

From: Gerring, Anna (MMO)
Sent: 03 August 2012 14:45
To: 'Mike Harris'
Cc:
Subject: Able UK - TR030001 - MMO () comments on WRs and responses to comments on RRs

Mike,

Please find attached the MMO's comments on written representations and responses to comments on relevant representations.

This is my last day in the office before I go on maternity leave. Gregor McNiven, copied into this email, will be picking up the case while I'm off so please feel free to contact him should you have any questions.

Kind regards

Anna

Dr. Anna Gerring

Inshore Marine Licensing Team

Marine Management Organisation

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Newcastle upon Tyne

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The Marine Management Organisation (MMO)

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Tel: [REDACTED]

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BY EMAIL ONLY

03 August 2012

Your ref: TR030001 / [REDACTED]

Our ref: DC9172

The Able Marine Energy Park Development Consent Order 2012

Dear Mr Harris,

Enclosed with this letter are the Marine Management Organisation's (MMO) comments on written responses and responses to comments on relevant representations.

Should you have any questions, please do not hesitate to contact me.

Yours sincerely,

[REDACTED]

Anna Gerring
Marine Management Organisation

Enc – 120803_MMO comments on WRs and responses to RRs

Email: infrastructure@marinemangement.org.uk

PLANNING ACT 2008

THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER 2012

**COMMENTS ON WRITTEN RESPONSES AND RESPONSES TO COMMENTS ON
RELEVANT REPRESENTATIONS**

PLANNING INSPECTORATE REFERENCE NUMBER: TR030001

PLANNING INSPECTORATE REFERENCE NUMBER FOR MMO: [REDACTED]

MMO INTERNAL REFERENCE NUMBER: DC9172

Contents

1. The Able Marine Energy Park.....	1
2. Scope of these representations.....	1
3. Overarching issues of concern to the MMO	2
4. Topic specific issues of concern to the MMO	4
5. Update on the MMO's comments on licensing requirements under Part 4 of the 2009 Act.....	5
6. Update on the MMO's comments on the DCO	6
7. Update on the MMO's comments on the environmental impact assessment.....	6
8. Conclusions.....	6

1. The Able Marine Energy Park

- 1.1. On 23 February 2012, the Marine Management Organisation (the “MMO”) received notice under section 56 of the Planning Act 2008 (the “2008 Act”) that the Infrastructure Planning Commission (the “IPC”) had, on 12 January 2012, accepted an application made by Able Humber Ports Limited (the “Applicant”) for an order granting development consent (the “DCO Application”) (MMO ref: DC9172; IPC ref: TR030001).
- 1.2. Amongst other things, the DCO Application includes a draft development consent order (the “DCO”) and an environmental statement (the “ES”). The draft DCO includes a draft Deemed Consent under the Marine and Coastal Access Act 2009 (the “2009 Act”) (the “Deemed Marine Licence”).
- 1.3. The DCO Application seeks authorisation for the Able Marine Energy Park (AMEP), which involves a quay of solid construction on the south bank of the river Humber together with an ecological compensation scheme comprising both temporary and permanent habitat creation on the north bank. Associated development includes dredging and land reclamation, onshore facilities for the manufacture, assembly and storage of marine energy installation components. Ancillary matters include compulsory purchase of land, harbour regulation and the diversion of two footpaths (the “Project”).
- 1.4. The Project would comprise a range of terrestrial and marine developments and several work items have the potential to impact on the marine area.

2. Scope of these representations

- 2.1. This document comprises the MMO’s comments on written responses and responses to comments on relevant representations¹. This is without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This is also without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for anything else.
- 2.2. The MMO has already provided initial comments in respect of the DCO Application in the form of a relevant representation, submitted to the IPC, now the National Infrastructure Directorate of the Planning Inspectorate, on 2 April 2012, a written representation, comments on other submitted relevant representation and answers to the examiners’ first written questions, submitted to the Planning Inspectorate on 22 June 2012. The MMO also attended the issue specific hearing on the development consent order (including deemed marine licence) on 12 July 2012 and submitted a summary of the MMO’s submission made at that hearing on 23 July 2013.
- 2.3. This representation primarily comments on the Applicant’s responses to the MMO’s relevant representation and reference is made to the other representations the

¹ Submitted in pursuance of Rule 8(1)(c)(ii) and (d)(ii) and Rule 10(5) of the Infrastructure Planning (Examination Procedure) Rules 2010.

MMO has made throughout the Examination period. This representation also provides an update on the progress made with the Applicant regarding issues initially raised in the relevant representations, highlighting project wide, over arching issues of concern and topic specific issues of relevance to the MMO.

2.4. The MMO's written representation comprises the following:

- Overarching issues of concern to the MMO – **section 3**
- Topic specific issues of concern to the MMO – **section 4**
- Update on the MMO's comments on licensing requirements under Part 4 of the 2009 Act – **section 5**
- Update on the MMO's comments on the DCO – **section 6**
- Update on the MMO's comments on the environmental impact assessment – **section 7**

2.5. The MMO will continue to consider the DCO Application and reserves the right to add to, amend or withdraw, from time to time, part or all of these representations.

3. Overarching issues of concern to the MMO

3.1. This representation makes detailed points in subsequent sections and Annexes on the drafting of the DCO and on progress made with regard to the environmental impact assessment. These comments, however, must be considered within the context of those overall remaining issues of concern.

Environmental assessment of the Project

- 3.2. The MMO has commented in relevant representations, written representations and at the issue specific hearing on the DCO, that there are outstanding questions with regards to whether an adequate assessment of the works has been undertaken through the EIA process.
- 3.3. In order for activities to be included in the deemed marine licence (the "DML"), the Applicant needs to clearly demonstrate through the EIA process that the potential environmental impact(s) of all licensable activities have been addressed and, where required, mitigated.
- 3.4. At the time of the relevant representations, the MMO did not believe that the ES and associated application documents achieved that. The Applicant provided a vast volume of additional supporting material to the ES in its representations on 27 July 2012. The MMO has not had the opportunity to review all of that material in detail. However, from an initial consideration of that information, the MMO is of the preliminary view that it does not appear to have addressed all of the concerns previously raised regarding the assessment of the proposed development. If, on a fuller consideration of the material, that preliminary view is confirmed to be the case, it will not be possible to agree a DML if the activities licensed thereunder have not been properly assessed.

- 3.5. The MMO has requested further information on a number of topics, including dredge and disposal and contamination analysis of Cherry Cobb Sands. These points are discussed in more detail in Annex x. Thus far, the Applicant has been unable to provide the clarification or additional information required to satisfy the MMO's concerns.
- 3.6. Due to the disjointed nature of submission of material, the MMO has also requested that the Applicant provide a sign-posting document detailing where it considers the assessment of the impact of the licensable activities has been undertaken. The Applicant has agreed in principle to provide this, but the MMO is yet to receive the document.
- 3.7. At the same time as considering the material submitted by the Applicant, the MMO has been engaging with the Applicant to try and agree the terms of a DML should it be concluded that an adequate assessment has been undertaken. However, consideration of the MMO's views on the drafting of the proposed DML must be taken with the caveat above in mind regarding the possibility of agreeing a licence in this case.

Ongoing design of the compensation site

- 3.8. The Applicant is currently in the process of re-designing the compensation site at Cherry Cobb Sands in order to achieve the required compensation to satisfy The Conservation of Habitats and Species Regulations 2010. The MMO understands that the Applicant is considering alternatives to managed realignment, such as regulated tidal exchange, and will also propose alternative solutions should a re-design of Cherry Cobb Sands still not achieve the required compensation package.
- 3.9. The MMO makes comments on the Environmental Statement and on some of the supplementary reports submitted to the Examining Authority (the "ExA") on 27 July 2012. Many of these comments relate to the compensation site design as presented in the original Application and ES.
- 3.10. The MMO will expect the Applicant to comment on the significance that any changes to the design of the compensation site may have on the assessment undertaken in the ES and supplementary reports once a final design for the compensation site is agreed. Should additional works be required in the marine area, the MMO will expect the Applicant to undertake an adequate assessment of the final project design. Further comments on this are made at paragraphs 4.8 and 4.9 and in Annex 1. The ExA is also referred to the Statement of Common Ground (the "SOCG") between the Applicant, the MMO, Natural England and the Environment Agency for further comment.

Drafting of the DCO, including the deemed marine licence

- 3.11. The MMO provided comments to the ExA regarding outstanding issues of concern with regards to the drafting of the DCO and DML at the issue specific hearing on the DCO held on 12 July 2012. A summary of the MMO's submission made at that hearing was submitted to the ExA on 23 July 2012. Those comments are not repeated here, but remain relevant. Additional detail is provided in a track-changed DCO included at Annex 2.

4. Topic specific issues of concern to the MMO

- 4.1. Detailed comments on all of the issues the MMO have commented upon in previous representations are provided in Annex 1 of this representation. In order to assist the ExA, the MMO provides the following summary of those topic specific issues which are of key concern to the MMO following a review of the written representations and responses which have been received:

Dredge and disposal operations: compliance with International Conventions and European legislation

- 4.2. In order to be in a position to agree a deemed marine licence, the MMO must be satisfied that the proposal satisfies International Conventions and European legislation, including the Oskar and London Conventions and the Waste Framework Directive. In order to achieve this, amongst other considerations, the MMO must be satisfied that alternatives to sea disposal have been considered, the material is suitable for sea disposal, and that there is an agreed registered disposal site which is capable of taking the dredged material. Following review of the supplementary reports, the MMO has outstanding questions with regards to these issues. These are detailed more fully in Annex 1, comments 7.4 to 7.28. The MMO would not be in a position to agree a deemed marine licence for these activities until these matters have been addressed.

Hydrodynamic and sedimentary regime

- 4.3. Related to the concerns raised in 4.2 and 4.8 to 4.9, the MMO also has some outstanding concerns relating to the impact of the dredge and disposal activities on the hydrodynamic and sedimentary regime of the estuary. Whilst a number of questions previously raised regarding this subject have been adequately addressed, some residual concerns remain, principally relating to disposal site capacity (and in-combination assessment with other plans and projects), the type of material to be disposed of to the proposed disposal sites and any impact the change in design of the compensation site may have on the assessment as currently made. See Annex 1, comments 7.4 to 7.28 and 8.6 to 8.16 for further detail.

Impact of piling works

- 4.4. The MMO considers it essential that an adequate assessment of the impact of piling during the construction of the project is made and that appropriate mitigation is secured for *all* sensitive receptors, including marine mammals, fish (including migratory salmonids and other sensitive species) and coastal bird species. The MMO do not consider it appropriate to agree mitigation for the impacts of piling on a species by species basis.
- 4.5. The MMO has been working closely with the Applicant, the Environment Agency and Natural England on this matter and the MMO's current position is set out in a letter sent to the Applicant by the Environment Agency on behalf of the Environment Agency, Natural England and the MMO on 31 July 2012. This is included at Annex 3 to this representation. Of key concern to the MMO are that the methods are adequately described and, where appropriate, conditioned within the deemed

marine licence (e.g. pile diameter), that appropriate mitigation is secured (including soft-start procedures and timing restrictions suitable to mitigate for the impact on *all* sensitive ecological receptors), and that monitoring requirements are agreed.

E.ON and Centrica outfalls

- 4.6. The MMO has repeatedly requested that the Applicant clarify its intentions with regards to the E.ON and Centrica outfalls. The MMO does not support both the licensing of moving of the outfalls and the maintenance of the outfalls with plough dredging to be included on the deemed marine licence as these are either/or activities.
- 4.7. Once the Applicant confirms the activities for which it is seeking consent, the MMO will consider whether an adequate assessment of the final proposal has been made. Further comments can be found at Annex 1, comments 7.39 and 7.40.

Compensation site design

- 4.8. As commented on in paragraphs 3.8 to 3.10, the MMO consider it essential that the final design of the compensation site be properly assessed in the context of the whole project. As such, the MMO will expect the Applicant to comment on the suitability of the ES and supplementary reports in relation to the final design of the compensation site. The MMO will expect this to include comment on any additional marine works the scheme will require.
- 4.9. The MMO will need to be satisfied that, once the compensation site is breached, any contaminants present on the site do not pose a threat of pollution to the marine environment. The MMO has reviewed the supplementary report on this subject (EX31.5) and outstanding questions remain, as detailed further in Annex 1, comments 8.21 to 8.24. The MMO require confirmation that this issue can be adequately addressed prior to works commencing before it is in a position to agree to a deemed marine licence.

5. Update on the MMO's comments on licensing requirements under Part 4 of the 2009 Act

- 5.1. The Applicant has provided a clearer description of the works they are seeking to undertake in the SOCG agreed between the Applicant, the MMO, Natural England and the Environment Agency. Notwithstanding comments made in paragraphs 4.6 and 4.7 with regard to the E.ON and Centrica outfalls, the MMO intends to use the descriptions provided in the SOCG to assess whether the proposed works have been adequately assessed in the ES and supplementary reports. In order to undertake this assessment, further information is required on a number of issues, as detailed more fully in Annex 1.
- 5.2. At present, the MMO is not yet satisfied that an adequate assessment of the marine works has been presented in the ES and supplementary reports.

6. Update on the MMO's comments on the DCO

- 6.1. The MMO received an updated version of the DCO on 18 July 2012. The MMO's comments are provided in a track-change version at Annex 2 of this representation. Cross references to the MMO's previous representations are provided for ease of reference and the ExA is referred to the summary of the MMO's submission at the issue specific hearing on the DCO for further detail. A number of outstanding questions remain on which the MMO are seeking clarity, including inconsistencies between the description of works in the DML and the SOCG.

7. Update on the MMO's comments on the environmental impact assessment

- 7.1. The MMO has provided a summary of overarching and topic specific concerns in sections 3 and 4 of this representation.
- 7.2. Detailed comments are provided in an updated version of Table 54.1 as submitted by the Applicant in their responses to relevant representations at Annex 1 to this representation.

8. Conclusions

- 8.1. The above represents an updated position of those areas of concern to the MMO following receipt of the written representations, answers to the ExA's questions and the responses to the relevant representations. Further detail is provided in the Annexes hereto. All of the outstanding issues commented on in this representation will need to be resolved before the MMO can agree to the DML.

Marine Management Organisation

03 August 2012

**Annex 1 Update of Table 54.1 from the Applicants answers to the first set
of Examiners' questions in relation to the Environmental
Statement**

Key:

	Query Closed Out
	Action with MMO
	Action with Applicant

No	MMO	Able UK	MMO comments
7. Environmental Statement: Volume 1 Able Marine Energy Park			
Chapter 7, Geology, Hydrology and Ground Conditions			
7.1-7.3	7.1: Paragraph 2.3.5: The definition of 'wider effects' needs to be reconsidered. If the effect is individually significant at a regional level, it is likely to also be significant at the local level.	Informative paragraphs, no action required. <u>28-6-12</u> In response to 7.1: The definition given in the report is the one adopted for the purposes of the ES. Socio-economic effects can have a wider regional effect without having a significant local effect. Waste disposal may have a regional effect without having any direct local effect.	<u>29-5-12</u> We would like a response to 7.1. Agree no response required for 7.2 and 7.3 <u>03-08-12</u> The MMO are still considering the Applicants response.
7.4	The dredging of the reclamation area, anchorage trench, berthing pocket, approach channel and turning area have been considered in Chapter 7. Dredging requirements for the excavation works at the pumping station, the south back channel, of Stone Creek (mentioned in previous draft chapters of the ES but not the current one) and of plough dredging have not been included. In addition, it is not clear if the over-dredge of the berthing pocket has been accounted for in the	<u>5-4-12</u> The cofferdam for the construction of the pumping station will incorporate the existing flood defence wall which will be removed to allow outfall pipes to be laid; the wall will then be reinstated. The invert of the outfall pipes will be at +3.9mCD. A channel up to 20m wide will be excavated through the intertidal area at a shallow gradient to direct flows	<u>29-5-12</u> I understand HR Wallingfords work will provide the dredge and disposal estimates required for the deemed marine licence. As such I provide no further comment on this until that report is received. The level of detail required is

No	MMO	Able UK	MMO comments
	values provided.	initially. Plough dredging is mentioned in Annex 7.6 as possible mitigation for the Centrica outfall. Work undertaken post submission is presented in HRW Technical Note DHR 4808-1 shows only the E-ON outfall is likely to be smothered and will need to be diverted. The frequency of plough dredging at the Centrica outfall is difficult to estimate; it should be subject to an agreed monitoring programme. The impact of the scheme on sedimentation in Stone Creek is assessed in Annex 32.4, Section 4.5 of the ES. Siltation is not expected to change as a consequence of the scheme. Nevertheless, an effect cannot be excluded due to the uncertainty attached to hydrodynamic modelling. Accordingly paragraph 4.5.5 recommends monitoring of sediment levels. Routine maintenance dredging is currently undertaken by the EA with (we understand) contributions from landowners and we would expect this to continue. It is considered that there is only a slight risk that the frequency of dredging operations increases due to the	contained in our relevant representations. I understand you are not now seeking permission to dredge Stone Creek. <u>03-08-12</u> The Applicant has confirmed the volumes of material they wish to dredge and dispose of to sea in the Statement of Common Ground (SOCG) between the Applicant, the MMO, Natural England and the Environment Agency submitted to the Examining Authority on 27 July 2012. Proposed volumes for capital dredge and disposal are provided in Table 12.2 of the SOCG and proposed volumes for maintenance dredge and disposal are provided in Table 12.3 of the SOCG. The MMO is currently undertaking an assessment of the dredge and disposal elements based on these

No	MMO	Able UK	MMO comments
		scheme. Any possible increase in maintenance dredging would be miniscule compared to the annual maintenance dredging on the Humber and is not be considered to give rise to a likely significant effect that needs specific assessment. Dredging volumes are being reviewed against more recent site investigation data. <u>28-6-12</u> We are not seeking consent to dredge Stone creek Maintenance dredge variability is detailed in Report EX8.6 included in the volume of supplementary environmental information (SEI).	proposed figures and the additional documentation provided in EX8.6 and EX8.7. The MMO has already raised several questions with regards to these reports to the Applicant. Outstanding questions include: Disposal site capacity The MMO has started to review EX8.6 and EX8.7 and it is not clear how the Applicant has calculated disposal site capacity. The Applicant has provided bathymetry data as requested by the MMO but further information is required. The reports state that modelling of the full amount of material was modelled to 5.3m below chart datum but the reports do not state the level used for the modelling of half disposal. The MMO requests that the Applicant provide this information. The MMO also requests that the Applicant provides the equivalent of Figure 4.4 in EX8.7 for the half disposal scenario. The Applicant needs to provide calculations in order to



AMEP

MMO RELEVANT RESPONSE – DRAFT ABLE RESPONSES

Date: 03-08-2012

No	MMO	Able UK	MMO comments
			provide the evidence to the conclusions they have drawn from their impact assessment. The MMO also requests clarification of how the Applicant has taken into consideration other licences and applications in calculation of disposal site capacity. The Applicant has stated that the material for other applications is going to HU081. However, Immingham Oil Terminal and Grimsby Ro-RO are permitted to dispose of to both HU081 and HU082. The Applicant must assess the worst case scenario otherwise the cumulative impact assessment is not sufficient. Evidence of this must be provided. Disposal of gravel to HU080 Clarification on the gravel component of capital dredged material. Gravel is not permitted to be disposed of to HU080 as this disposal site is characterised for erodible material. The Applicant referred the MMO to the Immingham Oil Terminal



AMEP

MMO RELEVANT RESPONSE – DRAFT ABLE RESPONSES

Date: 03-08-2012

No	MMO	Able UK	MMO comments
			Environmental Statement as an example of where gravel had been permitted to be disposed of to this site previously. The graph quoted is a representation of material sampled. It is only the eastern channel representing 170,000m³ of material that is in question. The minimum samples contained material entirely below the 1mm fraction, so does not include gravel. The worst case has some particles above the 2mm fraction, but this worst case represents at the worst 20% of the material. Therefore the worst case amount of gravel that may be found in the sandier samples is at the most 34,000m³ of material. This is considerably less than the 130,000m³ material the Applicant is proposing to dispose of to HU080. Gravel material will not disperse will remain local to the disposal site. The MMO requests that the Applicant provide a similar analysis to that referenced to



AMEP

MMO RELEVANT RESPONSE – DRAFT ABLE RESPONSES

Date: 03-08-2012

No	MMO	Able UK	MMO comments
			show the proportion of gravel material. Furthermore, the MMO requests that any modelling of the movement and fate of the gravel undertaken by the Applicant, and results demonstrating the impact this may have be provided in order to assist with assessing the impacts of this proposal. At present, the Applicant is seeking to dispose of a far greater amount of gravel than the site has received previously therefore this impact must be assessed. E.ON and Centrica outfalls The MMO request clarification from the Applicant with regard to their intention on whether they intend to dredge either one or both of the E.ON and Centrica outfalls. The MMO understands it is likely that one or both of the outfalls may be relocated. Clarification is sought in order to be able to undertake a full assessment of the Project. Estimates have been made for the changes to annual infill at the

No	MMO	Able UK	MMO comments
			Centrica/E.ON intake/outfall lines of an increase of 94,000 to 234,000 dry tonnes/year (EX8.6, Table 3, page 2). This is much greater than the quantities provided in the SOCG of 5000 wet tonnes/year. The Applicant is requested to comment on this. Furthermore, the MMO do not wish to licence activities that the Applicant do not intend to undertake. Location of south bank channel The MMO request clarification of the location of the "south bank channel" in order to confirm if contamination analysis is required. The coordinates provided in the deemed marine licence are on land.
7.5	These additional dredging and disposal operations are licensable activities under the 2009 Act. The MMO would prefer for these activities to be deemed within the DCO alongside the other marine licences in order for the project to be considered as a whole. However, the Applicant will need to undertake an impact assessment of these activities to do so.	<u>5-4-12</u> Excavation within the cofferdam will be undertaken in dry conditions when there is no hydraulic connection with the estuary. Material will be disposed of on the land. The requirement to excavate a channel	<u>29-5-12</u> See comments for 7.4 <u>03-08-12</u> See comments for 7.4

