double-counting of the site as both compensation for AMEP and mitigation for ALP, given the applicant’s explanation of how, with the phasing of the ALP development, the two requirements can be met. It will in any event be possible for the relevant planning authority to enforce compliance with the planning permission for ALP and before the AMEP development can commence Natural England will have to approve an amended Compensation EMMP which will include details of the compensation proposals at East Halton Marshes.

(c) Risk that the compensatory measures will fail on ecological grounds

38. The Secretary of State has considered the main areas of risk in terms of ecological certainty which contributed to Natural England’s assessment of “substantial risk” and the developments since the close of the examination, as set out below:

(a) Time lag

The applicant has revised the base programme for the AMEP development taking account of the constraints in the DML and the requirements in Schedule 11 to the Order, which has clarified the indicative timelines for the compensation works. Natural England considers that the changes to the timetable are relatively minor and that there is **no change** to the overall level of risk. Natural England has advised that making an earlier start to the Wet Grassland Site at Cherry Cobb Sands, for which ERYC has given planning permission, would further reduce this risk.

(b) Extent of RTE and Managed Realignment mudflat

The applicant has provided further information showing the extent of the available RTE compensatory habitat at various states of the tide, compared with the existing situation and for different base levels. This has confirmed that the compensation ratio will vary between 1.5:1 and 1:1, occasionally falling to 0.66:1 for a limited period of time during the spring tides if one field is impounded for maintenance operations at the same time as another is impounded as a reservoir. Natural England considers that there has been **no change** in the extent of the

compensatory habitat to be provided but confirms its view that a ratio of 1:1 is acceptable, provided that the RTE and Managed Realignment site meets its quality objectives and targets.

(c) Quality of RTE and Managed Realignment mudflat

The applicant has provided further information on disturbance to birds during management operations and has indicated the scope to minimise this through adaptive management. The applicant has also provided further information on RTE schemes in the UK and elsewhere and evidence of the BTG feeding in closed environments close to visual disturbance. Natural England considers that there is **no change** in this risk given that the RTE is untested in the UK at the scale proposed by the applicant. Natural England remains concerned that the RTE cells may inhibit the use of the habitat by BTG, but accepts that there is little empirical evidence to give a conclusive view. Natural England considers also that there remain uncertainties about whether the level of disturbance from the intensive management operations required to maintain the mudflat habitat will limit its functional value as a feeding habitat for the high numbers of birds displaced by the AMEP development.

(d) Quality of roost and wet grassland habitat at Cherry Cobb Sands

Natural England says that there is wide experience in the UK of successfully creating roosts and wet grassland habitats to provide ecologically functioning habitat for wading birds. This gives confidence that it is possible to create habitat suitable for BTG. The proximity of the proposed roost as well as the inter-tidal mudflat at Cherry Cobb Sands give added weight to this confidence. Natural England therefore considers that this risk has been **mitigated**.

(e) Quality of wet grassland at East Halton Marshes

Natural England considers that there is a high level of uncertainty that the creation of wet grassland in this location will provide anything other than habitat of modest value to the high numbers of birds that will be displaced by the AMEP development, because the site is some distance from suitable mudflat used by BTG. Natural England considers that, taking into account the additional information provided by the applicant which gives confidence that the proposals for East Halton Marshes can deliver functional habitat for water-birds, the risk in terms of the ecological issues of concern raised during the examination has been **reduced**.

39. The Secretary of State considers that in relation to the time lag between the commencement of the AMEP development and the compensation site becoming fully functional, the applicant has taken reasonable steps to limit the time delay and has agreed in recognition of the delay to provide additional compensation at East Halton Marshes - albeit that this may not be of significant value for the birds displaced by the development. He notes also that further reduction of the risk would be possible by starting work on the Cherry Cobb Sands Wet Grassland Site earlier. The Secretary of State has considered the representations of the RSPB on this matter, but continues to agree with the Panel's opinion that EU and Defra guidance on compensatory measures "*allow for a possible time lag, although obviously they will not encourage it*" (PR 10.187). He is satisfied that in this instance there is sufficient assurance that the applicant's compensatory measures will in time become fully functioning replacement for the habitat that will be lost, and that all the

necessary arrangements are in place to ensure that the measures will proceed and be maintained as agreed.

