

Dear Mike,

On behalf of the Harbour Master, Humber, I attach comments on Responses to the first round of Written questions.

Will you please confirm safe receipt.

Regards,

Alison Gorlov

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Partner


Contact details removed

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INFRASTRUCTURE PLANNING

THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010

THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER

TR030001

Comments on Responses to the First Round of Written Questions

Harbour Master, Humber

(Rule 8 letter 31 May 2012 Annex C)

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Introduction

1. These comments on the responses to the First Round of Written Questions are made by Captain P.J. Cowing in his capacity as Harbour Master, Humber, representing Associated British Ports ("ABP") as the statutory harbour authority and, in relation to pilotage, the competent harbour authority for the river Humber ("the Harbour Master, Humber"). The statutory harbour authority's operations are carried out on its behalf by Humber Estuary Services Limited ("HES").
2. The contents of this document and the views expressed by the Harbour Master, Humber are separate and distinct from anything that may be received by the Examining Authority from Associated British Ports in its capacity as a port operator within the Humber.

Comments on Responses to First Round of Written Questions

C.Ro – Q. 55 – whether the Harbour Master, Humber is satisfied that vessels using the C.RO or the Oil and Pipelines facility will not be impeded?

3. The Harbour Master, Humber notes C.Ro's concern, he having come to the opposite conclusion. As it may be instructive to ascertain what gives rise to C.Ro's contrary view, he will explore the issue with C.Ro.

Able – Q.23 - Compensation Site - Will Able retain ownership or will it be transferred to the Crown Estate?

4. Able's answer confirms that the compensation site (extent not specified) will be permanently acquired from the Crown Estate. It may be intended that this only relates to the area that will become intertidal and, subsequently by accretion, be above mean high water springs. However, the land includes areas in the river which are within ABP's lease (parts of plots nos. 10007, 11004, 12004 and 13004). It would appear that this land will remain in the river, although the Applicants should confirm this.
5. The Harbour Master, Humber has no objection to the acquisition of land that is taken out of the river but does object to any acquisition of land below mean high water springs. Further, any acquisition of ABP's land should be by agreement.

Able – Marine Matters – Q27 – Schedule 10 map and landfall at southern end of harbour

6. The response demonstrates the inadequacy of the proposed Schedule 10 map as the definitive means of identifying the precise limits of the harbour. It is an A4 print of a plan drawn at 1:10.000 at A3. The original is a small scale, but at least it is capable of showing a measure of detail. The version proposed for inclusion in the Order is so miniaturised a version that it cannot show precise details. The map can therefore be only a general picture of the harbour and for precise detail must rely on co-ordinates, which should anyway be included for accuracy.
7. As it seemed probable that the correct co-ordinates may be the quay limits as defined in the replacement deemed marine licence, those were the co-ordinates

taken for the amended description of Work No. 1 in the amended copy of the Order appended to the Harbour Master, Humber's summary of the case presented for him at the Specific Issue hearing on 12 July. However, the co-ordinates having been plotted, two of them do not appear to be in the right place. The Harbour Master, Humber is taking this up with the Applicant. Whatever are the correct co-ordinates, the Harbour Master, Humber considers it important that they should be marked on the Schedule 10 map.

Able – Marine Matters - Q. 28 – Port Marine Safety Code

8. The answer reflects the Harbour Master, Humber's discussions with the Applicant. It is a reasonable description of basic implementation on the ground. However, where the answer is lacking is in its failure to mention the statutory background, required by the DCO, which is what is being implemented. In addition to the liaison with ABP-HES proposed in the response, It will be essential that the DCO should give the Harbour Master, Humber the final say as regards any provision of a safety management system that impacts on the river for which he is responsible. This has been agreed in face to face negotiations.
9. The Harbour Master, Humber accordingly draws attention to the need for the Able Harbour Authority to consult the Harbour Master, Humber in relation to the initiation and operation of and any change in the safety management system ("SMS") prepared for compliance with the Port Marine Safety Code, this being required so far as that SMS has or may have an impact on the river. In addition, the Able Harbour Authority will be obliged (by paragraph 22 of Part 2 of Schedule 9) to comply with any requirement of the Harbour Master, Humber for the adjustment of its SMS as affecting the river Humber and the functions of the Conservancy Authority or the Harbour Master, Humber.
10. This is mentioned for completeness and does not detract from the correctness of the answer as far as it goes.

Able – Marine Matters – Q. 30(a) – State of the tide for berthing

11. The Harbour Master, Humber confirms that the Applicant's response is correct.

Able – Marine Matters - Q. 31 – Capital Dredge – management and other river users

12. As with the answer to Q. 28, the Applicant's response describes implementation only. It reflects discussions on this between the Applicant and the Harbour Master, Humber. In addition, the Applicants will bear in mind the need to comply with the protective provisions in Part 2 of Schedule 9 to the DCO. These, among other things—
 - (a) require that before works commence the approval of the Harbour Master, Humber must be obtained for plans of what is proposed (paragraph 8);
 - (b) in the amendments proposed by the Harbour Master, Humber make clear that this would also apply to method statements and the like governing the conduct of all dredging (paragraph 8); and
 - (c) crucially, provide for the statutory functions of the Harbour Master, Humber to have primacy over the functions of the Able Harbour authority (paragraph 22).

13. The Harbour Master, Humber believes that the Applicant understands why it is essential for him to retain the control of works and operations in the river for which he is responsible. In this Able will be in the same position as every other operator in the river, both statutory and non-statutory.
14. The Panel will also have in mind that the controls provided by the protective provisions simply replace the controls that would otherwise be available to the Harbour Master, Humber under the provisions of the Humber Conservancy Acts that would be disapplied by article 4(1) of the DCO. As previously indicated on the Harbour Master, Humber's behalf, without these controls the Harbour Master, Humber objects to article 4(1).

Able – Marine Matters - Q. 34 – Cumulative and in-combination impacts

15. The Harbour Master, Humber would like to remind the ExA that this recently provided and complex information is still being considered by him and specialist advisers. He is not yet in a position to confirm whether an adequate assessment has been made.

Able – Marine Matters - Q. 37 – overlap with HST approach channel

16. The Harbour Master, Humber has no wish to intervene in private arrangements between operators. His concern is that in the event that agreement between Able and HST about operations in the river proves to be inadequate, he may find himself caught between the two. The Harbour Master, Humber would therefore wish to be assured not just that heads of terms are under discussion but that HST is content that it has secured sufficient agreement with Able. Failing this, the Harbour Master, Humber sees a need, to protect his own position, for appropriate provisions for HST to be included in the DCO.

Able – Marine Matters - Q. 39 – disposal of non-erodible material at HU082 & Q. 40 disposal of erodible material at HU080

17. Able's response to Q. 39 fails to mention the regulatory functions of the MMO under the dredging conditions in the deemed marine licence in Schedule 8 to the DCO and of the Harbour Master, Humber under paragraph 10 of Part 2 of Schedule 9. The latter would require Able to obtain prior consent to its proposals for disposal of both erodible and non-erodible material. In addition, the amended paragraph 8 would ensure that there could not be any conflict between himself and the MMO as regards the various submissions to the MMO that Able would be required to make.

Able – Marine Matters – Q. 70(b) – What is still to be agreed in the draft marine licence?

18. The amended draft licence referred to in the response is the version that has been amended by the Harbour Master, Humber in the copy of the DCO appended to the written summary of his oral case made on 12 July 2012.

Signature removed

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