**AMEP****MMO RELEVANT RESPONSE – DRAFT ABLE RESPONSES****Date: 03-08-2012**

No	MMO	Able UK	MMO comments
		for the pumping station outfall is noted in Annex 8.3, Section 4. The potential requirement for maintenance dredging of the channel is also highlighted. It was agreed with Natural England that a similar feature that would be created in relation to a proposed pumping station for Able Logistics Park (NLC Planning Application Reference PA/2009/0600) simply represented a functional change to the habitat. It is estimated that the initial channel will be 25m wide, but this will narrow as it moves away from the discharge point. The initial channel dredge will make no difference to the impact assessment undertaken for capital dredging works. Increased dredging of Stone Creek is not anticipated (see above). Plough dredging causes sediment to be suspended in the lower reaches of the water body. Works would be undertaken on an ebb tide so that material resettles within the AMEP berthing pocket and approach channel and removed during maintenance dredging works. <u>28-6-12</u> Dredge operations and disposal is	

No	MMO	Able UK	MMO comments
		assessed in the ES. The MMO will need to define the omissions in the ES more precisely if they require further assessment.	
7.6	The MMO requests that the Applicant provides details of the location and quantity of material to be capital and maintenance dredged and disposed of the sea from these additional locations. The impact assessment in Chapter 7 and the Dredging Strategy at Annex 7.6 need to be updated to include this information.	<u>5-4-12</u> <i>Capital Dredging</i> Cofferdam: Approximately 2 000m ³ of material will be excavated from the sea wall and incorporated into the development as fill. South Bank Channel: Approximately 1000m ³ will be dredged to initiate a channel through the intertidal areas. Stone Creek: None Plough Dredging: None <i>Maintenance Dredging</i> Cofferdam: None. South Bank Channel: Allow complete re-dredge every year. Stone Creek: None Plough Dredging: Nominal	<u>29-5-12</u> See comments for 7.4 <u>03-08-12</u> The Applicant has provided these details in Tables 12.2 and 12.3 of the SOCG. The MMO is currently considering whether the impact assessment made adequately assesses this proposal. Outstanding questions are detailed in comments for 7.4. The DML will need to be updated to reflect the volumes presented in the SOCG.
7.7-7.13		Informative only	<u>29-5-12</u> Agree that 7.7-7.13 are informative. However, it should be noted that full consideration of Oskar requirements will need to be undertaken again once the final dredge and disposal qualities are provided. Further sampling and analysis of areas not previously covered may be

No	MMO	Able UK	MMO comments
			required and consideration of the Waste Framework Directive and the Waste hierarchy is required (as per my email of 22 May 2012). <u>03-08-12</u> The MMO seeks clarification of the location of the south bank channel to be dredged, as referred to in the SOCG submitted to the ExA on 27 July 2012. Depending on the confirmed location, this area may require contamination analysis to be undertaken before the MMO would be in a position to advise of its suitability for sea disposal.
7.14	The Applicant has provided further information to the MMO on this in the form of a Green Port Hull Cumulative Impacts Screening Assessment. However, this assessment has been made presuming that Green Port Hull is the same as Quay 2005. Whilst the Green Port Hull project does use the existing licences granted for Quay 2005, there is additional work including infilling of part of Queen Alexandra Dock and additional dredging. Therefore the cumulative assessment screening needs to be updated allowing for this work, particularly as most cumulative impacts	<u>5-4-12</u> Estuary wide modelling to be reviewed <u>28-6-12</u> Refer to report EX44.1 in the Volume of SEI accompanying the Applicant's comments on the Relevant Representations.	<u>29-5-12</u> I understand JBA and ERM are undertaken additional work on the in-combination assessment. As such I provide no further comment on this until that report is received. <u>03-08-12</u> See comments for 7.4

No	MMO	Able UK	MMO comments
	surround the dredging and changes to suspended sediment and coastal processes.		
7.17	To conclude, based on the figures presented in the ES, 954,350m ³ of non-erodible capital material is suitable for disposal to HU082 and 981,150m ³ of erodible capital material is suitable for disposal to HU080. The deemed marine licence at Schedule 8 must be updated to reflect this latest advice.	<u>5-4-12</u> Noted, BDB to consider appropriate drafting of the DML <u>28-6-12</u> Refer to reports EX8.5 – 8.10 in the Volume of SEI accompanying the Applicant's comments on the Relevant Representations.	<u>29-5-12</u> This will need to be updated following the findings of HR Wallingfords work. As such I provide no further comment on this until that report is received. <u>03-08-12</u> The Applicant has provided the actual volumes of material they are seeking to dispose of to sea in Tables 12.2 and 12.3 of the SOCG. The MMO is currently considering these proposed volumes to ensure an adequate assessment has been made. See comments for 7.4 regarding outstanding questions. The DML will need to be updated to reflect the volumes presented in the SOCG.
7.18-7.20		Informative <u>28-6-12</u> Refer to the Applicant's response to the Relevant Representations. Maintenance dredge variability is reported in EX8.6 in the Volume of SEI accompanying the	<u>29-5-12</u> Paragraphs 7.19 and 7.20 are not informative and require an action on Ables part. See comments for 7.4. <u>03-08-12</u>

No	MMO	Able UK	MMO comments
		Applicant's comments on the Relevant Representations.	See comments for 7.4 to 7.17.
7.21	The impact assessment in Chapter 7, the Dredging Strategy at Annex 7.6 and the deemed marine licence need to be updated to reflect the additional dredging requirements from the south bank channel, Stone Creek (if to be undertaken) and the plough dredging around the E.ON and Centrica outfalls.	<u>5-4-12</u> Noted. The strategy will be amended and re-issued. <u>28-6-12</u> The impact assessment fully takes account of dredging and disposal operations. The Applicant is not seeking consent to dredge at Stone Creek.	<u>29-5-12</u> Once the HR Wallingford report is available we will need to ensure an adequate impact assessment of the dredge disposal activities has been undertaken. Following this, the deemed marine licence will need to be updated. I am content for the updating of the Dredging Strategy to be a condition of the deemed marine licence. <u>03-08-12</u> See comments for 7.4 to 7.17.
7.22-7.24	7.22: HU080 has taken large quantities of material in the past and, given the dispersive nature of the Humber, the MMO considers that the disposal site has capacity to take the material as currently described in the DCO Application. However, the site will need to be monitored to ensure the material is dispersing as predicted and the MMO will require this to be a condition on the deemed marine licence with the Applicant	Informative <u>28-6-12</u> Revised draft Deemed Marine Licence is included in Appendix B of the Applicant's comments on the Relevant Representations.	<u>29-5-12</u> 7.22 and 7.24 require conditions to be drafted to include in the deemed marine licence. <u>03-08-12</u> Conditions relating to this comment are not included in the

No	MMO	Able UK	MMO comments
	required to agree the scope of the monitoring with the MMO prior to commencement. 7.24: The MMO requires that the Humber Baseline Document be updated to incorporate the dredging and disposal of dredged material being consented for this project. The MMO requests that this is provided to the MMO within 12 months of this consent being granted. This must be conditioned within the deemed marine licence.		current draft. See comments on the DCO at Annex 2 for further discussion.
Annex 7.6 Dredging Strategy			
7.25	The dredging plan produced by Westminster Dredging has not been amended to reflect the correct disposal sites mentioned in the rest of the document and in the DCO Application.	<u>5-4-12</u> The deposit locations are consistent with those reported elsewhere in the ES. The document will be amended to reflect the current advice from MMO.	<u>29-5-12</u> I am content for the updating of the Dredging Strategy to be a condition of the deemed marine licence.
7.26	The MMO requires that this Dredging Strategy be updated to reflect previous changes and the comments in these written representations.	<u>5-4-12</u> Noted. Strategy to be revised	<u>29-5-12</u> see comments for 7.25
7.27	The Dredging Strategy must also be updated to include all dredging and disposal activities to be undertaken as part of this project including the turning area, approach channel, berthing pocket, south bank channel, plough dredging, dredging for land reclamation, excavation at the pumping station and maintenance of Stone Creek, as well as any other dredge or disposal activities to take place which have not been mentioned in the DCO Application documents.	<u>5-4-12</u> Noted. Strategy to be revised.	<u>29-5-12</u> see comments for 7.25

No	MMO	Able UK	MMO comments
7.28	The Dredging Strategy must be updated and be approved in writing by the MMO prior to any dredging operations commencing. This must be conditioned in the deemed marine licence.	<u>5-4-12</u> Noted. Strategy to be revised.	<u>29-5-12</u> see comments for 7.25
Chapter 8 Hydrodynamic and Sedimentary Regime			
7.29-7.34		Informative <u>28-6-12</u> Refer to reports EX8.5 – 8.10 in the Volume of SEI accompanying the Applicant's comments on the Relevant Representations.	<u>29-5-12</u> Agree 7.29 is information only, however 7.30-7.34 require further clarification. Information required to satisfy 7.30-7.32 should be provided in the HR Wallingford and JBA reports. The information requested in 7.34 should be provided. <u>03-08-12</u> The MMO are still considering this point.
7.35	It would appear that the drainage channels of the currently terrestrial side of the compensation site are not represented in the model. Please comment on the significance of this.	<u>5-4-12</u> B&V to respond <u>29-5-12</u> The drainage channels are not part of the tidal system.	<u>29-5-12</u> I provide no further comment on this until the Black and Veatch comments are received. <u>8-6-12</u> Accepted
7.39	The increase in suspended material at the intake valves of the E.ON and Centrica power stations is also of some concern. Real-time monitoring of suspended sediment concentration is proposed	<u>5-4-12</u> Both parties are being consulted <u>28-6-12</u>	<u>29-5-12</u> It is likely that any mitigation or monitoring agreed with E.ON and or Centrica would need to be

No	MMO	Able UK	MMO comments
	near the power station intakes by the Applicant. A monitoring and mitigation strategy to assess, and where required mitigate, these changes must be agreed in writing with the MMO prior to any works commencing. The MMO requires a condition to this effect on the deemed marine licence (see paragraphs 5.16 to 5.18 for further discussion on conditions for the deemed marine licence). Consultation with the power station operators (Centrica and E.ON) will be required in designing an effective monitoring programme with suitable management trigger thresholds.	Meeting held with E.ON 19 th June and meeting with Centrica on 21 st June. Discussions ongoing.	conditioned in the deemed marine licence. As such, I request that you keep the MMO informed of the progress of these discussions. <u>03-08-12</u> No update has been provided.
7.40	Construction of a new outfall structure is discussed as potential mitigation for the potential increase in suspended material at the intake valves of the power stations. The Applicant will require a licence under the 2009 Act for construction of a new outfall. The MMO would prefer for this to be deemed within the DCO alongside the other marine licences in order for the project to be considered as a whole. However, the MMO has not found any assessment of this activity in the ES which would be required for the licence to be deemed within the DCO.	<u>5-4-12</u> Annex 9.6 of the ES assesses the temperature change in the water column above ambient. The temperature changes are too small to have an impact on any receptors and that finding is reported in paragraphs 9.8.32-9.8.34 of the ES. <u>28-6-12</u> Refer to report EX9.7 in the Volume of SEI accompanying the Applicant's comments on the Relevant Representations.	<u>29-5-12</u> Adequate assessment of the impact of moving the outfalls does not appear to be made in Annex 9.6 of the ES. The Annex concludes (page 3) by saying that "...the horizontal extent of the [Centrica discharge] plume for a particular excess temperature at any time is <i>likely to be</i> no greater than <i>about twice</i> that shown in the Technical Note. Similarly, <i>it is considered likely</i> that the peak surface excess temperature near the E.ON intake <i>will probably be</i> no greater than <i>about twice</i> that shown in this Technical Note." This opinion is unsupported by additional modelling at the

No	MMO	Able UK	MMO comments
			present time and should be confirmed by additional modelling if the option of moving the Centrica outfall is to be pursued further. We also require clarification on whether one or both of the outfalls will be moved such that a proper assessment of the works can be undertaken. It is not clear whether any consideration been given to the new Killingholme Power Station being proposed by CGen. <u>03-08-12</u> The MMO are still considering the additional information provided in EX9.7.
7.41-7.43		Informative	<u>29-5-12</u> A condition relating to the requirement for monitoring plans should be drafted for inclusion on the deemed marine licence. We will provide further comments on this in due course.

No	MMO	Able UK	MMO comments
			<u>03-08-12</u> See comments on the DCO at Annex 2.
Chapter 10 Aquatic Ecology			
7.44	With regards to table 10.13, the distance at which injuries, including Temporary Threshold Shift, could occur is more useful than the 'accumulation of energy' distance. Potentially, a marine mammal may only have to be within a certain distance of the piling once to have some auditory damage such as a Temporary Threshold Shift in their hearing.	<u>5-4-12</u> ERM to comment <u>28-6-12</u> Refer to report EX10.5 in the Volume of SEI accompanying the Applicant's comments on the Relevant Representations.	<u>29-5-12</u> I provide no further comment on this until the ERM comments are received. <u>03-08-12</u> TTS and PTS thresholds are still not provided, however, a measure of auditory damage is now given (200 dB re 1 uPa, up to 116m). The Applicant has agreed to using soft start procedures for percussive piling and to the presence of a marine mammal observer as mitigation. This must be secured through the deemed marine licence at Schedule 8 to the DCO in a manner the MMO is content with. Should this be achieved, the MMO have no further comments on this.
7.45	Paragraph 10.6.46 states that " <i>in a worst case scenario, harbour porpoises may display behavioural responses within a distance of 1.7km</i> "	<u>5-4-12</u> ERM to comment	<u>29-5-12</u> I provide no further comment on this until the ERM comments are

No	MMO	Able UK	MMO comments
	from the piling due to the maximum rms noise during a pulse". It then goes on to say that "they would only suffer potential auditory damage if they regularly approach within approximately 25.0 to 38.6km of the piling". Previous drafts of the ES stated "in a worst case scenario, harbour porpoises may display behavioural responses over a wide area (40.4 km from the piling)". The Applicant should clarify the position and ensure that the impact has been correctly assessed citing relevant studies where appropriate.	<u>28-6-12</u> Refer to report EX10.5 in the Volume of SEI accompanying the Applicant's comments on the Relevant Representations.	received. <u>03-08-12</u> Clarification with regards referencing the Lucke (2009) paper is now provided. The MMO make no further comment on this.
7.46	The impact of piling on migratory fish populations, including Atlantic salmon and lamprey species, during the construction period is of some concern. The impacts of piling on these species will need to be mitigated. As such, the MMO requests that the Applicant submits a piling mitigation strategy. This must be developed in consultation with other relevant bodies, in particular the Environment Agency, and be agreed in writing with the MMO prior to works commencing. The mitigation must be detailed within the deemed marine licence for monitoring and enforcement purposes.	<u>5-3-12</u> Discussions on-going with EA. <u>28-6-12</u> The Applicant received details of the MMO's proposals for piling restrictions on 19 th June and is currently reviewing them.	<u>29-5-12</u> The MMO has received a copy of the latest proposal for mitigation that Able have submitted to the EA on this matter. We are still considering our position on this mitigation and propose the addition of three conditions to the deemed marine licence to mitigate for the impact of piling noise on fish, as detailed in comments for 7.48. <u>03-08-12</u> The MMO have been in continuing discussions with the Applicant, the Environment Agency and Natural England with regards to

No	MMO	Able UK	MMO comments
			this issue. The Environment Agency set out the EA', NE's and MMO's position in a letter to the Applicant, dated 31 July 2012 and included at Annex 3 of this representation.
7.47	The construction of the Project could cause a barrier to the migration of lamprey species along the intertidal zone as the area is reclaimed. The impact has been mentioned in Table 10.10 and in paragraphs 10.6.59 and 10.6.62, stating that the lamprey could move through other parts of the estuary. However, the MMO does not consider that this is sufficient justification for the conclusion of no significant effect.	<u>5-4-12</u> What evidence exists for the premise that lamprey migrate preferentially along the intertidal zone? Able procured a report from the Institute of Estuarine and Coastal Studies on Lamprey and it is included in the ES at Annex 10.2. Paragraph 70 records that intertidal areas are not essential habitat for Lamprey. <u>28-6-12</u> The Applicant received details of the MMO's proposals for piling restrictions on 19th June and is currently reviewing them.	<u>29-5-12</u> We have reviewed Annex 10.2 in more detail and agree with the assessment made. We therefore request no further information on this. We propose the addition of three conditions to the deemed marine licence to mitigate for the impact of piling noise on fish, as detailed in comments for 7.48. <u>6-8-12</u> The MMO are currently discussing mitigation for the impact of piling on marine species with NE and EA. A draft was sent to Peter Stephenson on 8/6/12 from Annette Hewitson (EA). We will provide further comment in due course. <u>03-08-12</u> See comments for 7.46.
7.48	Paragraph 10.8.6 states that "a significant impact	<u>5-4-12</u>	<u>29-5-12</u>

No	MMO	Able UK	MMO comments
	to local resident fish populations beyond those that would succumb to the loss of subtidal habitat is possible". The only point at which any impact is mentioned is in paragraph 10.6.56. However other than to state there may be a locally significant effect, the impact is never described or quantified. Whilst the paragraph goes on to state that the conservation designations of the Humber Estuary SAC may not be affected, this is not to say the fish populations would not be affected either. A full description of the potential impact on resident fish populations should be provided.	ERM to respond <u>28-6-12</u> Refer to report EX10.4 in the Volume of SEI accompanying the Applicant's comments on the Relevant Representations.	The MMO has undertaken a thorough review of the fisheries information, including commercial fisheries as well as migratory populations and proposes the following mitigation for the impacts of noise from piling activities. The Licence Holder must ensure that soft-start procedures are used to ensure incremental increase in pile power over a set time period until full operational power is achieved. The soft-start duration should be a period of not less than 20 minutes. Should piling cease for a period greater than 10 minutes, then the soft start procedure must be repeated. <i>To allow mobile sensitive receptors to move away from the noise source, and reduce the likelihood of exposing the animal to sounds which can cause injury.</i> Piling is not permitted during the period of between the 1st -



AMEP

MMO RELEVANT RESPONSE – DRAFT ABLE RESPONSES

Date: 03-08-2012

No	MMO	Able UK	MMO comments
			31st May to minimise the impact on smolt and elver migration. <i>May is the peak smolt run period and peak migration period for Elvers coming into the estuary, this condition will minimise the impact on smolt and Elvers migration.</i> Piling between 1st August and the 31st October must take place only during low tide and during daylight hours to further minimise the impacts on salmon migration. <i>This is to mitigate the impacts on the remaining salmon migration period and any juvenile herring present, as most of the piling noise will travel through the air rather than the water.</i> <u>6-8-12</u> The MMO are currently discussing mitigation for the impact of piling on marine species with NE and EA. A draft was sent to Peter Stephenson on 8/6/12 from Annette Hewitson (EA). We will

No	MMO	Able UK	MMO comments
			provide further comment in due course. <u>03-08-12</u> Only impacts of dredged material and piling have been assessed, and the original comment hasn't been answered. For comments on mitigation for piling see comments for 7.46.
7.49	In general, many statements of impact are made but are not evidenced or backed up by appropriate references (for example, paragraphs 10.6.44, 10.6.47, 10.6.49 and 10.6.56). While there are references within paragraph 10.6 as a whole, all statements of impact need to be evidenced. Worked examples of how significance was calculated would assist interpretation.	<u>5-4-12</u> ERM to respond <u>28-6-12</u> Environmental impacts cannot always be assessed quantitatively. Refer to report EX10.4 – 10.6 in the Volume of SEI accompanying the Applicant's comments on the Relevant Representations for further impact assessment.	<u>29-5-12</u> I provide no further comment on this until the ERM comments are received. <u>03-08-12</u> Reports EX10.4-10.6 appear to be referenced properly.
7.50	An auditable methodology of significance assessment is not provided in this Chapter; there are only statements as to whether an impact is significant, in many cases, not backed up by any references. The Applicant needs to provide these methodologies for consideration. Impact tables or matrices of significance, as provided in Chapter	<u>5-4-12</u> ERM to respond <u>28-6-12</u> Refer to report EX10.4 – 10.6 in the Volume of SEI accompanying the Applicant's comments on the Relevant	<u>29-5-12</u> I provide no further comment on this until the ERM comments are received. <u>03-08-12</u>

No	MMO	Able UK	MMO comments
	12, would also aid interpretation.	Representations for further impact assessment.	The MMO is still considering this point.
Chapter 14 Navigation			
7.51-7.53		Informative, noted.	<u>29-5-12</u> Conditions relating to 7.51-7.53 should be drafted for inclusion on the deemed marine licence. We will provide further comments on this in due course. <u>03-08-12</u> Conditions relating to these comments are not included in the draft DML. See Annex 2 for further comment.
7.54	The Applicant will require a licence under the 2009 Act for the construction, deposit and/or removal of any permanent or temporary pilings or mooring dolphins. The MMO would prefer for this to be deemed within the DCO in order for the project to be considered as a whole. However, the MMO has not found any environmental impact assessment of this activity in the Environmental Statement which would be required for the licence to be deemed within the DCO as discussed at paragraphs 4.9 to 4.11.	<u>5-4-12</u> The impact of installing temporary dolphins is covered by the piling assessment.	<u>29-5-12</u> We are currently still considering this point. <u>03-08-12</u> The Applicant has provided a clearer indication of the works they intend to undertake in the marine area in the SOCG. The MMO is currently considering these works to ensure an adequate assessment of the impacts has been undertaken. The MMO has requested the

No	MMO	Able UK	MMO comments
			Applicant to produce a signposting document directing the reader to where the impact assessment has been made in the ES and supplementary information to assist in this, but is yet to receive it.
8. Environmental Statement: Volume 2 Compensation Site			
Chapter 28 Description of Development			
8.1-8.2		Informative	<u>29-5-12</u> Agree.
8.3	Erosion protection may be required, for example concrete blocks or rockfill. The Applicant may require a licence under the 2009 Act for this activity if the activity is taking place below mean high water springs. The MMO would prefer for this to be deemed within the DCO alongside the other marine licences in order for the project to be considered as a whole. However, the MMO has not found any environmental impact assessment of this activity in the Environmental Statement which would be required for the licence to be deemed within the DCO.	<u>5-4-12</u> Rock armour is proposed at the northern and southern revetments. The rock armour will be imported by road and placed by land based plant. What likely significant effect is anticipated and has not been assessed in the ES?	<u>29-5-12</u> We are currently still considering this point. <u>03-08-12</u> See comments for 7.54.
8.4	It is not clear whether the final resulting areas of expected salt marsh, mud flat and subtidal habitat will compensate for lost habitat at the main site in a "like for like" fashion. This needs to be clarified by the Applicant.	<u>5-4-12</u> Annex 1 of the EC Directive 92/43/EEC does not identify subtidal habitat per se, as a specific habitat type. Three habitat types in the marine environment are affected by the works: mudflat (1140), estuary (1130) and annuals colonising mud and sand	<u>29-5-12</u> I understand you are producing a table of habitat loss and habitat creation. We request a copy of this note and will provide further comments on this point once that has been received.