40. The Secretary of State considers that the key risk that remains concerns the quality of the RTE and Managed Realignment mudflats and whether they will provide equivalent functional habitat to that lost to the AMEP development. He notes that in its response to the applicant's further information the RSPB's view remains as put to the Panel that there is a substantial risk that the compensatory proposals will not be able to replicate the food resource available at North Killingholme, which the RSPB and NE consider to be of "exceptional quality". However, the Secretary of State notes also that the Panel, having fully evaluated the RSPB's examination evidence, did not accept the RSPB's opinion that the proposed RTE scheme was fundamentally flawed in terms of its physical parameters or that adaptive management would not be able to address any underperformance. He does not consider that the RSPB has provided any new information to lead him to a different conclusion.

41. The Secretary of State recognises the concerns of Natural England and the RSPB that the RTE proposals are novel and untested in the UK on this scale. He nevertheless considers that the case studies provided by the applicant about successful examples of RTE schemes elsewhere go some way to addressing the ecological risk. He considers that the examples of where RTE has proved to be an effective mechanism for developing functional habitats increase confidence in the applicant's selection of RTE as the primary compensation measure.

42. The Secretary of State has also considered the suggestion by Natural England, the RSPB and Associated British Ports that in order to reduce further the residual risk that the compensatory proposals might fail it is necessary to have in place a mechanism for agreeing and delivering contingency measures, in addition to the arrangements for adaptive management under the Compensation EMMP. However, taking into account the confidence in the compensatory measures expressed by the Panel and the further information submitted since the close of the examination, he does not consider that a large-scale failure of those measures that could not be addressed by adaptive management is a realistic prospect.

43. Since Natural England has not given any indication of what such contingency measures might be, the Secretary of State does not consider that it would be pragmatic or realistic to require the applicant to develop alternative compensation proposals at this stage. He is satisfied that, if this did prove necessary, this is a matter which would be addressed through the Steering Group to be established under the Compensation EMMP. He notes also that the UK Government is bound to provide compensatory measures under the Habitats Directive and has to inform the European Commission of the compensatory measures adopted in order to allow the Commission to assess whether the provisions of the Directive are being correctly applied.

44. The Secretary of State has considered the RSPB's concerns about the ability of the Cherry Cobb Sands Wet Grassland Site to maintain the appropriate levels of wetness, but notes that Natural England is more positive about these proposals and that the site is acknowledged to be more important as a wet roost. In relation to the remaining concerns of Natural England and the RSPB about the proposed compensation at East Halton Marshes, he considers that those concerns should be viewed in the light of the relatively minor role of the East Halton Marshes in the overall compensation package for SPA birds.

45. In the light of Natural England's overall assessment that the risk is "residual" and its view that the compensatory measures are "entirely credible", the Secretary of State considers that he can have confidence in the effectiveness of the compensatory measures and has concluded that the remaining risk that the compensatory measures might fail on ecological grounds is **acceptable**. In coming to this conclusion, as noted at paragraph 29 above, the Secretary of State considers that the test of "no reasonable scientific doubt" cannot reasonably be applied to assessing whether compensatory measures are likely to be successful. He considers that the test of "no reasonable scientific doubt" derived from the case of *Waddenzee ECJ (C-127/02)* applies to the judgement as to whether a project would have adverse impacts on the integrity of a site, not to the adequacy of compensation provisions. He therefore agrees with the Panel that the correct test for compensatory provisions is that the competent authority must be satisfied that the applicant can and will undertake appropriate compensatory measures to ensure that the overall coherence of *Natura 2000* is protected (see paragraph 26 above).