No	MMO	Able UK	MMO comments
		(1310).These specific habitat types are being compensated on a 'like for like' basis. <u>28-6-12</u> Refer to reports EX11.23 - 11.24 in the Volume of SEI accompanying the Applicant's comments on the Relevant Representations.	<u>03-08-12</u> Reports EX 11.23 and 11.24 provide detailed information on the losses and gains at the AMEP site. However, these reports do not provide estimates of amount of habitat type created and lost at the compensation site. The MMO understands that the Applicant is currently re-designing the compensation site and would request that this information is provided once the final compensation site design is agreed.
8.5	The anticipated areas of mud flat and salt marsh (after five years) alongside the areas of mud flat and salt marsh lost as a result of the development have not been provided. This is required to assess the effectiveness of the proposed Compensation Site (CS).	<u>5-4-12</u> Black and Veatch provided professional opinion to Natural England before the application was submitted. They are now undertaking the detailed design. <u>28-6-12</u> Refer to reports EX28.1 in the Volume of SEI accompanying the Applicant's comments on the Relevant Representations.	<u>29-5-12</u> The MMO requests a copy of this report. As such I provide no further comment on this until that report is received. <u>03-08-12</u> Regarding predicted accretion and erosion at the compensation site, the modelling reported appears plausible and valid and the review of information from Paull Holme Strays as a relatively

No	MMO	Able UK	MMO comments
			local comparison site is welcomed. The modelling methodology is not described in any detail, but the MMO acknowledge that the compensation site is currently being re-designed and so EX 28.1 is presented as an interim report. The MMO request that a detailed modelling report describing the modelling work in detail and presenting the results for the finalised design is provided for comment once available.
8.6		Informative	<u>29-5-12</u> A condition relating to the requirement for monitoring plans should be drafted for inclusion on the deemed marine licence. We will provide further comments on this in due course.
Chapter 32 Hydrodynamic and Sedimentary Regime			
8.7	Annex 32.2, paragraph 3.1: The model performance could be tested using the adjacent coastal realignment (i.e. Paull Holme Strays). As the forcing conditions are the same, such a test would give an indication of the reliability of the model as compared to the current situation in which there are no calibration data for the area of interest.	<u>5-4-12</u> B&V to respond <u>29-5-12</u> Attempting a test using Paull Holme Strays as suggested would add another set of uncertainties without necessarily demonstrating that the Cherry Cobb	<u>29-5-12</u> I provide no further comment on this until the B&V comments are received. <u>8-6-12</u> Accepted

No	MMO	Able UK	MMO comments
		Sands Model was reliable. It is important to note that the Tuflow modelling software used is standard software routinely used by the Environment Agency for modelling inundation of tidal and fluvial floodplains.	
8.8	Annex 32.2, paragraph 3.3.6: The suggestion that the large differences between the two models is due to model resolution (and a more uneven surface in the higher resolution model) appears speculative. Evidence for this suggestion and reasoning as to why field measurements were not taken to validate the model (in Cherry Cobb Creek, for example) should be provided.	5-4-12 B&V to respond 29-5-12 The detailed model has a 10m grid compared to the 100m grid used in the model of the whole Humber, hence there is much greater bathymetry detail in the detailed model than in the whole Humber model. The detailed model was nested within the Humber model and boundary conditions from the Humber model used to drive the detailed model. The whole Humber model was validated against levels and velocities within the estuary and the detailed model verified against output from the Humber model at the same grid location. Unfortunately we do not know the bed levels in the Humber model at the locations chosen, but because of differing grid resolution there are likely to be some differences in bed level in the two models at the point where comparisons are made.	29-5-12 I provide no further comment on this until the B&V comments are received. 8-6-12 Validation of one model using another model always adds uncertainty to conclusions. Measurements in intertidal areas can be difficult but are achievable (especially on the lower intertidal area where water depths are greater at high water) and would provide greater confidence in the conclusions of the modelling study. It needs to be demonstrated that there are no gross errors in the model thereby making its predictions unreliable. We request that you provide some figures for the range of velocities predicted in the intertidal areas by the model, and

No	MMO	Able UK	MMO comments
		Field measurements would have been desirable, but are difficult in intertidal conditions such as on top of Foulholme Sand and in Cherry Cobb Sands Creek. The operation of this particular model in the area of interest is almost totally determined by the bathymetry, so the potential increase in reliability and confidence in the model results was not considered sufficient to justify the investment.	a brief assessment of whether these velocities are realistic. Ideally the assessment should make reference to measurement of velocity taken somewhere comparable within the estuary. Making this assessment would give some reassurance that the model predictions are valid, and need not be an onerous task. <u>03-08-12</u> The sensitivity analysis in EX28.1 highlights the level of uncertainty in the modelled data, in particular the sensitivity associated with changes in the modelled values for sediment concentration. By carrying out the sensitivity analysis and incorporating information gained from Paull Holme Strays the Applicant has endeavoured to reduce the uncertainty in the modelled predictions as far as is practical. Field measurements are unlikely to further reduce this uncertainty and therefore no further action is required on this point.
8.9	Annex 32.2, paragraph 3.3.7: A potential issue	<u>5-4-12</u>	<u>29-5-12</u>

No	MMO	Able UK	MMO comments
	with the wetting and drying of surfaces in the model is cited for spikes at points 1 and 2. However, if this were the case one might reasonably expect to observe the same behaviour at all intertidal sites. However, this is not the case. Further discussion and justification is required to identify the likely causes and whether or not the model performance is acceptable.	B&V to respond <u>29-5-12</u> The cause of some spikes is certainly due to wetting and drying process. This can also be seen on tide levels and flow direction plots (i.e. Figure 6 and 7 respectively). TufLOW manual warns that "... high velocities can briefly occur during the wetting process, and are not particularly representative of the peak velocity". Spikes at sites 1 and 2 are linked to wetting and drying. Spikes after HW time at sites 3, 5 and 7 are thought to be due to some instability in the model.	I provide no further comment on this until the B&V comments are received. <u>8-6-12</u> Accepted
8.10	Annex 32.2, paragraph 3.3.10: The model results/performance should be compared statistically using an objective approach. On a number of the plots in Figure 7, the velocity, magnitude and phase are incorrect. For example, sites 2, 5 and 7 show significant magnitude or phase deviations between the two models.	<u>5-4-12</u> B&V to respond <u>29-5-12</u> It is important to remember that we are comparing one model against another, either/ both of which could be in error. Such an 'objective approach' may not help in the assessment of model reliability. Major differences at sites are considered in the preceding paragraphs. Hence in this instance we considered statistical methods were not helpful.	<u>29-5-12</u> I provide no further comment on this until the B&V comments are received. <u>8-6-12</u> This uncertainty adds weight to the comments in point 8.8 above. We agree that the differences are most likely to arise from differences in the model grids. <u>03-08-12</u>

No	MMO	Able UK	MMO comments
		We agree that there are differences at the cited points. The specific cause is not known, and which is closer to field conditions is also not known. Important to remember that the detailed model contains a much better representation of bathymetry than the whole Humber model, including a full representation of Cherry Cobb Sands Creek which takes drainage from the landward half of Foulholme Sands. Site 2 is in this part of the sandbank. We concluded that given the difference in model grid the differences were quite small.	See comments for 8.8. No further action is required on this point.
8.11	Annex 32.3, paragraph 3.4.5 and 3.4.11: The CS is predicted to give an increase in the maximum average current of 44% from 0.67 m/s to 0.97 m/s between the outlet and Stone Creek. It is stated that there will be increased erosion in this area, but no formal assessment is made to show whether this is correct and, if erosion is to occur, to what levels. As significant deepening is a highly likely impact of the proposed compensation site, it should be quantified in the assessment.	<u>5-4-12</u> B&V to respond <u>29-5-12</u> No assessment of the likelihood of erosion is included in Annex 32.2. This issue is covered in Annex 32.4 (section 4.4) and Annex 32.6 (section 3.3). These annexes do not quantify the deepening that will occur. The detailed modelling of the compensation site currently underway will be extended to assess the enlargement of Cherry Cobb Sands that is likely to occur because of the higher velocities.	<u>29-5-12</u> I provide no further comment on this until the B&V comments are received. <u>8-6-12</u> We welcome the extension of the detailed modelling work and will provide further comment on this once that report is received. <u>03-08-12</u> Quantitative assessments of erosion and accretion for both compensation schemes and the

No	MMO	Able UK	MMO comments
		<u>28-6-12</u> Refer to reports EX28.1 in the Volume of SEI accompanying the Applicant's comments on the Relevant Representations.	enlargement of Cherry Cobb Sands Creek are made in EX28.1. No further information is required on this point but see comments for 8.5 regarding detail required for finalised design.
8.12	The MMO understands that further modelling work is being undertaken by the Applicant to predict the development of the realignment site for the first 10 years. The MMO would wish to see the results of this modelling and would need to have sight of any new design for the compensation site, along with a detailed method statement which would need to be agreed prior to works commencing.	<u>5-4-12</u> Noted, the design is currently being undertaken. <u>28-6-12</u> Refer to reports EX28.1 in the Volume of SEI accompanying the Applicant's comments on the Relevant Representations.	<u>29-5-12</u> I provide no further comment on this until the B&V comments are received. <u>03-08-12</u> Further modelling work has been completed for two proposed scheme layouts. The development of the site over 5 years (rather than 10 years, as requested by the MMO) has been assessed for both schemes. No further information is required at this time but see comments for 8.5 regarding detail required for finalised design.
8.13	Annex 32.4: It has been stated that there are no data available for calibration and validation of the model. The Applicant should consider what evidence there is that this model has correctly predicted the effects of a coastal realignment, or how this may be assessed if no evidence readily exists. Although the CS under consideration here	<u>5-4-12</u> B&V to respond, telecom on 10-5. <u>29-5-12</u> Please see earlier response at point 8.7 on the value of a blind test. This particular model has not been used for	<u>29-5-12</u> I provide no further comment on this until the B&V comments are received. <u>8-6-12</u> The difficulty of validating the

No	MMO	Able UK	MMO comments
	does not presently exist, there are other sites in and near the Humber estuary where similar activities have occurred. These sites would make an ideal blind-test of the model – that is the model could be run without calibration/validation and compared afterwards with field data from an established re-alignment site. This would give confidence in the model results. It would be useful to know if the model was used previously with any of the Humber sites and, if so, how well it performed.	previous Humber managed realignment sites. Previous realignment schemes have used MIKE 21 and Delft3D software in 2D mode. Model performance of water levels and inundation extent has been good. Siltation predictions were less reliable, especially at Paull Holme Strays. For this study we have taken advantage of experience at PHS reported in Annex 32.5 and Annex 32.4 (section 4.1) to 'calibrate' accretion and erosion predictions.	modelling predictions is acknowledged and accepted, and the use of knowledge gained from Paull Holme Strays is welcomed. <u>03-08-12</u> No further comments.
8.14	Annex 32.4, paragraph 3.5.7: At point 16 there is a considerable change in flow speed. This is likely to scour a deeper channel and result in a slower speed. This model does not assess changes in bed level, which is a limitation. However, one could make predictions of the scour in the channel and use this information to model an anticipated 'equilibrium' channel configuration. At present the model only investigates the initial conditions rather than the hydrodynamic conditions that are likely to persist.	<u>5-4-12</u> B&V to respond, telecom on 10-5. <u>29-5-12</u> We agree and as indicated in 8.12 new modelling work will include reporting on scour in the creek. <u>28-6-12</u> Refer to reports EX28.1 in the Volume of SEI accompanying the Applicant's comments on the Relevant Representations.	<u>29-5-12</u> I provide no further comment on this until the B&V comments are received. <u>8-6-12</u> We welcome the extension of the detailed modelling work and will provide further comment on this once that report is received. <u>03-08-12</u> See comments for 8.12.
8.15	Annex 32.4, paragraph 4.3: This paragraph is important, but it is only briefly documented and reported. The time-series of bed shear stress, plotted along with the critical deposition and	<u>5-4-12</u> B&V to respond, telecom on 10-5. <u>29-5-12</u>	<u>29-5-12</u> I provide no further comment on this until the B&V comments are received.

No	MMO	Able UK	MMO comments
	erosion values, would be informative and should be included. Likewise, an explanation of why the increased velocities at point 19 (Figure 14b) result in a reduction (rather than the expected increase) in the annual erosion estimate (Table 12) would also be useful.	The time series of bed shear stress will be provided in the report of detailed modelling of the 100ha compensation site currently in progress. <u>28-6-12</u> Refer to reports EX28.1 in the Volume of SEI accompanying the Applicant's comments on the Relevant Representations.	<u>8-6-12</u> We welcome the extension of the detailed modelling work and will provide further comment on this once that report is received. <u>03-08-12</u> Time series of bed shear stress are shown (Figures 11 and 20). No further information is required on this point at this time.
8.16	Annex 32.4, paragraphs 5.1.2 and 5.1.3: The qualitatively forecast " <i>high erosion levels</i> " in the Cherry Cobb Sands Creek should be quantified (i.e. erosion/accretion estimates) as for other parts of the study area. This should be done upstream and downstream of the breach where accretion and erosion (respectively) are expected.	<u>5-4-12</u> B&V to respond, telecom on 10-5. <u>29-5-12</u> As indicated in 8.12 and 8.14, erosion and accretion estimates for Cherry Cobb Sands Creek will be made as part of the detailed modelling studies underway. <u>28-6-12</u> Refer to report EX28.1 in the Volume of SEI accompanying the Applicant's comments on the Relevant Representations.	<u>29-5-12</u> I provide no further comment on this until the B&V comments are received. <u>8-6-12</u> We welcome the extension of the detailed modelling work and will provide further comment on this once that report is received. <u>03-08-12</u> See comments for 8.11.
Chapter 33 Water Quality and Sediment Quality			
8.17 – 8.18		Informative	<u>29-5-12</u> Agree
8.19	The results from locations TH11 and TH12 are	<u>5-4-12</u>	<u>29-5-12</u>

No	MMO	Able UK	MMO comments
	higher than Cefas Action Level 2 for copper, mercury, lead and zinc; however it is unclear whether the methods are comparable to those used to determine the Cefas Action Levels. The MMO requests that details of the analytical methodologies used are provided in order to assess the comparability of this data. If it is not possible to compare the results with MMO criteria, the MMO may require re-sampling and testing using Cefas methods to ensure the direct comparison of TH11 and 12.	These trial pit locations lie outside the realignment site.	We have been provided with the trial pit location sites and confirm that, since these sites are outside of the realignment site, we have no further comment to make on this.
8.20	TH11 and TH12 also showed higher levels of pyrene and flouranthene than background levels in the Humber. The methods for these analyses also need to be provided to the MMO to determine the suitability of the data for a direct comparison to Cefas Action Levels.	<u>5-4-12</u> These trial pit locations lie outside the realignment site.	<u>29-5-12</u> We have been provided with the trial pit location sites and confirm that, since these sites are outside of the realignment site, we have no further comment to make on this.
8.21	Some sites were also tested for dichlorodiphenyldichloroethylene (DDE) and dieldrin however the limits of detection are several orders of magnitude above Cefas Action Level 1 (0.2 PPM and 0.001 PPM respectively). DDE and dieldrin concentrations have not, therefore, been adequately assessed for risk assessment purposes and will require further sampling and analysis.	<u>5-4-12</u> A second stage SI has commenced. <u>28-6-12</u> Refer to report EX31.5 in the Volume of SEI accompanying the Applicant's comments on the Relevant Representations.	<u>29-5-12</u> Able have provided the MMO with the methodologies used for the additional site investigation works have the following comments: • DDT and it's derivatives will need to be tested by a laboratory who can achieve an LOD below Cefas action level 1 (for example, the cefas laboratory); • Analysis of TBT and PCBs is also required;



AMEP

MMO RELEVANT RESPONSE – DRAFT ABLE RESPONSES

Date: 03-08-2012

No	MMO	Able UK	MMO comments
			• Samples at depths for all contaminants is also required. It may be sensible to wait for the final design of the compensation site to be agreed to ensure that the sampling at depth is appropriate; • The MMO would need to approve any remediation work undertaken. Full advice was provided to Jenn Dawes on 29/05/12. <u>03-08-12</u> Previous comments on methodologies still stand. Although TBT and PCBs have not been tested to Cefas limits of detection (LOD), the results are comparable and the MMO are content with the results provided that re-use of materials on site would be acceptable. No further assessment of TBT and PCBs is therefore required at present. Metals have been shown to be

No	MMO	Able UK	MMO comments
			below Cefas Action Level (AL) 2, therefore no further analysis of metals is required at present. DDT – The LOD used was above Cefas AL 1. However, the MMO are content with the results with the exception of one sample (TP1) which showed significantly elevated levels. TP1 at the surface showed levels five times that of Cefas AL 1 and there is currently no upper action level limit. DDD and DDD were below their limit of detection, so comparisons of ratios is impossible. However given the levels of DDT are higher than the breakdown products this suggests the DDT is from a fresh input. The Applicant is requested to provide further information with regards to the fate of the material in this area. If the material is to be excavated it should be removed from site. If the material is to remain details of how this material is to be used is required. Further analysis may be required to define the extent of this



AMEP

MMO RELEVANT RESPONSE – DRAFT ABLE RESPONSES

Date: 03-08-2012

No	MMO	Able UK	MMO comments
			contamination and to identify the source of the contamination. Results for Dieldrin still need to be provided. PAHs – due to the methods used by the Applicant, these may be underestimates and the MMO may require some re-analysis using more comparable methods. Once the final site design of the compensation site is agreed, the Applicant will need to provide full details of exact locations and depths of samples taken to date (and associated analysis results). The MMO will then advise if further contamination analysis is required. It is likely that it will be and the MMO is content for the above concerns to be addressed at that time.
8.22	The MMO understands that the Applicant is intending to undertake additional site investigation works. The MMO strongly recommend that the MMO are consulted on the scope of these works and the methodologies to	<u>5-4-12</u> Noted, consultation has commenced. <u>28-6-12</u> Refer to report EX31.5 in the Volume of	<u>29-5-12</u> see comments for 8.21

No	MMO	Able UK	MMO comments
	be used to ensure that the results can adequately describe the contamination and pollution risk for the marine environment.	SEI accompanying the Applicant's comments on the Relevant Representations.	
8.23	The MMO would require that works are not allowed to commence at the compensation site until the information requested in paragraphs 8.17 to 8.22 is provided to the MMO and the MMO has agreed in writing that the works should commence. Should the methodologies used be insufficient to be able to assess the risk of pollution to the marine environment, the MMO would require additional sampling and analysis of sediments to be undertaken place prior to works commencing. The MMO would require that this is made a condition of the deemed marine licence.	<u>5-4-12</u> Noted, BDB to consider appropriate drafting of the DML <u>28-6-12</u> Revised draft Deemed Marine Licence is included in Appendix B of the Applicant's comments on the Relevant Representations.	<u>29-5-12</u> see comments for 7.25 <u>03-08-12</u> See comments for 8.21.
8.24	Paragraph 33.6.3 states " <i>the sensitivity of the receiving estuarine waters to contaminants is considered to be medium and the magnitude of effect to be medium, resulting in a moderate negative significant effect</i> ". Evidence of this statement has not been provided. Where possible, appropriate mitigation should be proposed and be detailed in the deemed marine licence.	<u>5-4-12</u> B&V to respond, telecom on 10-5. <u>29-5-12</u> If the second stage SI shows contaminated land is present within the proposed managed realignment site, a mitigation strategy will be proposed in line with the risk assessment of Annex 31.4. We will advise MMO on testing procedures.	<u>29-5-12</u> I provide no further comment on this until the B&V comments are received. <u>8-6-12</u> We welcome the additional SI work and will provide further comment on the SI work and the mitigation strategy once this information is received. Please see email to Jenn Dawes (Able UK) dated 29/05/2012 regarding our position on sampling and

No	MMO	Able UK	MMO comments
		<u>28-6-12</u> Refer to report EX31.5 in the Volume of SEI accompanying the Applicant's comments on the Relevant Representations.	analysis requirements. <u>03-08-12</u> See comments for 8.21.
8.25	Paragraph 33.6.7 mentions that a soke dyke will need to be relocated. It is unclear whether this is below mean high water springs, but there is mention that the waters are saline, which implies that it is. Depending on its current and proposed location, this may require a licence under the 2009 Act. Details of the current and proposed location of the soke dyke should be provided to the MMO, as well as a brief intended method statement in order to clarify this point. Should this activity require a licence under the 2009 Act, the MMO would prefer for this to be deemed within the DCO in order for the project to be considered as a whole. However, the MMO has not found any assessment of this activity in the ES which would be required for the licence to be deemed within the DCO.	<u>5-4-12</u> Plan AME-02016 shows the diverted position of the soke dyke behind the new flood defence. The existing feature is behind the existing defence. Neither the existing nor diverted drain lie within the marine environment.	<u>29-5-12</u> We are currently still considering this point. <u>03-08-12</u> Accepted. No further comment.
Chapter 34 Aquatic Ecology and Nature Conservation			
8.26	Paragraph 34.6.2 states that while there will be damage to the salt marsh due to construction vehicles, but it will recover quickly. There is no evidence or references for this statement and further clarification is required.	<u>5-4-12</u> The paragraph needs to be read in the context of the previous paragraph. There should be no permanent or significant indirect effect on saltmarsh beyond the excavated channel.	<u>29-5-12</u> We are currently still considering this point. <u>03-08-12</u> The MMO is still considering this

No	MMO	Able UK	MMO comments
8.27	Previous drafts of this chapter have mentioned that the removal of salt marsh and placement of any protective matting for vehicles tracking across salt marsh will be required during construction. There is no reference to this in the final ES; however, the applicant has agreed that there will be some excavation of the foreshore during construction. Clarification is sought from the Applicant on whether this will form part of the construction methodology. If these activities are due to occur an impact assessment should be made of them in this DCO Application for the project to be considered as a whole.	<u>5-4-12</u> Paragraph 34.6.1 notes that approximately 2ha saltmarsh will be removed to create a drainage channel into the site. This is being compensated for within the realignment site. Vehicles will use bog mats if required but this will not have any additive effect since the machines will operate within the channel that is being created. The bog mats will be recovered on completion of the works.	point. <u>29-5-12</u> We are currently still considering this point. <u>03-08-12</u> The MMO understands that the Applicant is currently re-designing the compensation site. Once the final design has been agreed, the MMO requests the Applicant undertakes as assessment of the impact on saltmarsh of the final design.
8.28	The removal of salt marsh and placement of protective matting below mean high water springs are licensable activities under the 2009 Act. Should they be taking place, the MMO would prefer for this to be deemed within the DCO alongside the other marine licences in order for the project to be considered as a whole. However, the MMO has not found any assessment of this activity in the ES which would be required for the licence to be deemed within the DCO (as discussed in paragraphs 4.9 to 4.11). This would need to include describe the maximum envisaged extent of matting and the impact of the matting on the marine environment. This should also be included in the in-combination and cumulative impacts	<u>5-4-12</u> The loss of saltmarsh is covered in the ES, is compensated for (refer to Table 11.16 and 11.17). The use of bog mats will not give rise to any likely significant effects. <u>28-6-12</u> Refer to report EX11.23 – 11.24 in the Volume of SEI accompanying the Applicant's comments on the Relevant Representations.	<u>29-5-12</u> We are currently still considering this point. We expect losses and gains of saltmarsh to be covered in the note mentioned at 8.4 <u>03-08-12</u> There does not appear to be any assessment of the impact or amount of matting required in EX11.23 or 11.24. Evidence to show that the use of

No	MMO	Able UK	MMO comments
	assessment for salt marsh habitat.		bog mats will not cause environmental impact (Able comment 5-4-12) needs to be provided. Again, that Applicant will be required to supply this information for the final design of the compensation site.
8.29		Informative	<u>29-5-12</u> A condition relating to the requirement for monitoring plans should be drafted for inclusion on the deemed marine licence. We will provide further comments on this in due course.
Chapter 36 Drainage and Flood Risk			
8.30	Previous drafts of this chapter mentioned possible dredging of Stone Creek if siltation levels rise. Any specific reference to dredging has been removed but there is now mention of a monitoring and maintenance plan which will identify mitigation works (see paragraph 7.41).	<u>5-4-12</u> See response to 7.4 <u>28-6-12</u> The Applicant will undertake monitoring of siltation levels in Stone Creek.	<u>29-5-12</u> See comments for 7.4 <u>03-08-12</u> Accepted. No further comment.
8.31	The MMO requests that the Applicant clarifies whether additional dredging is likely to be required. If there is potential for additional dredging, the environmental impacts of this should be assessed in this DCO Application for the project to be considered as a whole.	<u>5-4-12</u> The impact of the scheme on sedimentation in Stone creek is assessed in Annex 32.4, Section 4.5 of the ES. Siltation is not expected to change as a consequence of the scheme. Nevertheless as an effect	<u>29-5-12</u> I understand you are not now seeking permission to dredge Stone Creek.

No	MMO	Able UK	MMO comments
		cannot be excluded due the uncertainty attached to hydrodynamic modelling. Accordingly paragraph 4.5.5 recommends monitoring of sediment levels. Routine maintenance dredging is currently undertaken by the EA with contributions from landowners and will have to continue. It is considered that there is only a slight risk that the frequency of dredging operations increases due to the scheme. Any possible increase in maintenance dredging would be miniscule compared to the annual maintenance dredging on the Humber and could not be considered to give rise to a likely significant effect.	
8.32	Any dredging or disposal would require a licence under the 2009 Act. The MMO would prefer for all licences under the 2009 Act to be deemed within the DCO alongside the other marine licences in order for the project to be considered as a whole. However, the MMO has not found any environmental impact assessment of this activity in the ES which would be required for the licence to be deemed within the DCO.	<u>5-4-12</u> No dredging is anticipated	<u>29-5-12</u> I understand you are not now seeking permission to dredge Stone Creek.

**Annex 2 MMO comments on revised draft DCO and DML received on
19 July 2012**

Planning Act 2008
Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
Regulation 5(2)(b)
Document reference: TR030001/DCO/[23](#)

**The proposed Able Marine Energy Park
Draft Development Consent Order**

| [3 August](#)~~29 June~~ 2012
Revision: [32](#)
Bircham Dyson Bell

STATUTORY INSTRUMENTS

2012 No. XXXX

INFRASTRUCTURE PLANNING

HARBOURS, DOCKS, PIERS AND FERRIES

**The Able Marine Energy Park
Development Consent Order 2013**

Made - - - - 2013
Coming into force - - 2013

CONTENTS

PART 1 - PRELIMINARY

1. Citation and commencement
2. Interpretation
3. Incorporation of the Harbours, Docks and Piers Clauses Act 1847
4. Modification of enactments

PART 2 – PRINCIPAL POWERS

5. Development consent etc. granted by the Order
6. Period for completion of work
7. Jurisdiction of the Harbour Authority
8. Agreements etc., entered into by Company
9. Maintenance of authorised development
10. Provision of works
11. Benefit of Order
12. Consent to transfer benefit of Order

PART 3 – STREETS

13. Street works
14. Temporary stopping up of streets
15. Access to works
16. Agreements with street authorities
17. Public rights of way

PART 4 – SUPPLEMENTAL POWERS

- 18. Discharge of water
- 19. Protective work to buildings
- 20. Authority to survey and investigate the land
- 21. Right to dredge
- 22. Tidal works not to be executed without approval of Secretary of State
- 23. Abatement of works abandoned or decayed
- 24. Survey of tidal works
- 25. Lights on tidal works during construction
- 26. Provision against danger to navigation
- 27. Permanent lights on tidal works
- 28. Power to appropriate

PART 5 – POWERS OF ACQUISITION

- 29. Compulsory acquisition of land
- 30. Power to override easements and other rights
- 31. Compulsory acquisition of land – incorporation of the mineral code
- 32. Time limit for exercise of authority to acquire land compulsorily
- 33. Compulsory acquisition of rights
- 34. Private rights of way
- 35. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
- 36. Acquisition of subsoil only
- 37. Acquisition of part of certain properties
- 38. Rights under or over streets
- 39. Temporary use of land for carrying out the authorised development
- 40. Temporary use of land for maintaining authorised development
- 41. Statutory undertakers
- 42. Recovery of costs of new connections

PART 6 – MISCELLANEOUS AND GENERAL

- 43. Deemed marine licence
- 44. Felling or lopping of trees
- 45. Trees subject to tree preservation orders
- 46. Railway and navigation undertakings
- 47. Railway network
- 48. Arrangements with Her Majesty's Revenue and Customs
- 49. Application of landlord and tenant law
- 50. Operational land for purposes of the 1990 Act
- 51. Defence to proceedings in respect of statutory nuisance
- 52. Protection of interests
- 53. Saving for Trinity House
- 54. Disapplication of regulation 73 of the Conservation of Habitats and Species Regulations 2010
- 55. Planning, etc. jurisdiction
- 56. Certification of plans etc
- 57. Service of notices

- 58. Arbitration
- 59. Requirements - appeals

SCHEDULES

- Schedule 1 — Authorised development
- Schedule 2 — Streets subject to street works
- Schedule 3 — Streets to be temporarily stopped up
- Schedule 4 — Access to works
- Schedule 5 — Streets to be stopped up
- Schedule 6 — Land of which temporary possession may be taken
- Schedule 7 — Trees subject to Tree Preservation Orders
- Schedule 8 — Deemed Marine Licence
- Schedule 9 — Protective provisions
 - Part 1 — For the protection of Natural England
 - Part 2 — For the protection of AB Ports
 - Part 3 — For the protection of the Environment Agency
- Schedule 10 — Limits of harbour
- Schedule 11 — Requirements

Able has applied for an order granting development consent to the Infrastructure Planning Commission in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

the application was examined by an Examining authority under Part 4 of the Planning Act 2008(a);

the Examining authority has considered the application and the relevant representations made in relation to it, and has reported its recommendation to the Secretary of State as decision-maker under section [74(2)(b) / 83(2)(b)] of that Act;

the decision-maker has decided under section 104 of that Act to make an order granting development consent;

the decision-maker makes the following Order under section 114 of that Act.

(a) 2008 c. 29, as amended

PART 1

PRELIMINARY

Citation and Commencement

1. This Order may be cited as the Able Marine Energy Park Development Consent Order 2013 and shall come into force the day on which it is made.

Interpretation

2.—(1) In this Order—

“the 1847 Act” means the Harbours, Docks and Piers Clauses Act 1847(a);

“the 1961 Act” means the Land Compensation Act 1961(b);

“the 1965 Act” means the Compulsory Purchase Act 1965(c);

“the 1980 Act” means the Highways Act 1980(d);

“the 1984 Act” means the Road Traffic Regulation Act 1994(e);

“the 1990 Act” means the Town and Country Planning Act 1990(f);

“the 1991 Act” means the New Roads and Street Works Act 1991(g);

“the 2008 Act” means the Planning Act 2008(h);

“AB Ports” means Associated British Ports, company number ZC000195, registered at 79-91 Aldwych, London WC2B 4HN;

“area of jurisdiction” means the area shown bounded by the line described as ‘boundary of jurisdiction of the Harbour Authority’ on the plan at Schedule 10; and in the following provisions of this Order, references to the limits of the harbour shall be construed as references to the limits so shown;

“area of seaward construction activity” means the area of the sea within the Order limits shown on the land plan;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, being development within the meaning of section 32 of the 2008 Act;

“the book of reference” means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“the Company” means Able Humber Ports Limited, company number 107029, registered at Ogier House, The Esplanade, St Helier, Jersey, JE4 9WG;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“the Crown land plan” means the plan certified as the Crown land plan by the decision-maker for the purposes of this Order;

“the decision-maker” has the same meaning as in section 103 of the 2008 Act;

Comment [MMO1]: Re MMO comment 5.1; Applicant response 68.3: The MMO understands the Applicant will provide coordinates on the plan at Schedule 10. The MMO is content with this approach but requests that the plan to be used is provided for comment.

-
- (a) 1847 (10 & 11 Vict) c. 27, as amended at the date of the coming into force of this Order
(b) 1961 c. 33, as amended at the date of the coming into force of this Order.
(c) 1965 c. 56, as amended at the date of the coming into force of this Order
(d) 1980 c. 66, as amended at the date of the coming into force of this Order.
(e) 1984 c. 27, as amended at the date of the coming into force of this Order.
(f) 1990 c. 8, as amended at the date of the coming into force of this Order.
(g) 1991 c. 22, as amended at the date of the coming into force of this Order.
(h) 2008 c. 29, as amended at the date of the coming into force of this Order.

“the dockmaster” means the dockmaster appointed by the Harbour Authority under this Order;

“the design drawings” means the design drawings submitted under regulation 5(2)(o) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and certified as the design drawings by the decision-maker for the purposes of this Order;

“the ecology plan” means the plan certified as the ecology plan by the decision-maker for the purposes of this Order;

“harbour” means the harbour constructed by the undertaker in pursuance of the powers conferred on them by this Order and includes the dredged channel also constructed under those powers, and all other works, land, buildings, ancillary works, plant, property and conveniences connected with them, as from time to time existing;

“the Harbour Authority” means the Company in its capacity as harbour authority established by article 7 (jurisdiction of the Harbour Authority);

“the harbour master” means the harbour master appointed by AB Ports to be a harbour master for an area that includes the area of jurisdiction and includes the harbour master’s deputies and assistants;

“the heritage plan” means the plan certified as the heritage plan by the decision-maker for the purposes of this Order;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the land plan” means the plan certified as the land plan by the decision-maker for the purposes of this Order;

“level of high water” means the level of mean high-water springs;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct or replace the authorised development and any derivative of “maintain” shall be construed accordingly;

“Network Rail” means Network Rail Infrastructure Ltd, company number 02904587 registered at King’s Place, 90 York Way, London N1 9AG;

“Order land” means the land shown on the land plan which is within the boundary of land required for or affected by the proposed development, and described in the book of reference;

“the Order limits” means the limits shown as such on the works plan, and are the limits within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“relevant planning authority” means the local authority for the area in which the relevant land to which the provisions of this Order apply is situated;

“requirement” means the corresponding paragraph of Schedule 11;

“the rights of way plan” means the plan certified as the rights of way plan by the decision-maker for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageway, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“tidal work” means so much of any work authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;

“tree preservation order” has the meaning given in section 198 of the 1990 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

(a) 1981 c. 67, as amended at the date of the coming into force of this Order.

“the undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act and articles 11 and 12;

“the undertaking” means the harbour undertaking of the undertaker as authorised from time to time;

“vessel” means every description of vessel or water-borne structure, however propelled, moved or constructed, and includes displacement and non-displacement craft, personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over or placement in water and which is at the time in, on or over water;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plan” means the plan certified as the works plan by the decision-maker for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development shall be taken to be measured along that work.

Incorporation of the Harbours, Docks and Piers Clauses Act 1847

3.—(1) With the exception of sections 6 to 23, 25, the proviso to section 28, section 31, the proviso to section 32, section 33, sections 35, 36, 38, 39, 42, 43, 45, 48 to 50, 53 to 55, 59 to 64, 66 to 69, 71 to 73, 76 and 79 to 90, 92, 97, 98 and 102, the 1847 Act is incorporated in this Order subject to the modifications stated in paragraph (2).

(2) In construing the 1847 Act as so incorporated—

- (a) the expression “the special Act” means this Order;
- (b) the expressions “the Promoters of the undertaking” and “the undertakers” mean the undertaker;
- (c) the expression “the harbour, dock or pier” means the authorised development within the area of jurisdiction;
- (d) the expressions “limits” and “prescribed limits” mean the area of jurisdiction;
- (e) the expression “near the pier” does not extend beyond the area of jurisdiction;
- (f) the expression “the harbour master”, in relation to the authorised development means the harbour master as defined in article 2;
- (g) the definition of “vessel” in article 2(1) shall be substituted for the definition in section 3 of the 1847 Act; and
- (h) any requirement to comply with a notice or direction given by the harbour master shall be construed as including a requirement that, in complying with such notice or direction, a person who is subject to the notice or direction shall also comply with any relevant notice or direction given by AB Ports or the harbour master in the exercise by either or both of them of any function conferred by or under any enactment (including this Order).

Modification of enactments

4. —(1) Sections 25 and 26 of the River Humber Conservancy Act 1852(a), section 9 (licences for execution of works) of the Humber Conservancy Act 1899(b) and section 6(2) (no erections in

(a) 1852 c. cxxx. , as amended at the date of the coming into force of this Order.

(b) 1899 c. cci. , as amended at the date of the coming into force of this Order.

Humber below river lines or without licence above river lines) of the Humber Conservancy Act 1905(a) do not apply to the authorised development.

(2) The requirement to obtain consent under section 23(1) of the Land Drainage Act 1991(b) does not apply to the authorised development.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

5. Subject to the provisions of this Order and to the requirements in Schedule 11 (requirements) the undertaker is granted development consent for the authorised development, to be carried out within the Order limits.

Period for completion of work

6. If the authorised development is not completed within ten years from the coming into force of this Order or such extended time as the decision-maker may on the application of the undertaker allow, then on the expiration of that period or such extended time (as the case may be) the rights granted by this Order to the undertaker for making and maintaining the works shall cease except as to so much of them as is then substantially commenced.

Jurisdiction of the Harbour Authority

7.—(1) Without prejudice to the functions of AB Ports exercisable within its limits, the Company shall be the harbour authority for the area of jurisdiction.

(2) Without prejudice to any provision of the 1847 Act as incorporated by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847), the area within which the Harbour Authority and the dockmaster may exercise their functions under this Order shall be the area of jurisdiction.

(3) The jurisdiction of the Harbour Authority over vessels within the area of jurisdiction shall not extend to—

- (a) any vessel unless it is at anchor or otherwise moored or is causing an obstruction within the area of jurisdiction; or
- (b) signalling or any other activity connected with the movement of the vessel.

(4) Where any person referred to in paragraph (5)(a) considers that there is an actual or anticipated conflict between—

- (a) the exercise of any function of any person mentioned in paragraph (5)(a); and
- (b) the exercise of any function of any person mentioned in paragraph (5)(b),

then that person may give notice to the relevant person in paragraph (5)(b).

(5) The persons referred to in paragraph (4) are—

- (a) AB Ports and the harbour master; and
- (b) the Harbour Authority and the dockmaster.

(6) The notice referred to in paragraph (4) shall set out any requirements concerning the exercise of the relevant function by the relevant person mentioned in paragraph (5)(b).

(7) The requirements referred to in paragraph (6) may—

- (a) make general provision in relation to the exercise of functions over time; or

Comment [MMO2]: Re MMO comment 5.2; Applicant response 68.4. The MMO is still considering this issue and will provide further comment on this through the examination process.

(a) 1905 c. clxxix, , as amended at the date of the coming into force of this Order.
(b) 1991 c. 59, as amended at the date of the coming into force of this Order

- (b) make specific provision about the exercise of a particular function or functions on a particular occasion.
- (8) If—
 - (a) a notice sets out requirements falling within paragraph (7)(a) it must be made in writing; and
 - (b) a notice sets out requirements falling within paragraph (7)(b) it may be made in writing or in any other manner considered appropriate by the person giving the notice.
- (9) On receipt of a notice given under paragraph (4), the recipient of the notice shall comply with the notice.
- (10) Save where expressly provided elsewhere in this Order, no person mentioned in paragraph (5)(b) is obliged to seek any permission or otherwise notify any person mentioned in paragraph (5)(a) prior to exercising any function.
- (11) Subject to the requirements of any notice given under paragraph (4), the functions of the Harbour Authority and the dockmaster shall be exercised in accordance with Part 2 of Schedule 9 (for the protection of AB Ports).

Agreements entered into by Company, etc.

8. Any agreement or undertaking entered into by the Company before the coming into force of this Order in connection with the proposed exercise of its functions as Harbour Authority shall be binding upon the Harbour Authority notwithstanding that it was entered into by the Company before it was established as a Harbour Authority by article 7 (jurisdiction of the Harbour Authority).

Maintenance of authorised development

9. The undertaker may at any time maintain the authorised development and within the limits of the harbour, from time to time enlarge, relay or extend temporarily or permanently the authorised development, except to the extent that this Order or an agreement made under it provides otherwise.

Provision of works

10.—(1) The undertaker may from time to time within the Order limits provide and operate such harbour facilities, together with works ancillary to those facilities, as may be necessary or convenient for the construction of the authorised development or the operation of the undertaking, and for this purpose the undertaker may construct and maintain roads, railway lines, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient.

(2) Without prejudice to paragraph (1) the undertaker may within the Order limits carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the authorised development, including—

- (a) works for the accommodation or convenience of vessels (including but not limited to berthing heads, mooring posts, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons);
- (b) works to divert, remove or replace apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines; and
- (c) landscaping and other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works.

Comment [MMO3]: Re MMO comment 5.3; Applicant response 68.5. The MMO accept the Applicant's acknowledgement that this does not exempt the Applicant from the requirements of the 2009 Act and make no further comment.

Comment [MMO4]: Re MMO comment 5.4; Applicant response 68.5. The MMO accept the Applicant's acknowledgement that this does not exempt the Applicant from the requirements of the 2009 Act and make no further comment.

(3) Article 3 of, and Parts 11 and 17 in Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995(a) shall apply as if this Order were a grant of planning permission.

Benefit of Order

11. Subject to article 12 (consent to transfer benefit of Order), the provisions of this Order shall have effect solely for the benefit of the Company.

Consent to transfer benefit of Order

12.—(1) The undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1), references in this Order to the undertaker, except in paragraph (3), shall include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Comment [MMO5]: Re MMO comment 5.6; Applicant response 68.5. At the issue specific hearing on the DCO the MMO again raised a concern as to the ability to transfer the benefit of the DCO. The Applicant stated that the DCO could be amended by way of a Harbour Revision Order under the Harbours Act 1964. The MMO disagrees with the position put forward by the Applicant. Whilst it is, of course, for the ExA to determine the scope of the Planning Act 2008 to authorise such matters with regards to the DCO application, the MMO feels that clarification of this point would be beneficial.

PART 3

STREETS

Street works

13.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

(a) SI 1995/418, as amended at the date of the coming into force of this Order.

Temporary stopping up of streets

14.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 3 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the rights of way plan, in column (3) of that Schedule.

(4) The undertaker shall not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (3) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Access to works

15.—(1) The undertaker may, for the purposes of the authorised development—

- (a) form and lay out means of access to a public highway, or improve existing means of access to a public highway, in the location specified in columns (1) and (2) of Schedule 4 (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access to a public highway or improve existing means of access to a public highway, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If a relevant planning authority which receives an application for approval under paragraph (1)(b) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it shall be deemed to have granted approval.

Agreements with street authorities

16.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the strengthening, improvement, repair or reconstruction of any street required as a result of the exercise of the powers conferred by this Order;
- (b) any stopping up, alteration or diversion of a street authorised by this Order; or
- (c) the carrying out in the street of any of the works referred to in article 13(1) (street works).