Other impacts on the marine environment

46. The Secretary of State has considered the concerns expressed by the Environment Agency, the MMO and others during the examination about the impacts of the RTE in relation to erosion and flood risk. He agrees with the Panel's view that these impacts will be adequately addressed by requirements 37 and 41 to 44 in Schedule 11 to the Order, and by the proposed Marine EMMP which must be approved by the MMO before the AMEP development can commence (PR 10.165-169). With regard to the Environment Agency's concerns about the impacts of the project and the compensation proposals on its interests referred to at PR 10.230, the Secretary of State notes that the terms of all the legal agreements required by the Environment Agency have been agreed with the applicant since the close of the examination and that the Environment Agency has withdrawn its objections to this application.

Regulation 9A of the Habitats Regulations

47. The Secretary of State has noted the view of Natural England in its letter to the Panel of 7 November 2012 that any additional impacts of the AMEP development on wild bird habitat beyond the boundaries of the SPA and on non-SPA species has been assessed and that mitigation will be provided through the Terrestrial EMMP. The Secretary of State is satisfied that, taking into account the requirement under the Order to carry out the Terrestrial EMMP as approved by Natural England, he has fulfilled his duty under regulation 9A to preserve, maintain and re-establish habitat for wild birds.

Secretary of State's overall conclusions on Habitats Regulations Assessment

48. The Secretary of State is satisfied that as a result of the Panel's examination of the Order application there is a robust and adequate identification of the likely impacts of the AMEP development, that has been agreed by the statutory consultees and the applicant, on which to make the necessary appropriate assessment (PR 10.21). He is further satisfied that in the light of the Panel's report and the responses to the Department for Transport's letter of 28 August 2013 he has sufficient information to make robust conclusions on the adequacy of the applicant's compensatory measures and the associated level of risk that remains after mitigation.

49. The Secretary of State notes and agrees with Natural England's advice that there is a residual risk that the applicant's compensatory measures might not work. He is however

satisfied that the risk has been adequately mitigated for the reasons given above. Taking into account all relevant information now before him, the Secretary of State agrees with the Panel's conclusion at PR 10.237 that the first and second tests specified in the European Commission's guidance for ensuring the coherence of *Natura 2000* (set out at paragraph 26 above) are met. He considers further that there is adequate assurance that, subject to implementation of the EMMPs, the compensatory measures will provide functions comparable to those for which the European sites at North Killingholme were selected.

50. In the light of the foregoing assessment, the Secretary of State for Transport, as competent authority for the purposes of the Habitats Regulations, is satisfied he is entitled under regulation 62(1) of the Habitats Regulations to give consent for the AMEP development notwithstanding the adverse effect which it will have on the integrity of the European sites.

The Able Marine Energy Park Development Consent Order

The Planning Act 2008

Certificate under Section 127 (2) (b)

1. The Able Marine Energy Park Development Consent Order which has been submitted by Able Humber Ports Limited to the Secretary of State includes the land described in the Schedule.
2. The land was acquired by a statutory undertaker - a predecessor of Associated British Ports Limited ("ABP") - for the purpose of its undertaking and the Secretary of State is satisfied that an interest is held in the land for the purposes of the carrying out of ABP's undertaking.
3. The Secretary of State in exercise of his powers under section 127 of the Planning Act 2008 certifies that the land described in the Schedule can be purchased and not replaced without serious detriment to the carrying on of ABP's undertaking.

SCHEDULE

Plot No 03020	All interests in 47886.48 square metres of land comprising trees, shrubbery, hedgerows, grassland (Killingholme Marshes), drains, and beds thereof, Killingholme Marshes, South Killingholme
Plot No 03021	All interests in 1441.97 square metres of land comprising private access road (Station Road), verges and hardstanding, to the south of Killingholme Marshes, South Killingholme, Immingham
Plot No 03022	All interests in 1495.09 square metres of land comprising grassland to the west east of Killingholme Marshes, South Killingholme, and Immingham
Plot No 03023	All interests in 4200.45 square metres of land comprising public footpath (FP 50), sloping masonry and river wall, private road (Station Road), hardstanding, drain and bed thereof, to the east of Killingholme Marshes, South Killingholme, Immingham.