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Public rights of way

17.—(1) With effect from the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard defined in the implementation plan, the section of each public right of way (being a footpath) specified in columns (1), (2) and (3) of Schedule 3 (footpaths to be diverted) is extinguished.

(2) With effect from that same date, the alternative section of each footpath specified in column (4) of Schedule 5 is created.

(3) In this article—

“implementation plan” means the written plan prepared by the undertaker and approved by the local highway authority for the creation of the agreed alternative right of way to the defined standard; and

“local highway authority” has the same meaning as in section 329(1) of the 1980 Act.

PART 4 SUPPLEMENTAL POWERS

Discharge of water

18.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker shall not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

(4) The undertaker shall not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(b) (requirement for an environmental permit).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(c) (interpretation), an internal drainage board, a

Comment [MMO6]: Re MMO comment 5.6; Applicant response 68.5. The MMO accept the Applicant's acknowledgement that this does not exempt the Applicant from the requirements of the 2009 Act and make no further comment.

(a) 1991 c.56, as amended at the date of the coming into force of this Order.

(b) S.I. 2010/675, as amended at the date of the coming into force of this Order.

(c) 1964 c.40, as amended at the date of the coming into force of this Order.

joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those Regulations.

Protective work to buildings

19.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 58 (arbitration).

(7) The undertaker shall compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker shall compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

20.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) shall, if so required upon entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent shall not be unreasonably withheld.

(5) The undertaker shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Right to dredge

21.—(1) The undertaker may, for the purposes of constructing and maintaining the authorised development and of affording access to the authorised development by vessels, from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the River Humber as adjoin or are near to the work and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part 9 of the Merchant Shipping Act 1995) from time to time dredged by them.

(2) No such materials shall be laid down or deposited—

- (a) in contravention of the provisions of any enactment as respects the disposal of waste; or

Comment [MMO7]: Re MMO comment 5.7; Applicant response 68.5. The MMO accept the Applicant's acknowledgement that this does not exempt the Applicant from the requirements of the 2009 Act and make no further comment.

Comment [MMO8]: Re MMO comment 5.8-5.9; Applicant response 68.7. The MMO understands the Applicant is content for this provision to be removed and would support that approach.

- (b) in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Marine Management Organisation pursuant to Part 2 of Schedule 8 (deemed marine licence).

(3) The undertaker shall consult with the Humber Conservancy Board before exercising the rights conferred on them by this article.

Tidal works not to be executed without approval of Secretary of State

22.—(1) Unless its construction has commenced within five years of the coming into force of this Order, no tidal work shall be constructed, reconstructed, extended, enlarged, replaced or relaid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before that work is begun.

(2) If a tidal work is constructed, reconstructed, extended, enlarged, replaced or relaid in contravention of paragraph (1) or of any condition or restriction imposed under that paragraph—

- (a) the Secretary of State may by notice in writing require the undertaker at its own expense to remove the tidal work or any part of it and restore the site to its former condition; and, if on the expiration of 30 days beginning with the date when the notice is served on the undertaker it has failed to take reasonable steps to comply with the requirements of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; or
- (b) if it appears to the Secretary of State urgently necessary so to do, the Secretary of State may remove the tidal work, or part of it, and restore the site to its former condition, and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the undertaker.

Abatement of works abandoned or decayed

23.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the undertaker at its own expense either to repair and restore that work or any part, or to remove that work and restore the site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion of it, in any notice under this article.

(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the undertaker

Survey of tidal works

24. If the Secretary of State considers it expedient to do so, the Secretary of State may order a survey and examination of a tidal work or of the site on which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the undertaker.

Lights on tidal works etc. during construction

25. The undertaker shall at or near—

- (a) a tidal work, including any temporary work; or

Comment [MMO9]: During the course of the issue specific hearing on the DCO it became clear that there is duplication of this provision within the DCO. Article 23 provides for the Secretary of State to make the determination as to abandonment and/or decay where as para. 17 of Sch. 9 provides for a determination by the Conservancy Authority. At the hearing, the MMO sought clarification regarding the mechanism by which the Secretary of State could make the determination required by Article 23 and would ask the Applicant to provide clarification on this point as it is not clear on the face of the DCO.

- (b) any plant, equipment or other obstruction placed, in connection with any authorised development or any work authorised by article 10 (provision of works), within the area of seaward construction activity,

during the whole time of the construction, reconstruction, extension, enlargement, replacement or relaying, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State and the Humber Conservancy Board or, failing agreement between them, the Secretary of State may from time to time direct.

Provision against danger to navigation

26. In case of damage to, or destruction or decay of, a tidal work or any part of it, the undertaker shall as soon as reasonably practicable notify the Humber Conservancy Board and Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House and the Humber Conservancy Board or, failing agreement between them, the Humber Conservancy Board may from time to time direct.

Permanent lights on tidal works

27. After the completion of a tidal work the undertaker shall at the outer extremity of it exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as the Humber Conservancy Board and Trinity House or, failing agreement between them, the Humber Conservancy Board may from time to time direct.

Power to appropriate

28.—(1) Subject to articles 11 and article 13, the undertaker may from time to time set apart and appropriate any part of the harbour for the exclusive or preferential use and accommodation of any trade, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such charges and to such terms, conditions and regulations as the undertaker may think fit.

(2) No person or vessel shall make use of any part of the harbour so set apart or appropriated without the consent of the harbour master, and—

- (a) the harbour master may order any person or vessel making use of the harbour without such consent to leave or be removed; and
- (b) the provisions of section 58 of the 1847 Act (powers of harbour master as to mooring of vessels in harbour), as incorporated by this Order, shall extend and apply with the necessary modifications to any such vessel.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

29.—(1) The undertaker may acquire compulsorily so much of the Order land as is shown washed pink on the land plan as is required for the authorised development or to facilitate it.

(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article is subject to article 39 (temporary use of land for carrying out the authorised development).

Power to override easements and other rights

30.—(1) Any authorised activity undertaken by the undertaker which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title under it) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or carrying out, or maintenance of any building or work on land;
- (b) the erection, construction, or maintenance or anything in, on, over or under land; or
- (c) the use of any land.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including and any natural right to support.

(4) Nothing in this article shall authorise interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is—

- (a) a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or
- (b) a right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.

(5) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right shall be extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(6) In respect of any interference, breach extinguishment, abrogated or discharged in pursuance of this article, compensation—

- (a) shall be payable under section 7 or 10 of the 1965 Act; and
- (b) shall be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where—
 - (i) the compensation is to be estimated in connection with a purchase under those acts; or
 - (ii) the injury arises from the execution of works on or use of land acquired under those acts.

(7) Nothing in this article shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

(8) Nothing in this article shall be construed as restricting the entitlement of any person to compensation.

(9) Where a person deriving title under the undertaker by whom the land in question was acquired or appropriated—

- (a) is liable to pay compensation, and
- (b) fails to discharge that liability,

the liability shall be enforceable against the undertaker.

Compulsory acquisition of land – incorporation of the mineral code

31. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(a) (minerals) are incorporated in this Order subject to the modification that for “the acquiring authority” substitute “the undertaker”.

Time limit for exercise of authority to acquire land compulsorily

32.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 35 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(b).

(2) The authority conferred by article 39 (temporary use of land for carrying out the authorised development) shall cease at the end of the period referred to in paragraph (1), but nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

33.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plan.

(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act, as substituted by article 37 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

(4) Any person who suffers loss as a result of the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Private rights of way

34.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes.

(a) 1981 c. 67, as amended at the date of the coming into force of this Order
(b) 1981 c.66, as amended at the date of the coming into force of this Order.

(3) Subject to the provisions of this article, all private rights of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 41 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) shall have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land,
- (ii) the undertaker's appropriation of it,
- (iii) the undertaker's entry onto it, or
- (iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs shall not apply to any right of way specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

(a) is made with a person in or to whom the right of way is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

35.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(a) 1981 c. 66, as amended at the date of the coming into force of this Order

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

(a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and

(b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

36.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 29 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 37 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

37.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—

(a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and

(b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of six weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

38.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) shall not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation shall not be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

39.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 6 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on that land.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land of which temporary possession may be taken, after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 6;
- (b) in the case of any Order land, after the end of the period of two years beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.

(5) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 33 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 36 (acquisition of subsoil only).

(9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised development

40.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article “the maintenance period”, in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

41. The undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plan within the limits of the land to be acquired and described in the book of reference;

- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the land plan and described in the book of reference; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plan and described in the book of reference.

Recovery of costs of new connections

42.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 41 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 41, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article shall not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6

MISCELLANEOUS AND GENERAL

Deemed marine licence

43. The undertaker is deemed to be granted a licence under section 66 of the Marine and Coastal Access Act 2009^(a) to carry out the works described in Schedule 8, subject to the provisions set out in that Schedule, which shall be treated as licence conditions.

Felling or lopping of trees

44.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(a) 2009 c. 23, as amended at the date of the coming into force of this Order

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

Trees subject to tree preservation orders

45.—(1) The undertaker may fell or lop any tree described in Schedule 7 and identified on the land plan, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

Railway and navigation undertakings

46.—(1) Subject to the following provisions of this article, the undertaker may not under article 13 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.

Railway network

47.—(1) The modification of the railway network consisting of the removal of the line crossing the Order land from the network operated by Network Rail shall be treated as a minor modification for the purposes of Part 4 of the Railways Act 2005(a).

(a) 2005 c. 14 as amended at the date of the coming into force of this Order

(2) The undertaker, or any person permitted by the undertaker, may operate and use the railway crossing the Order land together with any ancillary works as a system, or part of a system, for the carriage of goods.

(3) The Office of Rail Regulation, Network Rail and the undertaker may enter into agreements in connection with the operation and use of the railway crossing the Order land.

Arrangements with Her Majesty's Revenue and Customs

48. The undertaker and Her Majesty's Revenue and Customs may enter into any such agreement or arrangement as they think fit to provide for, or to facilitate, the assessment, collection or recovery of charges, including an agreement or arrangement as to the provision and maintenance of accommodation at the harbour.

Application of landlord and tenant law

49.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

50. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

51.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990^(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance

(a) 1990 c.43, as amended at the date of the coming into force of this Order.

is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974^(a); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development in accordance with a scheme of monitoring and attenuation of noise agreed with the relevant planning authority as described in requirement ~~2020~~2019; or

(ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

52. Schedule 9 to this Order has effect.

Saving for Trinity House

53. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Disapplication of regulation 73 of the Conservation of Habitats and Species Regulations 2010

54.—(1) Regulation 73 of the Conservation of Habitats and Species Regulations 2010^(b) (general development orders) (“the Habitats Regulations”) shall not apply to any planning permission which relates to the works authorised by article 10 (provision of works) and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995^(c) for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

(2) Paragraph (1) does not apply if and to the extent that those works—

(a) do not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 61 of the Habitats Regulations (assessment of implications for European Sites and European Offshore Marine Sites) in connection with the making of this Order; and

(b) are not the subject of a further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

Planning, etc. jurisdiction

55.—(1) During the period beginning with the date when this Order comes into force and ending on the accretion date, the area within the Order limits shall, for the purposes of the Control of

(a) 1974 c.40, as amended at the date of the coming into force of this Order.

(b) S.I. 2010/400 as amended at the date of the coming into force of this Order

(c) S.I. 1995/418 as amended at the date of the coming into force of this Order

Pollution Act 1974^(a) and the 1990 Act, be annexed to and incorporated with the area of the relevant planning authority.

(2) In this article, “accretion date” means the date when the works authorised by this Order have been completed or, if earlier, the date when the benefits and rights granted by this Order cease to have effect pursuant to article 6 (period for completion of work).

Certification of plans etc

56.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the decision-maker copies of—

- (a) the book of reference;
- (b) the Crown land plan;
- (c) the ecology plan;
- (d) the heritage plan;
- (e) the land plan;
- (f) the rights of way plan; and
- (g) the works plan,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

57.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978^(b) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(a) 1974 c. 40 as amended at the date of the coming into force of this Order
(b) 1978 c. 30.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement shall be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person shall give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.

(9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

Arbitration

58. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Requirements - appeals

59. Section 78 of the 1990 Act shall apply to an application for any consent, agreement or approval of a local planning authority under Schedule 11 as if such consent, agreement or approval were required pursuant to a condition imposed on a grant of planning permission.

Signed by authority of the Secretary of State

[xxx] 2013

Department for Transport

Comment [MMO10]: During the issue specific hearing on the DCO, the MMO expressed the view that an arbitration clause would not be appropriate to regulate disputes with regard to the deemed marine licence. The MMO is still considering this issue and will provide further comment on this through the examination process.

SCHEDULES

SCHEDULE 1

Article 5

AUTHORISED DEVELOPMENT

NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT

1. In the district of North Lincolnshire and within the limits of deviation for Work No. 1 shown on the works plan—

Work No. 1—a quay of solid construction.

ASSOCIATED DEVELOPMENT

2. In the district of North Lincolnshire and within the limits of deviation for Work No. 2 shown on the works plan—

Work No. 2—works to the junction of Humber Road and Rosper Road;

3. In the district of North Lincolnshire and within the Order limits—

- (a) dredging and land reclamation;
- (b) the provision of onshore facilities for the manufacture, assembly and storage of components and parts for offshore marine energy and related items;
- (c) works to Rosper Road, Eastfield Road, the A160 and the A180;
- (d) surface and foul water disposal arrangements;
- (e) lighting;
- (f) parking;
- (g) ecological mitigation works; and
- (h) the re-siting of apparatus.

4. In the district of the East Riding of Yorkshire and within the Order limits, the development of compensatory environmental habitat.

Comment [MMO11]: Re MMO comment 5.10; Applicant response 68.8. The MMO considers that it would be advisable for all details of the proposed works to be amalgamated into one Schedule and stated in the same location within the DCO. If the details contained within Part 2 of Schedule 8 were included in Schedule 1, the DML could then just cross-refer to Schedule 1 in order to define the licensable activities. Ultimately this is really a question of the niceties of the drafting of the DCO and the MMO is content, subject to further points made below under the DML, that the detail, as currently provided for in Part 2 of Schedule 8, is now being provided within the terms of the DCO.

SCHEDULE 2
STREETS SUBJECT TO STREET WORKS

Article 13

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
District of North Lincolnshire	Rosper Road
	Chase Hill Road

SCHEDULE 3

Article 14

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
District of North Lincolnshire	Rosper Road	Between points C and D as shown on the rights of way plan
	Rosper Road	Between points E and F as shown on the rights of way plan
	Eastfield Road	Between points G and H as shown on the rights of way plan

SCHEDULE 4
ACCESS TO WORKS

Article 15

(1) Area	(2) Subject to street works
District of North Lincolnshire	Improved access from Rosper Road shown at the point marked A on sheet 2 of the rights of way plan
	New access from Rosper Road shown at the point marked A on sheet 3 of the rights of way plan

SCHEDULE 5
FOOTPATHS TO BE STOPPED UP

Article 17

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Footpath to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New footpath to be substituted</i>
District of North Lincolnshire	Footpath 50	From point F1 to point F2 as shown in orange on the rights of way plan	A footpath between points F1 and F3 as shown in blue on the rights of way plan
District of the East Riding of Yorkshire	Paull Footpath 6	From point F4 to point F5 as shown in orange on the rights of way plan	A footpath between points F4 and F5 as shown in blue on the rights of way plan

SCHEDULE 6

Article 39

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
District of North Lincolnshire	01001, 01002, 01003	Works to A160 / Rosper Road junction	Works to Rosper Road
	02001, 03001, 04001, 05001	Works to Rosper Road	Works to Rosper Road
	02009, 02010, 02011, 02012, 03027	Footpath diversion	Footpath diversion
	03026	Private track diversion	Private track diversion
	02013	Quay construction - access	Marine works
	06001, 06002, 06003, 06004, 06005	Installation of a sewer and works to sewage treatment works	Sewage improvement works

SCHEDULE 7

Article 45

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Identification of tree shown on ecology plan</i>	<i>(3)</i> <i>Work to be carried out</i>
District of North Lincolnshire	Marked with T1 on sheet 3 of the ecology plan	Felling to allow authorised development to proceed
	Marked with T2 on sheet 3 of the ecology plan	Felling to allow authorised development to proceed

SCHEDULE 8
DEEMED MARINE LICENCE
PART 1

Article 43

INTRODUCTORY

Interpretation

1. (1) In this Schedule:—

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“the approach channel” means the area bounded by co-ordinates (53°39.57’N, 00°13.43’W), (53°39.61’N, 00°13.30’W), (53°39.40’N, 00°12.90’W), (53°39.03’N, 00°12.41’W) and (53°38.94’N, 00°12.60’W) and shown on sheet xx of the works plan;

“the berthing pocket” means the area bounded by co-ordinates (53°39.55’N, 00°13.48’W), (53°39.57’N, 00°13.43’W), (53°38.94’N, 00°12.60’W) and (53°39.92’N, 00°12.64’W) and shown on sheets 4, 8 and 9 of the works plan;

“the Centrica outfall” means the area bounded by co-ordinates xxx, xxx, xxx and xxx and shown on sheet 5 of the works plan;

“Cherry Cobb Sands breach”

“Cherry Cobb sands channel” means the area bounded by co-ordinates (53°39.34’N, 00°08.44’W), (53°39.28’N, 00°08.34’W), (53°39.25’N, 00°08.38’W) and (53°39.31’N, 00°08.48’W);

“clay” means dredged materials with a diameter of less than 31.25 micrometres;

“the E.ON outfall” means the area bounded by co-ordinates xxx, xxx, xxx and xxx and shown on sheet 5 of the works plan;

“earthworks season” means the period from April to October or such other period set out in British Standard 6031;

“flood wall at Cherry Cobb Sands” means the area bounded by co-ordinates xxx, xxx, xxx and xxx and shown on sheets 10, 11, 12 and 13 of the works plan;

“gravel” means dredged materials with a diameter of at least 2 and less than 64 millimetres;

“HU080” means the area bounded by co-ordinates (53°36.95’N, 00°03.47’W), (53°36.55’N, 00°00.42’E), (53°36.30’N, 00°00.62’W) and (53°36.47’N, 00°02.32’W);

“HU082” means the area bounded by co-ordinates (53°37.47’N, 00°02.27’W), (53°37.25’N, 00°00.80’W), (53°36.97’N, 00°00.81’W) and (53°37.12’N, 00°02.29’W);

“licence holder” means the Company and any agent or contractor acting on its behalf;

“licensable activity” means an activity licensable under section 66 of the 2009 Act;

“licensed activity” means any activity described in Part 2 of this Schedule;

“licensed undertaker” means the Company and any agent or contractor acting on its behalf;

“MMO” means the Marine Management Organisation;

Comment [MMO12]: These coordinates need to be included. Also, the Applicant is requested to define the dredge area OR the new location for the outfall. As these works are either/or, the MMO is not content for both activities to be licensed.

Comment [MMO13]: The MMO understands the breach and the channel are different locations –both need to be defined to avoid confusion.

Comment [MMO14]: These coordinates need to be included. Also, the Applicant is requested to define the dredge area OR the new location for the outfall. As these works are either/or, the MMO is not content for both activities to be licensed.

“mean high water springs” means the average of high water heights occurring at the time of spring tides;

“named vessel” means a vessel whose name and type has been notified to the MMO in writing;

~~“the North Killingholme Haven Pits sluice site” means the area bounded by co-ordinates xxx, xxx, xxx and xxx and shown on sheet 5 of the works plan~~

“the pumping station channel”

“the pumping station site” means the area bounded by co-ordinates [\(53°38.59’N, 00°13.10’W\)](#), [\(53°38.58’N, 00°13.08’W\)](#), and [\(53°38.58’N, 00°13.09’W\)](#) ~~xxx, xxx, xxx and xxx~~ and shown on sheets 3 and 9 of the works plan;

“the quay limits” means the area bounded by co-ordinates [\(53°39.46’N, 00°13.68’W\)](#), [\(53°39.54’N, 00°13.45’W\)](#), [\(53°38.95’N, 00°12.67’W\)](#), [\(53°38.88’N, 00°12.75’W\)](#) and [\(53°38.98’N, 00°13.18’W\)](#) and shown on sheets 8 and 9 of the works plan;

“the quay site”

“sand” means dredged materials with a diameter of at least 62.5 micrometres and less than 2 millimetres;

“sea bed” means the ground under the sea;

“silt” means dredged materials with a diameter of at least 31.25 and less than 62.5 micrometres; and

“turning area” means the area bounded by co-ordinates [\(53°39.40’N, 00°12.90’W\)](#), [\(53°39.41’N, 00°12.53’W\)](#), [\(53°39.11’N, 00°12.26’W\)](#) and [\(53°39.03’N, 00°12.41’W\)](#) and shown on sheets 8 and 9 of the works plan.

(2) Unless otherwise specified, all geographical co-ordinates given in this Schedule are in latitude and longitude degrees and minutes to two decimal places.

[\(3\) Tonnages of dredged materials are expressed in wet tonnes.](#)

Addresses

2. (1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this schedule is the Marine Management Organisation, Marine Licensing Team, ~~PO Box 1275, Newcastle upon Tyne, NE99 5BN~~ [Lancaster House, Newcastle Business Park, Newcastle upon Tyne, NE4 7YH](#).

(2) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this schedule is ~~marine-consents@marinemangement.org.uk~~ [infrastructure@marinemangement.org.uk](#).

PART 2

LICENSED ACTIVITIES

3. The activities set out in this Part are able to be carried out by the licence holder as if licensed under the 2009 Act.

Construction of the quay

4. (1) The licence holder is permitted to construct a quay and carry out associated land reclamation within the quay limits and according to the following specification:—

- (a) ~~no more than approximately~~ 550 tubular and 1100 sheet steel perimeter piles may be driven into the bed of the estuary to form the external face of the quay, where such piles are to be installed from named vessels moored in the estuary;
- (b) two return walls may be constructed between the ends of the quay and the existing flood defence wall, comprising ~~no more than approximately~~ 23,000 steel piles driven into the

Comment [MMO15]: The MMO requires coordinates to be provided for the location of the dredging activity.

Comment [MMO16]: The MMO requires coordinates to be provided for the location of the dredging activity.

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Comment [MMO17]: It would be useful if this included references to relevant work plans submitted with the Application.

The Applicant is requested to update the DML with the description of works as provided in the SOCG.

bed of the estuary from named vessels and also earthwork revetments with no more than approximately 75,000 tonnes of rock armour protection, such revetments and rock armour to be constructed using land-based plant;

- (c) no more than approximately 450 flap anchor piles may be fixed to the landward face of the perimeter piles and seated in a trench on the bed of the estuary, to be installed from named vessels moored in the estuary;
- (d) no more than approximately 70 steel anchor piles may be driven into the bed of the estuary and fixed to perimeter piles, to be installed from named vessels moored in the estuary;
- (e) the area of estuary approximately 50 metres landward of the quay perimeter piles may be reclaimed by depositing marine dredged sands and gravels from named vessels using rainbowing techniques;
- (f) the remaining area of estuary enclosed by the quay perimeter piles and the two return walls may be reclaimed using marine dredged sands and gravels by constructing two granular dams that extend from the existing flood defence wall to the area reclaimed under paragraph (e), so that the dams divide the remaining reclaim area into three approximately equal cells, whereupon named vessels shall pump fluidised granular material into each cell in sequence, allowing estuarine water that is retained within each cell to overflow the dams as the fluidised material is deposited and settles within the cell, such activity to continue until all cells attain their design levels; and
- (g) steel plates may be attached to the perimeter piles by welding and bolting, whereupon a fender may be attached to each steel plate by bolts, all such works being undertaken from a man basket suspended from a crane located on land.

~~(2) Drainage outfalls and cooling water outfalls may be incorporated into the quay.~~

~~(3)(2)~~ Monitoring equipment fixed to buoys shall be deployed at locations in the estuary during the piling works permitted by sub-paragraph (1) in accordance with a the marine Ecological mitigation Management and ~~m~~Monitoring ~~p~~Plan to be submitted to and approved in writing by the MMO following consultation with the Environment Agency and Natural England.

Relocation of E.ON and Centrica outfalls

[Insert wording describing works to be undertaken, if required]

Temporary dolphins

5. (1) The licence holder is permitted to construct and remove up to seven temporary dolphins within the berthing pocket, such that each dolphin comprises three tubular steel piles driven into the bed of the estuary from named plant moored in the estuary, whereupon the piles shall be braced with interconnecting steelwork.

~~(1) The dolphins constructed under sub-paragraph (1) may be used to moor named vessels involved in the carrying out of any of the other activities listed in this Part.~~

~~(2)(1)~~ Monitoring equipment fixed to buoys shall be deployed at locations in the estuary during the piling works permitted by sub-paragraph (1) in accordance with ~~a~~ the marine environmental Ecological mitigation Management and ~~m~~Monitoring ~~p~~Plan referred to in paragraph 13 to be submitted to and approved by the MMO following consultation with the Environment Agency and Natural England.

~~(3)(2)~~ Each temporary dolphin must be removed as soon as practicable once the activities for which they have been constructed have been completed.

Berthing pocket infill

6. Following or during the dredging of the berthing pocket, the licence holder ~~must~~ is permitted to deposit up to 250,000 tonnes of gravel and rock from named vessels into the berthing pocket so that its depth does not exceed -11 metres chart datum.

Pumping station

Comment [MMO18]: The Applicant is requested to clarify whether either one or both of the EON and Centrica outfalls will be re-located. If they are, the MMO requests they are included as an individual section in the deemed marine licence with greater detail of what the works will involve. The MMO does not support both the moving of the outfalls and the maintenance of the outfalls with plough dredging to be included on the deemed marine licence as these are either/or activities.

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7. (1) The licence holder is permitted to construct a pumping station at the pumping station site according to the following specification:—

- (a) a temporary steel cofferdam containing up to six drainage pipes may be installed through the existing flood defence and extend onto the foreshore, whereupon the flood defence wall shall be reinstated to its original seaward profile using inert soil materials and concrete;
- ~~(b) a section of drainage channel may be created by excavating the foreshore seawards from the outfall pipe, whereupon material shall be removed down to the invert level of the drainage pipes over the width of the pipes and up to 50 metres seawards of the pipes;~~
- ~~(c)~~ (b) a stone mattress may be placed within the drainage channel created under (b) over a distance of 20 metres seawards of the outfall pipes; and
- ~~(d)~~ (c) a pumping station may be constructed such that its seaward extend it above the stone mattress.

(2) Works outside the cofferdam shall be undertaken using land based plant operating from a berm formed within the south-eastern return wall of the quay.

Compensation site creation

8. The licence holder is permitted to remove a 250 metre section of the existing north bank flood wall to create at the Cherry Cobb Sands channel under the following conditions:—

- (a) a new flood defence shall have been constructed landward of the existing flood defence;
- (b) a channel shall have been excavated from the site of the breach to the foreshore at the level of the breach;
- (c) all material is to be removed using land-based plant;
- ~~(d) all excavated material is to be disposed of in the intertidal area created between the old and new flood defences; and~~
- ~~(e)~~ (d) the amount of excavated material shall not exceed xxx.

North Killingholme Haven Pits sluice

~~9. The licence holder is permitted to carry out works to the existing sluice at the North Killingholme Haven Pits sluice site according to the following specification:—~~

Capital dredging

~~10.9.~~ (1) The licence holder is permitted to carry out capital dredging at the following locations:—

- (a) the quay site to a depth of -6.5 metres Chart Datumxxx;
- (b) the berthing pocket to a depth of -14.54 metres Chart Datum;
- (c) the approach channel to a depth of -9 metres Chart Datumxxx;
- (d) the turning area to a depth of -9 metres Chart Datumxxx;
- ~~(e) the E.ON outfall to a depth of xxx;~~
- ~~(f) the Centrica outfall to a depth of xxx;~~
- ~~(g)~~ (e) the pumping station channel to a depth of 0.5 metres Chart Datumxxx; and
- ~~(h)~~ (f) the Cherry Cobb Sands channel to a depth of 5.7 metres Chart Datumxxx.

(2) The materials must be dredged in the approximate quantities and deposited at the locations according to the following table:

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Comment [MMO19]: This is a dredging activity and so needs to go in the dredging section.

Comment [MMO20]: The MMO understands that the area for the extent of the breach and the extent of the channel are different locations. As such, terminology used must reflect this and coordinates must be provided for both activities.

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Comment [MMO21]: The MMO do not agree to this at this time as contamination analysis at the compensation site is yet to be finalised. From initial results presented in EX31.5, it is unlikely that all material will be available for use on site.

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Comment [MMO22]: The information in this section needs to be updated to reflect the volumes provided in Table 12.2 of the SOCG. Methods for dredging also need to be provided.

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Location	Material	Maximum tonnage per year	Deposit location	Total licensed tonnage
Quay site	Gravel	50,000	HU080	725,000
	Sand	110,000		
	Silt	390,000		
	Clay	175,000		
The berthing pocket	Gravel	50,000	HU080	1,675,000
	Sand	50,000		
	Silt	150,000		
	Clay	1,475,000		
The approach channel	Gravel	300,000	HU080	1,650,000
	Sand	600,000		
	Silt	500,000		
	Clay	250,000		
The turning area	Gravel	35,000	HU080	250,000
	Sand	95,000		
	Silt	80,000		
	Clay	40,000		
The E.ON outfall	Gravel		HU080	
	Sand			
	Silt			
	Clay			
The Centrica outfall	Gravel		HU080	
	Sand			
	Silt			
	Clay			
The pumping station channel	Gravel		HU080	2,500
	Sand	500		
	Silt	2,000		
	Clay			
The Cherry Cobb Sands channel	Gravel		HU080 The intertidal area landward of the Cherry Cobb Sands channel	10,000
	Sand	2,000		
	Silt	8,000		
	Clay			

Comment [MMO23]: This section needs to include the full volume to be dredged, including the portion not to be disposed of to sea, as is described in Table 12.2 of the SOCG.

Maintenance dredging

14.10. (1) The licence holder is permitted to carry out maintenance dredging at the following locations:—

- the quay site;
- the berthing pocket to a depth of -11 metres Chart Datum;
- the approach channel to a depth of -9 metres Chart Datum;
- the turning area to a depth of -9 metres Chart Datum;
- the E.ON outfall to keep it free of siltation;
- the Centrica outfall to keep it free of siltation;
- the pumping station channel to a depth of -3 metres Chart Datum; and
- the Cherry Cobb Sands channel to a depth of -5.7 metres Chart Datum.

(2) The dredging under sub-paragraph (1) may only be carried out for the purpose of:—

- maintaining the authorised development;
- maintaining access to the authorised development; and
- removing siltation caused by the authorised development.

Comment [MMO24]: The information in this section needs to be updated to reflect the volumes provided in Table 12.3 of the SOCG. Methods for dredging also need to be provided.

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Comment [MMO25]: As previously commented, the MMO is not content for the deemed marine licence to include both the relocation of the E.ON and Centrica outfalls and the maintenance dredging of the outfalls. As such, one activity must be removed.

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and the dredged depths may not exceed those set out in paragraph 7(1).

(3) The materials must be dredged in the approximate quantities and deposited at the locations according to the following table:

Location	Material	Maximum tonnage per year	Deposit location	Total licensed tonnage
Quay site	Gravel		HU080	
	Sand			
	Silt			
	Clay			
The berthing pocket	Gravel		HU0802	1,075,000
	Sand	150,000		
	Silt	925,000		
	Clay			
The approach channel	Gravel		HU0820	50,000
	Sand	10,000		
	Silt	40,000		
	Clay			
The turning area	Gravel		HU0820	50,000
	Sand	10,000		
	Silt	40,000		
	Clay			
The E.ON outfall	Gravel		HU0802	2,500
	Sand	500		
	Silt	2,000		
	Clay			
The Centrica outfall	Gravel		HU0802	2,500
	Sand	500		
	Silt	2,000		
	Clay			
The pumping station channel	Gravel		HU080	100
	Sand	50		
	Silt	50		
	Clay			
The Cherry Cobb Sands channel	Gravel		HU080	
	Sand			
	Silt			
	Clay			

PART 3

ENFORCEMENT

11. Any breach of this Schedule shall not constitute a breach of this Order but shall be subject to the enforcement regime in Chapter 3 of Part 4 of the 2009 Act as if this Schedule were a licence granted under that Act.

PART 34

CONDITIONS

General conditions

12. (1) The conditions set out at paragraphs 140 to 37xxx are licence conditions attached to the deemed marine licence granted by article 43.

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(2) For such of the licensed activities that involve the construction, alteration or improvement of works in or over the sea or on or under the sea bed, the conditions shall apply to any person who for the time being owns, occupies or enjoys any use of the licensed activity.

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~~13.~~ No licensed activity shall be carried out until a Marine environmental mitigation Ecological Management and management-Monitoring pPlan has been agreed in writing by the MMO following consultation with the Environment Agency and Natural England, and the licensed activities shall be carried out in accordance with the mMarine environmental-Ecological mManagement and mitigation-Monitoring pPlan.

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Comment [MMO26]: The MMO will also require a similar condition to capture the EMMP for the compensation site.

14. No licensed activity shall be carried out until a vessel movement management plan has been agreed in writing by the MMO, and the licensed activities shall be carried out in accordance with the vessel movement management plan.

~~13.15.~~ The MMO must be notified by the licence holder at least five working days before the commencement of any licensed activity of its acceptance of the provisions of this Schedule and that the company and any agents or contractors employed by it to carry out the licensed activities have knowledge of the provisions of this Schedule.

~~14.16.~~ The MMO must be notified by the licence holder at least five working days before the commencement of each licensed activity that that such licensed activity is about to commence.

~~15.17.~~ The MMO must be notified by the licence holder in writing of any agents, contractors or sub-contractors that will be carrying out any licensed activity on behalf of the licence holder at least five working days before the commencement of the licensed activity.

~~16.18.~~ The licence holder must ensure that a copy of this Schedule and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or sub-contractors that will be carrying out any licensed activity on behalf of the licence holder.

~~17.19.~~ The MMO must be provided with notification of any vessel being used to undertake any licensed activity no less than 24 hours before the commencement of the licensed activity, such notification setting out

- (a) the vessel type,
- (b) the vessel International Maritime Organization (IMO) number; and
- (c) the vessel owner or operating company.

~~18.20.~~ The licence holder must ensure that a copy of this Schedule and any subsequent revisions or amendments has been provided to, read and understood by the master of any vessel being used to undertake any licensed activity, and that a copy of this Schedule is held on board any such vessel.

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~~19.21.~~ Should the licence holder become aware that any of the information on which the granting of this deemed marine licence was based has changed or is likely to change, the licence holder must notify the MMO at the earliest opportunity.

~~20.22.~~ Any breach of the conditions of this deemed marine licence may be treated as the breach of a marine licence over which the MMO may take enforcement action under the 2009 Act.

Project wide conditions

~~21.23.~~ The works shall be carried out in accordance with a works schedule to be agreed in writing between the licence holder and the MMO prior to the commencement of the works, and any changes to the works schedule are also to be agreed in writing with the MMO.

24. (1) The following dependencies apply to the licensed activities in paragraphs 4 to 11.

(2) If the licence holder carries out any of the activities licensed under paragraph 4 (construction of the quay), then it must:

Comment [MMO27]: Other than the piling conditions at paragraphs 25 to 30, the MMO has not previously requested any of these additional conditions. The MMO requests that the Applicant discuss in detail the conditions to be secured through the DML. Conditions will need to cover all aspects of the marine works and not be limited to piling and dredge and disposal elements. Comments on this matter were made in the summary of the MMO's submission at the issue specific hearing on the DCO at paragraphs 3.13 to 3.18, which the ExA are referred to for further comment.

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(a) carry out the activity licensed under paragraph 8 (compensation site creation) in the June following the creation of the compensation site, which in turn must be done during the first earthworks season following the commencement of the activity licensed under paragraph 4;

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(b) carry out the activity licensed under paragraph 7 (pumping station);

(c) carry out the activity licensed under paragraph 11(1)(e) (the E.ON outfall maintenance dredging) unless agreed in writing with E.ON; and

(d) carry out the activity licensed under paragraph 11(1)(f) (the Centrica outfall maintenance dredging).

(3) If the licence holder carries out the activity licensed under paragraph 10(1)(b) (berthing pocket capital dredging) then it must carry out the activity licensed under paragraph 6 (berthing pocket infill) to the extent that the dredging is below -11 metres Chart Datum.

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Piling conditions

22-25. (1) No operations consisting of piling shall commence until a piling method statement has been submitted to and agreed in writing by the MMO, following consultation with the Environment Agency and Natural England, such statement to include the following:—

- (a) the use of pile pads,
- (b) the use of pile shrouds,
- (c) the specification of piles to be used,
- (d) soft start procedures to be followed after any cessation of piling of more than 10 minutes that ensure an incremental increase in pile power over a set time period until full operational power is achieved, over a period of not less than 20 minutes,
- (e) marine mammal observation, and
- (f) implementation of an active monitoring scheme under paragraph ~~26~~~~26~~~~23~~.

(2) Percussive piling shall only be carried out in accordance with the relevant piling method statement.

Comment [MMO28]: The MMO has previously requested that the Applicant takes into consideration comments made by other parties when drafting conditions for the deemed marine licence but includes the MMO in those discussions to ensure that any conditions included are appropriate and proportionate. The MMO request the Applicant to provide information as to why this condition has been included in order to undertake this assessment.

Comment [MMO29]: Discussions regarding mitigation for the impact of piling are ongoing. The latest proposal from the Environment Agency, Natural England and the MMO is provided at Annex xxxxx. The deemed marine licence will need to be updated to reflect the final mitigation agreed.

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23-26. (1) No development shall be commenced until an active monitoring scheme has been submitted to and agreed in writing by the MMO, to include the following details:—

- (a) the location of active monitoring buoys and the depth and design of sensors,
- (b) details of the frequency of measurement of temperature and dissolved oxygen,
- (c) 24-hour monitoring of noise,
- (d) when monitoring shall commence and cease, to include a two-week period of pre- and post-construction monitoring to establish baseline conditions and the return to baseline conditions respectively,
- (e) a log of the number and approximate locations of piling rigs that are in operation on any given day, and
- (f) details of how the monitored information will be accessed by or communicated to the site contractor and the MMO as necessary.

(2) The development shall be carried out in accordance with the relevant active monitoring scheme.

(3) No percussive piling shall take place while the data from the relevant active monitoring scheme shows either the temperature to be above 21.5 degrees Celsius or dissolved oxygen to be below 5 milligrams per litre.

24-27. No percussive piling shall take place between 7 April and 1 June inclusive in any calendar year.

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25-28. (1) Percussive piling shall be restricted at other times as follows:—

- (a) from 2 June to 22 July inclusive in any year, the maximum amount of percussive piling permitted within any four-week period shall not exceed:—
 - (i) 100 hours where a single piling rig is in operation, or
 - (ii) a total of 168 hours where two or more rigs are in operation;
- (b) from 23 July to 10 September inclusive in any year, the maximum amount of percussive piling permitted within any four-week period shall not exceed:—
 - (i) 25 hours where a single piling rig is in operation, or
 - (ii) a total of 42 hours where two or more rigs are in operation;
- (c) from 11 September to 31 October inclusive in any year, the maximum amount of percussive piling permitted within any four-week period shall not exceed:—
 - (i) 134 hours where a single piling rig is in operation, or
 - (ii) a total of 224 hours where two or more rigs are in operation.
- (d) from 1 November in any year to 4 April in the following year inclusive, the maximum amount of percussive piling permitted within any eight-week period shall not exceed:—
 - (i) 336 hours where a single piling rig is in operation, or
 - (ii) a total of 560 hours where two or more rigs are in operation.

(2) For the purposes of calculating hours of operation under this paragraph, these shall be calculated to be the time elapsed between the first and last percussive strikes during any one day.

26.29. No percussive piling shall take place on a Sunday, or before 0600 hours or after 2200 hours on any other day.

27.30. The maximum diameter of marine piles shall be 2.1 metres.

Dredge and disposal conditions

28.31. Conditions 32323229 to 37xxx shall apply to licensed activities consisting of dredging and disposal.

29.32. (1) The licence holder must agree a dredge and disposal strategy with the MMO before the commencement of any licensed activities.

(+)(2) The dredging and disposal must be carried out in accordance with the dredge and disposal strategy.

33. The licence holder must install bunding and/or storage facilities to contain and prevent the release of fuel, oils, and chemicals associated with plant, refuelling and construction equipment, into the marine environment such that secondary containment should be used with a capacity of not less than 110% of any container's storage capacity.

34. The licence holder must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO Marine Pollution Response Team (0870 7851050 and dispersants@marinemangement.org.uk)

35. The licence holder must ensure that to minimise the amount of man-made materials disposed of at sea any man-made material must be separated from the dredged material and disposed of to land.

36. The licence holder must employ methods to minimise resuspension of sediment during dredging operations.

37. The licence holder must ensure that the Environment Agency's Pollution Prevention Guidelines for works in or near water (PPG5) are adhered to at all times.

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Comment [MMO30]: Whilst the conditions the Applicant has included here are relevant to the Project, the MMO will provide the Applicant with conditions required for the DML. At present, the MMO has not agreed any conditions for inclusion in the deemed marine licence with the Applicant.

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Comment [MMO31]: This condition relates to all activities, not just dredging and disposal and should be in a Project wide section.

Comment [MMO32]: This condition relates to all activities, not just dredging and disposal and should be in a Project wide section.

Comment [MMO33]: This condition relates to all activities, not just dredging and disposal and should be in a Project wide section.

SCHEDULE 8

Article 52

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF NATURAL ENGLAND

1. For the protection of Natural England the following provisions shall, unless otherwise agreed in writing between the undertaker and Natural England, have effect.

Biodiversity enhancement and monitoring

2. No stage of the authorised development shall commence until a biodiversity enhancement and monitoring plan has been prepared for that stage by the undertaker and approved by Natural England.

3. Each stage of the authorised development shall be carried out and monitoring undertaken in accordance with the relevant biodiversity enhancement and monitoring plan.

Sediment transport and geomorphological effects

4. No tidal work shall commence until a post-construction plan for the monitoring of indirect sediment transport and geomorphological effects caused by that work development has been prepared by the undertaker and approved by Natural England.

5. The undertaker will carry out post-construction monitoring as detailed in the plan agreed under paragraph 4.

PART 2

FOR THE PROTECTION OF THE HUMBER CONSERVANCY

Interpretation

6. In this Part—

“the Conservancy Authority” means AB Ports Humber Estuary Services in its role as harbour authority for the Humber Conservancy;

“the Able Dockmaster” means the dockmaster appointed by the Able Harbour Authority under this Order;

“environmental document” means—

- (a) the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental statement or other document so prepared by way of clarification or amplification of the environmental statement; and
- (b) any other document containing environmental information provided by the Able Harbour Authority to the Secretary of State or the Conservancy Authority for the purposes of any tidal works approval under article 22 (tidal works not to be constructed without approval of the Secretary of State) or this Schedule; and

“the Able Harbour Authority” means Able Humber Ports Ltd in its role as harbour authority for the Able Marine Energy Park;

Comment [MMO34]: Re MMO comments 5.52-5.56; Applicant response 68.10: By virtue of the provisions of the 2009 Act, there is an overlap in the jurisdiction of the MMO and the LPAs between the mean low and high water spring tide. In its response to the MMO's relevant representations, the Applicant has expressed the view that, in the area between the high and low water mark where there is overlapping jurisdiction between the bodies, one body should take the lead for monitoring compliance with the DCO's requirements whilst consulting the body. The Applicant would prefer this to be the arrangement, rather than having matters signed off by both bodies, so as to avoid the delay of dual-sign off and to avoid complications should the two bodies be in dispute.

Whilst understanding the concerns, expressed by the Applicant, the MMO does not support the suggestion put forward for the division of responsibilities between the bodies. The 2009 Act clearly envisages that there will be areas of overlapping jurisdiction between the MMO and the LPAs and the MMO is of the opinion that there is no mechanism by which the MMO is able to relinquish its functions to the LPAs. The MMO is therefore firmly of the view that, where there is an overlap in jurisdiction between the bodies, dual-sign off of those matters will be required.