Date: 18 December 2013

**Martin Woods
Head of the TWA Orders Unit
Department for Transport**

The Able Marine Energy Park Development Consent Order

The Planning Act 2008

Certificate under Section 127 (2) (b)

1. The Able Marine Energy Park Development Consent Order which has been submitted by Able Humber Ports Limited to the Secretary of State includes the land described in the Schedule.
2. The land was acquired by a statutory undertaker – a predecessor of Associated British Ports in its capacity as conservancy authority for the River Humber - for the purposes of its undertaking and the Secretary of State is satisfied that the land is used for the purposes of the carrying out of its undertaking.
3. The Secretary of State in exercise of his powers under section 127 of the Planning Act 2008 certifies that the land described in the Schedule can be purchased and not replaced without serious detriment to the carrying on of the conservancy authority's undertaking.

SCHEDULE

Plot No 08001	All interests, excluding the freehold interests, in 298261.60 square metres of land comprising river (River Humber) and bed thereof, mud and shingle up to mean high water mark, to the east of Rosper Road, South Killingholme, Immingham.
Plot No 09001	All interests, excluding the freehold interests, in 303223.30 square metres of land comprising river (River Humber) and bed thereof, mud and shingle up to mean high water mark, to the east of Rosper Road, South Killingholme, Immingham.

Date: 18 December 2013

**Martin Woods
Head of the TWA Orders Unit
Department for Transport**

The Able Marine Energy Park Development Consent Order

The Planning Act 2008

Certificate under Section 127

1. The Able Marine Energy Park Development Consent Order which has been submitted by Able Humber Ports Limited to the Secretary of State includes the new rights described in the Schedule.
2. The land over which new rights are to be acquired was acquired by a statutory undertaker - a predecessor of Network Rail Infrastructure Limited ("NR") - for the purpose of its undertaking and the Secretary of State is satisfied that an interest in the land is held for the purposes of the carrying out of NR's undertaking.
3. The Secretary of State in exercise of his powers under section 127 of the Planning Act 2008 certifies that the new rights described in the Schedule can be purchased without serious detriment to the carrying on of NR's undertaking.

SCHEDULE

Plot No 03028A	A new easement 40 metres wide giving the undertaker and those authorised by it a right to cross the railway with heavy and slow-moving vehicles/light vehicular and other traffic across 631.82 square metres of disused railway, track bed and associated structures, trees, shrubbery, drain and bed thereof, premises and land, to the east of Station Road, South Killingholme, Immingham.
Plot No 04033A,	A new easement 20 metres wide giving the undertaker and those authorised by it a right to cross the railway with heavy and slow-moving vehicles/light vehicular and other traffic across 329.61 square metres of disused railway, track bed and associated structures, trees, shrubbery, drains and beds thereof, premises and land, to the east of Rosper Road, South Killingholme, Immingham.
Plot No 04034A	A new easement 20 metres wide giving the undertaker and those authorised by it a right to cross the railway with heavy and slow-moving vehicles/light vehicular and other traffic across 312.70 square metres of disused railway, track bed and associated structures, trees, shrubbery, drains and beds thereof, premises and land, to the east of Rosper Road, South Killingholme, Immingham.

Plot No 04035A	A new easement 20 metres wide giving the undertaker and those authorised by it a right to cross the railway with heavy and slow-moving vehicles/light vehicular and other traffic across 286.47 square metres of disused railway, track bed and associated structures, trees, shrubbery, drains and beds thereof, premises and land, to the east of Rosper Road, South Killingholme, Immingham
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Date: 18 December 2013

**Martin Woods
Head of the TWA Orders Unit
Department for Transport**

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission or the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks from the date when the Order is published following the completion of Special Parliamentary Procedure.

The text of the Able Marine Energy Park Development Consent Order which the Secretary of State proposes to make is being made available on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/yorkshire-and-the-humber/able-marine-energy-park/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).