Comment [MMO35]: Re MMO comment 5.57; Applicant response 68.11. Discussions with the Applicant and Natural England are ongoing but conditions to be included in the deemed marine licence are yet to be agreed.

Comment [MMO36]: Re MMO comment 5.58; Applicant response 68.5. The MMO accept the Applicant's acknowledgement that this does not exempt the Applicant from the requirements of the 2009 Act and make no further comment.

“the Humber Harbour Master” means the harbour master appointed by the Conservancy Authority to be a harbour master for an area that includes the area of jurisdiction and includes the harbour master’s deputies and assistants; and

“the river” means the River Humber.

General

7.—(1) The provisions of this Schedule shall, unless otherwise agreed in writing between the Able Harbour Authority and the Conservancy Authority, have effect for the protection of the Conservancy Authority and the users of the river.

(2) For the purposes of this Schedule, the definition of “tidal work” shall be taken to include—

- (a) any projection over the river outside the area of jurisdiction by booms, cranes and similar plant or machinery, whether or not situated within the area of jurisdiction; and
- (b) any authorised work which affects the river or any functions of the Conservancy Authority, whether or not that authorised work is within the limits of the Conservancy Authority,

but shall not include any maintenance dredging.

Tidal Works: approval of detailed design

8.—(1) Before—

- (a) submitting any plans and sections for any tidal work to the Secretary of State for her approval under article 22 (tidal works not to be constructed without approval of the Secretary of State);
- (b) commencing any operation for the construction of a tidal work where approval of the Secretary of State under article 22 is not required; or
- (c) commencing any operation for the maintenance of a tidal work,

the Able Harbour Authority shall submit to the Conservancy Authority plans and sections of the tidal work or operation and such further particulars as the Conservancy Authority may, within 28 days from the day on which plans and sections are submitted under this sub-paragraph, reasonably require.

(2) No application for the Secretary of State’s approval under article 22 shall be made in respect of a tidal work until plans and sections in respect of that tidal work submitted under sub-paragraph (1) have been approved by the Conservancy Authority.

(3) Any tidal work not requiring the Secretary of State’s approval under article 22 shall not be constructed, and no tidal work shall be maintained, except in accordance with such plans as may be approved in writing by the Conservancy Authority or determined under paragraph 25.

(4) Any approval of the Conservancy Authority required under this paragraph shall not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the Conservancy Authority may make for the protection of—

- (a) traffic in, or the flow or regime of, the river;
- (b) the use of its operational land or the river for the purposes of performing its functions; or
- (c) the performance of any of its functions connected with environmental protection.

(5) Requirements made under sub-paragraph (4) may include conditions as to—

- (a) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the tidal work; and
- (b) the expiry of the approval if the Able Harbour Authority does not commence construction of the tidal work approved within a prescribed period.

(6) Subject to sub-paragraphs (8) and (9), any such approval shall be deemed to have been refused if it is neither given nor refused within 42 days of the specified day.

(7) Before making a decision on any such approval, the Conservancy Authority shall take into account any opinion on plans and sections provided to it by the Environment Agency.

(8) Accordingly, an approval of the Conservancy Authority under this paragraph shall not be deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (6) has not been given pending the outcome of any consultation on the approval in question that the Conservancy Authority is obliged in the proper exercise of its functions to carry out provided that during the course of such consultation, the Conservancy Authority has acted with all due expedition.

(9) In this paragraph “the specified day” means, in relation to any tidal work—

- (a) the day on which plans of that work are submitted to the Conservancy Authority under sub-paragraph (1); or
- (b) the day on which the Able Harbour Authority provides the Conservancy Authority with all such particulars of the work as have been reasonably requested by the Conservancy Authority under that sub-paragraph;

whichever is the later.

(10) Whenever the Able Harbour Authority provides the Secretary of State with an environmental document it shall at the same time send a copy to the Conservancy Authority.

9. Any operations for the construction of any tidal work approved in accordance with this Order shall, once commenced, be carried out by the Able Harbour Authority with all reasonable dispatch and to the reasonable satisfaction of the Conservancy Authority so that river traffic, the flow or regime of the river and the exercise of the Conservancy Authority’s functions shall not suffer more interference than is reasonably practicable, and the Conservancy Authority shall be entitled by its officer at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

Discharges, etc.

10.—(1) The Able Harbour Authority shall not without the consent of the Conservancy Authority—

- (a) deposit in or allow to fall or be washed into the river any gravel, soil or other material; or
- (b) discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise.

(2) Any consent of the Conservancy Authority under this paragraph shall not be unreasonably withheld but may be given subject to such terms and conditions as the Conservancy Authority may reasonably impose.

(3) Any such approval shall be deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 35 days of the day on which the request for consent is submitted under sub-paragraph (1).

(4) In its application to the discharge of water into the river, article 18 (discharge of water) shall have effect subject to the terms of any conditions attached to a consent given under this paragraph.

11. The Able Harbour Authority shall not, in exercise of the powers conferred by article 18, damage or interfere with the beds or banks of any watercourse forming part of the river unless such damage or interference is approved as a tidal work under this Order or is otherwise approved in writing by the Conservancy Authority.

Obstruction in river

12. If any pile, stump or other obstruction to navigation becomes exposed in the course of constructing any tidal work (other than a pile, stump or other obstruction on the site of a structure comprised in any permanent work), the Able Harbour Authority shall, as soon as reasonably practicable after the receipt of notice in writing from the Conservancy Authority requiring such action, remove it from the river or, if it is not reasonably practicable to remove it—

- (a) cut the obstruction off at such level below the bed of the river as the Conservancy Authority may reasonably direct; or
- (b) take such other steps to make the obstruction safe as the Conservancy Authority may reasonably require.

Removal, etc. of the Conservancy Authority moorings and buoys

13. If—

- (a) by reason of the construction of any tidal work it is reasonably necessary for the Conservancy Authority to incur reasonable costs in temporarily or permanently altering, removing, re-siting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by the Conservancy Authority, or laying down and removing substituted moorings or buoys, or carrying out dredging operations for any such purpose, not being costs which it would have incurred for any other reason; and
- (b) the Conservancy Authority gives to the Able Harbour Authority not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the Able Harbour Authority may make in response to the notice within 14 days of the receipt of the notice,

the Able Harbour Authority shall pay the costs reasonably so incurred by the Conservancy Authority.

Navigational lights, buoys, etc.

14. In addition to any requirement under articles 25 (lights on tidal works during construction) and 27 (permanent lights on tidal works), the Able Harbour Authority shall, at or near every tidal work, and any other work of which the Able Harbour Authority is in possession in exercise of any of the powers of this Order (being in either case a work which is below mean high water level forming part of the river), exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the Conservancy Authority may from time to time reasonably require.

Removal of temporary works

15. On completion of the construction of any part of a permanent authorised work, the Able Harbour Authority shall as soon as practicable remove—

- (a) any temporary tidal work carried out only for the purposes of that part of the permanent work; and
 - (b) any materials, plant and equipment used for such construction,
- and shall make good the site to the reasonable satisfaction of the Conservancy Authority.

Protective action

16.—(1) If any tidal work—

- (a) is constructed otherwise than in accordance with the requirements of this Schedule or with any condition in an approval given pursuant to paragraph 8(4); or
- (b) during construction gives rise to sedimentation, scouring, currents or wave action detrimental to traffic in, or the flow or regime of, the river,

then the Conservancy Authority may by notice in writing require the Able Harbour Authority at the Able Harbour Authority's own expense to comply with the remedial requirements specified in the notice.

(2) The requirements that may be specified in a notice given under sub-paragraph (1) are—

- (a) in the case of a tidal work to which sub-paragraph (1)(a) applies, such requirements as may be specified in the notice for the purpose of giving effect to the requirements of—
 - (i) this Schedule; or
 - (ii) the condition that has been breached; or
- (b) in any case within sub-paragraph (1)(b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river.

(3) If the Able Harbour Authority does not comply with a notice under sub-paragraph (1), or is unable to do so then the Conservancy Authority may in writing require the Able Harbour Authority to—

- (a) remove, alter or pull down the tidal work, and where the tidal work is removed to restore the site of that work (to such extent as the Conservancy Authority reasonably requires) to its former condition; or
- (b) take such other action as the Conservancy Authority may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

(4) If a tidal work gives rise to environmental impacts over and above those anticipated by any environmental document, the Able Harbour Authority shall, in compliance with its duties under any enactment and, in particular, under section 48A of the 1964 Act, take such action as is necessary to prevent or mitigate those environmental impacts and in so doing shall consult and seek to agree the necessary measures with the Conservancy Authority.

(5) If the Conservancy Authority becomes aware that any tidal work is causing an environmental impact over and above those anticipated by any environmental document, the Conservancy Authority shall notify the Able Harbour Authority of that environmental impact, the reasons why the Conservancy Authority believes that the environmental impact is being caused by the tidal work and of measures that the Conservancy Authority reasonably believes are necessary to counter or mitigate that environmental impact. The Able Harbour Authority shall implement the measures that the Conservancy Authority has notified to the Able Harbour Authority or shall implement such other measures as the Able Harbour Authority believes are necessary to counter the environmental impact identified, giving reasons to the Conservancy Authority as to why it has implemented such other measures.

Abandoned or decayed works

17.—(1) If any tidal work or any other work of which the Able Harbour Authority is in possession in exercise of any of the powers of this Order (being in either case a work which is below mean high water level) is abandoned or falls into decay, the Conservancy Authority may by notice in writing require the Able Harbour Authority to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as the Conservancy Authority reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river, the Conservancy Authority may by notice in writing require the Able Harbour Authority to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or
- (b) if the Able Harbour Authority so elects, to remove the tidal work and (to such extent as the Conservancy Authority reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the Able Harbour Authority has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, the Conservancy Authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing shall be recoverable from the Able Harbour Authority.

Facilities for navigation

18.—(1) The Able Harbour Authority shall not in the exercise of the powers granted by this Order interfere with any marks, lights or other navigational aids in the river without the agreement of the Conservancy Authority, and shall ensure that access to such aids remains available during and following construction of any tidal works.

(2) The Able Harbour Authority shall provide at any tidal works, or shall afford reasonable facilities at such works (including an electricity supply) for the Conservancy Authority to provide

at the Able Harbour Authority's cost, from time to time, such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation of users of the river in general as the Conservancy Authority may deem necessary by reason of the construction of any tidal works, and shall ensure that access remains available to apparatus during and following construction of such works.

(3) The Able Harbour Authority shall comply with the directions of the Humber Harbour Master from time to time with regard to the lighting on the tidal works or within the harbour, or the screening of such lighting, so as to ensure safe navigation on the river.

Survey of riverbed

19.—(1) Before the commencement of construction of the first tidal work to be constructed following approval pursuant to article 22 (tidal works not to be constructed without approval of the Secretary of State), the Conservancy Authority may, at the Able Harbour Authority's reasonable expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action that might result from the construction of such of the authorised works as would constitute tidal works if they were to be constructed, for the purposes of establishing the condition of the river at that time.

(2) Before the commencement of construction of any other tidal work approved pursuant to article 22, the Conservancy Authority may, at the Able Harbour Authority's reasonable expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action resulting from that tidal work for the purpose of establishing the condition of the river at that time.

(3) The Conservancy Authority may carry out such surveys of the river as are reasonably required during the construction of any tidal work to ascertain the effect of that tidal work on the river and the Conservancy Authority shall make available to the Able Harbour Authority the results of any such survey in electronic and paper format.

(4) After completion of, respectively, any tidal work and all the tidal works constructed under this Order, the Conservancy Authority may, at the Able Harbour Authority's expense carry out a further survey of the parts of the river which were surveyed prior to the construction of that work, or as the case may be a survey of the completed tidal works as so constructed, for the purpose of establishing the condition of the river and the effect that the tidal work is, or as the case may be the tidal works are, having on navigation, the flow and the regime of the river and the exercise of the Conservancy Authority's functions.

(5) The Conservancy Authority shall not under this paragraph carry out a survey of any part of the river as respects which the Able Harbour Authority has provided to the Conservancy Authority survey material which the Conservancy Authority is reasonably satisfied establishes the condition of the river, and in the case of a survey under sub-paragraph (3), the effect of the tidal work, or as the case may be the tidal works.

Sedimentation, etc.: remedial action

20.—(1) This paragraph applies if any part of the river becomes subject to sedimentation, scouring, currents or wave action which—

- (a) is, during the period beginning with the commencement of the construction of that tidal work and ending with the expiration of 10 years after the date on which all the tidal works constructed under this Order are completed, wholly or partly caused by a tidal work; and
- (b) for the safety of navigation or for the protection of works in the river, should in the reasonable opinion of the Conservancy Authority be removed or made good.

(2) The Able Harbour Authority shall either—

- (a) pay to the Conservancy Authority any additional expense to which the Conservancy Authority may reasonably be put in dredging the river to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to the tidal work; or

- (b) carry out the necessary dredging at its own expense and subject to the prior approval of the Conservancy Authority, such prior approval not to be unreasonably withheld or delayed;

and the reasonable expenses payable by the Able Harbour Authority under this paragraph include any additional expenses accrued or incurred by the Conservancy Authority in carrying out surveys or studies in connection with the implementation of this paragraph.

Indemnity

21.—(1) The Able Harbour Authority shall be responsible for and make good to the Conservancy Authority all reasonable financial costs or losses not otherwise provided for in this Schedule which may reasonably be incurred or suffered by the Conservancy Authority by reason of—

- (a) the construction or operation of the authorised works or the failure of the authorised works;
- (b) anything done in relation to a mooring or buoy pursuant to paragraph 13; or
- (c) any act or omission of the Able Harbour Authority, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised works or dealing with any failure of the authorised works;

and the Able Harbour Authority shall indemnify the Conservancy Authority from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission.

(2) The fact that any act or thing may have been done—

- (a) by the Conservancy Authority on behalf of the Able Harbour Authority; or
- (b) by the Able Harbour Authority, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Conservancy Authority, or in a manner approved by the Conservancy Authority, or under its supervision or the supervision of its duly authorised representative;

shall not (if it was done or required without negligence on the part of the Conservancy Authority or its duly authorised representative, employee, contractor or agent) excuse the Able Harbour Authority from liability under the provisions of this paragraph.

(3) The Conservancy Authority shall give the Able Harbour Authority reasonable notice of any such claim or demand as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand shall be made without the prior consent of the Able Harbour Authority.

Statutory functions

22.—(1) Subject to article 4(1) and this paragraph, any function of the Able Harbour Authority or any officer of the Able Harbour Authority, whether conferred by or under this Order or any other enactment, shall be subject to—

- (a) any enactment relating to the Conservancy Authority;
- (b) any byelaw, direction or other requirement made by the Conservancy Authority or the Humber Harbour Master under any enactment; and
- (c) any other exercise by the Conservancy Authority or the Humber Harbour Master of any function conferred by or under any enactment.

(2) The Able Harbour Authority or Able Dockmaster shall not take any action in the river outside the area of jurisdiction under sections 57 and 65 of the 1847 Act as incorporated by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847) except with the consent of the Humber Harbour Master, which shall not be unreasonably withheld.

(3) The Able Dockmaster shall not give or enforce any special direction to any vessel under section 52 of the 1847 Act, as incorporated by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847), if to do so would conflict with a special direction given to the same vessel by the Humber Harbour Master.

(4) The Conservancy Authority shall consult the Able Harbour Authority before making any byelaw which directly applies to or which could directly affect the construction, operation or maintenance of the Able Marine Energy Park.

(5) The Conservancy Authority or the Humber Harbour Master (as appropriate) shall consult the Able Harbour Authority before giving any general direction which directly affects the construction, operation or maintenance of the Able Marine Energy Park.

Consideration for dredged material

23.—(1) Subject to any agreement concluded between the Able Harbour Authority, the Conservancy Authority and any other party benefiting from material dredged by the Conservancy Authority, the Able Harbour Authority shall pay the Conservancy Authority for material dredged by the Conservancy Authority under this Order from so much of the river as is vested in the Conservancy Authority, consideration calculated at a rate agreed between them and otherwise in accordance with this paragraph.

(2) The Able Harbour Authority shall pay reasonable consideration under sub-paragraph (1) as respects material dredged in the course of the construction of the works authorised by article 21 (right to dredge) based on the quantity of such material that—

- (a) is not used for the construction of—
 - (i) the authorised works;
 - (ii) any other works related to the construction of Able Marine Energy Park; or
 - (iii) the related development; and
- (b) is not owned by the undertaker, and
- (c) is sold by the Able Harbour Authority or by any other person exercising any powers under this Order.

Removal of wrecks and obstructions, etc.

24.—(1) Before exercising any power under section 252 of the Merchant Shipping Act 1995(a) or under section 56 of the 1847 Act, the Able Dockmaster shall notify the Humber Harbour Master.

(2) The Able Dockmaster shall comply with any reasonable instructions that the Humber Harbour Master may give in relation to the exercise of the powers referred to in sub-paragraph (1).

Disputes

25. Any dispute arising between the Able Harbour Authority and the Conservancy Authority under this Schedule shall be determined by arbitration as provided in article 66 (arbitration).

PART 3

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

26. For the protection of the Environment Agency, the following provisions shall, unless otherwise agreed in writing between the undertaker and the Environment Agency, have effect.

27. The requirement for consent under section 109 of the Water Resources Act 1991 and byelaw 27 of the Anglian Region Land Drainage and Sea Defence Byelaws 1987 shall not be required for the authorised development subject to the conditions contained in paragraphs [28](#) to [31](#).

28. The authorised development should be carried out to ensure minimum obstruction to flows in the watercourse at all times.

29. The requirements set out in the Environment Agency's Pollution Prevention Guideline 5 (Works and Maintenance in or near Water) must be complied with to ensure that the works are carried out in a proper manner and do not adversely affect the watercourse.

Comment [MMO37]: Re MMO comment 5.59; Applicant response 68.12. Discussions with the Applicant and the Environment Agency are ongoing but conditions to be included in the deemed marine licence are yet to be agreed.

30. On completion of the works, all debris and surplus material shall be removed from the banks of the watercourse and that the banks are left in a stable condition with adequate protection provided to avoid erosion, to the satisfaction of the Environment Agency.

31. The Company must bring the conditions contained in paragraphs 7 to 9 to the attention of any agent or contractor responsible for carrying out the authorised development.

PART 4

FOR THE PROTECTION OF THE HIGHWAYS AGENCY

32. For the protection of the Highways Agency, no part of the authorised development shall be occupied until improvements to the following junctions (or alternatives approved in writing by the local planning authority in consultation with the Highways Agency) have been implemented in accordance with details approved by the local planning authority in consultation with the Highways Agency:

- (a) A160/A1173/Humber Road (Manby Road Roundabout),
- (b) A160/Top Road/Habrough Road,
- (c) A160/A1077 Ulceby Road,
- (d) A160/Eastfield Road (signalised junction), and
- (e) A180/A160 Merge/Diverge (Brocklesby Interchange).

PART 5

FOR THE PROTECTION OF NETWORK RAIL

33. For the protection of Network Rail, the following provisions shall, unless otherwise agreed in writing between the undertaker and Network Rail, have effect.

SCHEDULE 10

LIMITS OF HARBOUR

Article 2

Comment [MMO38]: Re MMO comment 5.1; Applicant response 68.3: The MMO understands the Applicant will provide coordinates on the plan at Schedule 10. The MMO is content with this approach but requests that the plan to be used is provided for comment.

SCHEDULE 11

REQUIREMENTS

Article 5

1. In this Schedule—

“the 1990 Act” means the Town and Country Planning Act 1990;

“the 2008 Act” means the Planning Act 2008;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“environmental statement” means the statement submitted under regulation 5(2)(a) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a), together with any supplementary statement;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the relevant planning authority” means North Lincolnshire Council for land in that council’s area and East Riding of Yorkshire Council for land in that council’s area;

Time limits

2. The authorised development must be begun within 7 years of the date of this Order.

Stages of the development

3. No part of the authorised development shall commence until a written scheme setting out all the stages of the authorised development has, after consultation with the highway authority, been submitted to and approved by the relevant planning authority.

Cargo restriction

4. (1) The cargo that the authorised development is authorised to handle shall be restricted to items associated with marine energy infrastructure and any cargo that is incidental or ancillary to such items.

(2) If further categories of cargo are authorised by means of planning permission or an order under section 14 of the Harbours Act 1964 or section 1 of the Transport and Works Act 1992, then the implementation of such authorisations shall not constitute a breach of this order.

Detailed design approval

4.5. The authorised development shall be carried out in accordance with the design drawings unless otherwise approved in writing by the relevant planning authority.

Provision of landscaping

5.6. No stage of the authorised development, other than tidal works, shall commence until a written landscaping scheme has been submitted to and approved by the relevant planning authority. The landscaping scheme must include details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;

Comment [MMO39]: Re MMO comments 5.52-5.56; Applicant response By virtue of the provisions of the 2009 Act, there is an overlap in the jurisdiction of the MMO and the LPAs between the mean low and high water spring tide. In its response to the MMO’s relevant representations, the Applicant has expressed the view that, in the area between the high and low water mark where there is overlapping jurisdiction between the bodies, one body should take the lead for monitoring compliance with the DCO’s requirements whilst consulting the body. The Applicant would prefer this to be the arrangement, rather than having matters signed off by both bodies, so as to avoid the delay of dual-sign off and to avoid complications should the two bodies be in dispute.

Whilst understanding the concerns, expressed by the Applicant, the MMO does not support the suggestion put forward for the division of responsibilities between the bodies. The 2009 Act clearly envisages that there will be areas of overlapping jurisdiction between the MMO and the LPAs and the MMO is of the opinion that there is no mechanism by which the MMO is able to relinquish its functions to the LPAs. The MMO is therefore firmly of the view that, where there is an overlap in jurisdiction between the bodies, dual-sign off of those matters will be required.

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(a) S.I. 2009/2264

- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (g) proposed and existing functional services above ground, including drainage, power and communications cables and pipelines and supports;
- (h) details of existing trees to be retained, with measures for their protection during the construction period;
- (i) retained historic landscape features and proposals for restoration, where relevant; and
- (j) implementation timetables for all landscaping works.

Implementation and maintenance of landscaping

6.7.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under requirement **6665** and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

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(2) The landscaping works must be carried out in accordance with implementation timetables approved under requirement **6665**.

(3) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

Trees

7.8. No stage of the authorised development, other than tidal works, shall commence until written details of any proposed tree planting and the proposed times of planting have been approved in writing by the relevant planning authority; and all tree planting shall be carried out in accordance with those details and at those times.

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Highway access

8.9.—(1) No stage of the authorised development shall commence until for that stage, written details of the siting, design and layout of any new permanent or temporary means of access to a public highway to be used by vehicular traffic, or any alteration to an existing means of access to a public highway used by vehicular traffic, has, after consultation with the relevant highway authority, been submitted to and approved by the relevant planning authority.

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(2) The public highway accesses must be constructed, or, as the case may be, altered, in accordance with the approved details.

(3) No stage of the authorised development shall commence until for that stage, a written scheme (the “Access Management Scheme”) has, after consultation with the relevant highway authority, been submitted to and approved by the relevant planning authority.

(4) The Access Management Scheme must be carried out in accordance with the approved details.

Public rights of way

9.10.—(1) No stage of the authorised development shall commence that would affect North Lincolnshire Footpath 50 or East Riding of Yorkshire Paull Footpath 6 until a written implementation plan and specification for the making up of an alternative right of way has, after consultation with the relevant highway authority, been submitted to and approved by the relevant planning authority.

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(2) The alternative Footpath 50 and Paull Footpath 6 shall be implemented in accordance with the relevant approved plan and specification.

Fencing and other means of enclosure

10.11.—(1) No stage of the authorised development shall commence until, for that stage, written details of all proposed permanent and temporary fences, walls or other means of enclosure have been submitted to and approved by the relevant planning authority.

(2) Any temporary fencing must be removed on completion of the authorised development.

(3) Any approved permanent fencing of the authorised development must be completed before the authorised development is brought into use.

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Surface water drainage

14.12.—(1) No stage of the authorised development shall commence until, for that stage, written details of the surface and foul water drainage system (including means of pollution control and funding arrangements) have, after consultation with the sewerage and drainage authority, been submitted to and approved by the relevant planning authority.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details.

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Contaminated land

12.13.—(1) No stage of the authorised development shall commence until a written scheme applicable to that stage, to deal with the contamination of any land, including groundwater and ground gas, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) The scheme shall include an investigation and assessment report, prepared by a suitably qualified person, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) Remediation must be carried out in accordance with the approved scheme.

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Archaeology

13.14.—(1) No stage of the authorised development shall commence until, for that stage, a written scheme for the investigation of areas of archaeological interest as identified in chapters 18 and 40 of the environmental statement has been submitted to and approved by the relevant planning authority.

(2) The scheme shall identify areas where fieldwork and/or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the scheme must be by a suitably qualified person or body.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

Comment [MMO40]: Re MMO comment 5.61; Applicant response 68.13-6.14. Discussions with the Applicant are ongoing but conditions to be included in the deemed marine licence are yet to be agreed.

As previously stated, the MMO is of the opinion that there is no mechanism by which the MMO is able to relinquish its functions to the LPAs. The MMO is therefore firmly of the view that, where there is an overlap in jurisdiction between the bodies, dual-sign off of those matters will be required.

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Ecological mitigation

14.15.—(1) No stage of the authorised development shall commence until a written ecological management plan for that stage reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement, after consultation shall be submitted to and approved by the relevant planning authority.

(2) The ecological management plan shall include an implementation timetable and must be carried out as approved.

Comment [MMO41]: Re MMO comment 5.62-5.63; Applicant response 68.13-6.14. Discussions with the Applicant are ongoing but conditions to be included in the deemed marine licence are yet to be agreed.

As previously stated, the MMO is of the opinion that there is no mechanism by which the MMO is able to relinquish its functions to the LPAs. The MMO is therefore firmly of the view that, where there is an overlap in jurisdiction between the bodies, dual-sign off of those matters will be required.

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Code of construction practice

15.16.—(1) No stage of the authorised development shall commence until a code of construction practice for that stage has been submitted to and approved by the relevant planning authority.

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(2) All construction works shall be undertaken in accordance with the approved code, unless otherwise agreed by the relevant planning authority.

Design of roads

16.17.—(1) No stage of the authorised development consisting of the construction or alteration of a street which is a trunk road, including any traffic management and control measures, shall commence until written details of the design of the street have been submitted to and approved by the Highways Agency.

(2) The authorised development construction or alteration of the street or the taking of traffic management and control measures shall be carried out in accordance with the approved design.

External lighting

17.18. No stage of the authorised development, shall commence until written details of any external lighting to be installed at any of the construction sites within that stage, including measures to prevent light spillage, have, after consultation with the highway authority, been submitted to and approved by the relevant planning authority; and any approved means of lighting must subsequently be installed and retained for the duration of the construction period.

Construction traffic

18.19.—(1) No stage of the authorised development shall commence until written details of the preferred route for that stage to be used by construction traffic on public highways, after consultation with the highway authority, is submitted to and approved by the relevant planning authority.

(2) Notices shall be erected and maintained throughout the period of construction at every construction site exit to a public highway, indicating to drivers the route agreed by the relevant planning authority for traffic entering and leaving the site.

Control of noise during construction

19.20.—(1) No stage of the authorised development shall commence until a written scheme for noise management during construction and maintenance of that stage has been submitted to the relevant planning authority.

(2) The scheme shall set out the particulars of—

- (a) the works, and the method by which they are to be carried out;
- (b) the noise attenuation measures to be taken to minimise noise resulting from the works, including any noise limits; and
- (c) a scheme for monitoring the noise during the works to ensure compliance with the noise limits and the effectiveness of the attenuation measures.

(3) The approved noise management scheme must be implemented before and maintained during construction and maintenance of the relevant stage of the authorised development.

(4) The construction and maintenance works must be undertaken in accordance with the approved noise management scheme.

Control of emissions

20.21.—(1) No stage of the authorised development shall commence until a written scheme for that stage—

- (a) for the management and mitigation of emissions of—
 - (i) odour,
 - (ii) artificial light,
 - (iii) dust,
 - (iv) smoke, and
 - (v) steam; and
- (b) to ensure the prevention of infestation or emanation of insects

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from the authorised development has been submitted to and approved by the relevant planning authority.

(2) The approved scheme must be implemented before and maintained during the construction, operation and decommissioning of the relevant stage of the authorised development.

(3) For the purposes of this requirement, “insects” excludes insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981^(a) (animals which are protected), unless they are included in respect of section 9(5) of that Act only.

Travel plan

24.22.—(1) No stage of the of the authorised development shall commence until, for that stage, after consultation with the highway authority, a travel plan, which must include details of the expected means of travel to and from the authorised development and any parking to be provided, has been submitted to and approved by the relevant planning authority.

(2) No part of the authorised development shall be brought into use until, after consultation with the highway authority, a travel plan, which must include details of the expected means of travel to and from the authorised development and any parking to be provided, has been submitted to and approved by the relevant planning authority.

(3) The plan approved under paragraph (1) must be implemented during the construction of the authorised development and the plan approved under paragraph (2) must be implemented within one month of the authorised development being brought into use and shall continue to be implemented for as long as the authorised development is used.

European protected species

22.23.—(1) No stage of the authorised development shall be begun that is likely to affect a European protected species until, after consultation with Natural England and the Secretary of State for the Environment, Food and Rural Affairs, a scheme of protection and mitigation measures for that species has been submitted to and approved by the relevant planning authority; and the authorised development shall be carried out in accordance with the approved scheme.

(2) “European protected species” has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010.

Requirement for written approval

23.24. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be given in writing.

Amendments to approved details

24.25. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details shall be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

Requirement for consent of Civil Aviation Authority and Ministry of Defence

25.26. No stage of the authorised development shall commence until for that stage, after consultation with the Civil Aviation Authority and the Ministry of Defence, written details for the operation of the authorised development and its effect on radar have been submitted to and agreed by the relevant planning authority.

Flood warning and evacuation plan

26.27. No building of the authorised development shall be occupied until, after consultation with the relevant planning authority, written details of a flood warning and evacuation plan, which must

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(a) 1981 c. 69, as amended at the date that this Order comes into force

include details of expected means of evacuation or safe refuge during a tidal flood event, has been submitted to and approved by the relevant planning authority.

Listed buildings

27-28. No stage of the authorised development shall commence until a listed building management plan applicable to that stage, which must include details of protection of any building referred to from vibration damage and the renovation or re-use of the building, has been submitted to and approved by the relevant planning authority in consultation with English Heritage.

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Tall structures

28-29. No structure shall be erected over 45 metres in height above finished ground level until written details of a lighting scheme applicable to that structure has been submitted to and approved in writing by the relevant planning authority following consultation with the Civil Aviation Authority.

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Flood and sea defences

29-30. No stage of the authorised development shall commence until a written scheme applicable to that stage, to deal with the design and construction of tidal defences, has been submitted to and approved by the relevant planning authority after consultation with the Environment Agency.

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EXPLANATORY NOTE

(This note is not part of the Order)

This order authorises the construction and operation of a quay, associated onshore facilities and other development, to be situated on the south bank of the River Humber to the north east of Immingham, together with the creation of a compensatory environmental habitat on the north bank of the River Humber to the north east of the quay.

STATUTORY INSTRUMENTS

2012 No. XXXX

INFRASTRUCTURE PLANNING

HARBOURS, DOCKS, PIERS AND FERRIES

The Able Marine Energy Park
Development Consent Order 2012

BIRCHAM DYSON BELL LLP
50 Broadway
London SW1H 0BL
Solicitors and Parliamentary Agents
8222187.1 — 30.11.11

**Annex 3 Letter from the Environment Agency on behalf of the Marine
Management Organisation and Natural England to the Applicant
regarding mitigation for the impact of piling works**

Mr Richard Cram
Able UK Ltd
Able House
Billingham Reach Industrial Estate
BILLINGHAM
Teeside
TS23 1PX

Your ref: RC.LH.A.L12-0330
Our ref: AN/2012/113982

Date: 31 July 2012

Dear Richard,

**Marine Energy Park, Killingholme Marshes, North Lincolnshire
Piling Mitigation & Compensation Proposals**

Thank you for your letter dated 6 July 2012 in respect of the above,

I have considered the points you have raised and will address some of them specifically below. However, I would also direct you to our detailed Written Representations, including the Statement by Dr Adrian Fewings, for our case and opinions on this issue. As the requirements are not solely for the protection of migratory fish, I would also refer you to the representations made by Natural England (NE) and the Marine Management Organisation (MMO) on lamprey, over-wintering birds and marine mammals.

We do not accept that our requirements are over-precautionary, we believe that they are proportionate and in line with the precautionary principle. However, we too remain committed to trying to achieve a solution that provides the protection for the species of concern that we require and allows you to deliver your project.

Soft Start

Natural England has reviewed the soft start report sent through by Able and agree that you have followed the same methodology that Associated British Ports (ABP) employed for Green Port Hull (GPH) and presented a case for reducing its soft start duration. This report comes to the same conclusion as ABP in that it is concluded that 120 seconds of soft start is sufficient to avoid damage to grey seal hearing. Natural England believes that this is an absolute minimum and would normally advise that the Joint Nature Conservation Committee (JNCC) soft start guidance should be adhered to. However, following consideration of the proposal put forward by ABP, we did agree to a 180 second soft start for GPH, which was calculated by adding a 50% precautionary increase to the 120 seconds proposed. We therefore advise that Able should also undertake a 180 second soft start, together with a 100m mitigation zone.

Piling Method Statement

Waterside House, Waterside North, Lincoln, LN2 5HA
Customer services line: 03708 506 506
Email: enquiries@environment-agency.gov.uk
www.environment-agency.gov.uk

Calls to 03 numbers cost the same as calls to standard geographic numbers (i.e. numbers beginning with 01 or 02).

We are pleased to your agreement to this requirement, which will be included in the Deemed Marine Licence.

Active Monitoring Scheme

Please see below, under dissolved oxygen and water temperature for our comments on this issue.

Piling Restrictions

We understand your view with respect to the 'work blocks' and can appreciate how you may have mis-interpreted what was meant by it. The reason it was re-defined in respect of your proposal was to try and provide further clarity. The meaning is the same for the GPH project. However, we are aware that the method of piling intended for that project differs from your own – GPH intends that 4-5 piles will be set up in a jig and then percussive piling of them will be done immediately, one after another, without any lengthy gaps for resetting of rigs/hammers.

We note your views in respect of the restrictions between July and September. We understand that in the information you attached on your piling programme, where you quote 'impact piling' this may (particularly for day 1) represent vibro-piling and does not necessarily represent percussive piling. It is our opinion, therefore, that the restrictions should not hinder the project to the point of disproportionate financial risk, which you claim. During the most restricted period, July to Sept, the restrictions give you a daily average of 4.1hours with 1 rig and 7hours with 2 rigs (average 3.5hrs per rig). Based on your piling schedule the 2nd day of percussive piling would require approx 5.3hrs – averaging out at 2.65hrs per day. Even with potential unforeseen difficulties this leaves a contingency of 1.45hrs on a single rig and 0.85hrs per rig where 2 are used. If you think this interpretation of your proposed piling methodology is incorrect, we will be pleased to discuss it with you further.

You will note that the restrictions as currently drafted do also enable you more piling hours than the GPH project – the reason for this is that Hull City Council required restrictions not only for the aquatic environment, but also to protect surrounding amenity.

We note your comments in respect of the GPH draft decision notice. It is for the decision maker to ensure they are satisfied that the conditions are worded in a way they believe appropriate and enforceable. The piling restrictions for the GPH project will also be included in a Marine Licence. In the interests of consistency we attach a revised schedule of the piling related conditions (see Appendix), which include wording that is now as consistent as possible to those the MMO intends to include on the GPH Marine Licence and we would ask that you consider the acceptability of these for your project.

Compensation Proposal

It is disappointing that you cannot yet place a monetary value on the Cherry Cobb Sands works. However, we look forward to receiving this when the detailed design is progressed.

Dissolved Oxygen and Water Temperature

The issue with dissolved oxygen and water temperature levels is fully explained in Paragraph 7.3 of Appendix D (Statement by Dr Adrian Fewings) of our Written Representations. In summary, the reason for this restriction is because if these conditions (low dissolved oxygen and/or high water temperature) are experienced the fish will become stressed and this will be compounded by any behavioural response resulting from exposure to the piling noise.

It is disappointing that you are now challenging this issue given the numerous references, within your Environmental Statement, to the effects of reduced dissolved oxygen and temperature level on ecological receptors such as macrophytes, fish, and benthic Invertebrates. You also previously confirmed to us, in your letter of 11th May 2012, that you would cessate impact piling in the event that water temperature in the estuary exceeds 21.5 degrees Celsius.

Cold Weather Restriction

Natural England has always advised that the seasonal restriction that is required for SPA/ Ramsar waterbirds should be *based on* the wildfowling cold weather restriction. Wildfowling is an example of an activity that is regulated during periods of cold weather but it would not be appropriate to directly compare the situation as regards wildfowling and a programme of industrial construction works. In addition, the regulatory mechanisms are not intended to do a comparable job. The wildfowling ban is a nationwide ban that is implemented when certain ground conditions are met at 13 official weather stations around the coast of Britain. The purpose of the ban is to ensure that wildfowling disturbance does not affect waterfowl survival during periods of severe weather.

Construction disturbance will be more intensive and more prolonged. Any potential constraints on disturbing construction activity should focus specifically on the given set of activities at that precise location and the SPA/ Ramsar species involved. As you will be aware, the aim is to avoid an adverse effect on site integrity and ensure that the conservation objectives are not compromised. Natural England's advice is that the restrictions as set out in our letter of 19 June 2012 are required to achieve this. A slightly amended cold weather condition (this is the one that will be included in the GPH Marine Licence) is included in the attached Appendix.

No Sunday Working

We were of the impression that you did not intend to pile on Sundays. The purpose of this restriction is to ensure that this is the case, and secures the benefit of a quiet period for fish and lamprey. The intention here is identical to the similar restriction you have accepted for no night-time working.

Restriction on Pile Diameter

The purpose for this restriction is exactly as explained within the reason. The risk/impact assessments have been undertaken using this diameter pile and therefore we would not wish larger piles to be used. However, we can agree to your request to insert "unless otherwise agreed in writing with" and this will now be incorporated into the piling methodology statement condition, please see Condition 1 on the amended schedule contained in the Appendix to this letter.

Residual Effects

Using the seasonal risk curves, we are able to estimate the percentage risk if peak periods are avoided. This should be used, together with the Cherry Cobb Sands works and information on the monetary value of the fisheries affected, to quantify any residual effect.

We hope that the above explanations, together with the schedule of amended conditions, will be sufficient for you to reconsider your position with a view to accepting the requirements in order to avoid any further representations having to be made on these issues.

Hull City Council Written Representations

We have also now considered the Written Representations made by Hull City Council, which state the need for the Planning Inspectorate “to restrict construction operations relating to Marine Piles occurring concurrently from different marine developments”. Hull City Council include Condition 19 in the GPH schedule to secure adherence to a noise reduction scheme (to be submitted and agreed) if percussive piling is to be carried out at the same time as Able’s Marine Energy Park. This condition relates to the protection of redshank, a Humber Estuary SPA species. As you will be aware, Able is providing compensation at Cherry Cobb Sands for the indirect loss of adjacent intertidal habitat due to disturbance during construction and operation of the new port. Mitigation, in the form of seasonal restrictions, is required to mitigate the impact on the remaining intertidal habitat. Redshank have been included in your in-combination assessment – see Natural England’s letter of 22 December 2011 - and therefore your proposed mitigation already covers this issue.

Should you require any additional information, or wish to discuss these matters further, please do not hesitate to contact me on the number below.

Yours sincerely

Annette Hewitson
Principal Planning Advisor

Direct dial [REDACTED]

Direct fax [REDACTED]

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Appendix – Schedule of proposed conditions for inclusion in DCO Schedule 8, Deemed Marine Licence

Prior to works commencing

Condition 1

The Licence Holder must ensure that a detailed piling methodology statement is submitted and approved by the MMO prior to the commencement of works (for consultation with Natural England and Environment Agency). The method statement shall include the following measures:

- Pile pads shall be utilised at all times;
- Soft start piling shall be utilised at the commencement of any piling. The statement must detail the exact soft start protocol to be followed;
- The maximum pile diameter shall be 2.1 meters unless otherwise agreed in writing by the MMO (following consultation with Natural England and the Environment Agency);
- Piling shall not take place during periods when the data from the Active Monitoring Buoy shows temperatures above 21.5 degrees Celsius and/or dissolved oxygen to be below 5 mg/l;
- Details of the piling methodology to be adopted which sets out the likely spread of piling activity throughout a day.

Percussive piling shall thereafter proceed only in strict accordance with the agreed Piling Method Statement.

Reason: To minimise the noise impact of piling on fisheries. To maximise the time fish have to vacate the affected area before sound pressures increase. To reduce the risk to migratory fish species including Atlantic Salmon, Sea Trout, River and Sea Lamprey, and Eel.

Condition 2

The Licence Holder must ensure that an Active Monitoring Scheme has been submitted to and agreed in writing by the MMO (following consultation with Natural England and Environment Agency). The Scheme shall include the following details:

- Location of Active Monitoring Buoy(s) and depth and design of sensors;
- Full details of the frequency of measurement of temperature and dissolved oxygen in order to ascertain compliance with condition 1;
- 24 hours a day, 7 days a week monitoring of noise in order to ascertain compliance with conditions 4 and 5;
- Full details of when monitoring will commence and cease, which will include a 2 week period of pre and post construction monitoring in order to establish baseline conditions and the return to baseline conditions once construction activity has finished;

- A log of the number and approximate location of piling rigs which are in operation on any given day;
- Full details of how the monitored information will be accessed by or communicated to the site contractor, the MMO, Natural England and the Environment Agency, where necessary.

The monitoring scheme shall thereafter be implemented in accordance with the timetable approved as part of the scheme.

Reason: To ensure appropriate information is available to allow noise mitigation measures to be implemented and monitored. To avoid periods when water conditions will make fish more vulnerable to disturbance - in accordance with condition 1. To reduce the risk to migratory fish species including Atlantic Salmon, Sea Trout, River and Sea Lamprey, and Eel.

Condition 3

The Licence Holder must ensure a cold weather construction restriction strategy is submitted to and agreed with the MMO (in consultation with Natural England) before any percussive piling takes place. The strategy shall include the following elements/procedures:

- No percussive piling (other than to finish driving any pile that is in the process of being driven at the point the cold weather restriction comes into force) shall take place following 7 consecutive days of zero or sub zero temperatures (where the temperature does not exceed 0°C for more than 6 hours in any day or any other pre-agreed formula to define short periods of thaw);
- 3 temperature monitoring points shall be agreed within the Humber Estuary such as Immingham, Grimsby and Killingholme;

The restrictions will be reviewed as follows:

- After 24 hours of above-freezing temperatures, the restrictions will be lifted on a "probationary basis", provided that the weather forecast (met office forecast location to be agreed) indicates that freezing conditions will not return within 5 days.
- After a further 5 clear days of above-freezing temperatures, the restrictions will be lifted entirely and the "clock reset to zero".

The Strategy shall thereafter be implemented in strict accordance with the details agreed.

Reason: To ensure there is no adverse effect on the interest features of the Humber Estuary SPA/Ramsar site.

During works

Condition 4

The Licence Holder must ensure that no percussive piling of marine piles (the marine element being defined as a pile that will, during construction, be in a free water condition and the term "percussive piling" referring to the driving of piles, but excluding

the handling, placing and vibro-driving of piles) shall take place between 7th April and 1st June inclusive in any one calendar year.

Reason: To reduce the risk to migratory fish species including Atlantic Salmon, Sea Trout, River and Sea Lamprey, and Eel.

Condition 5

The Licence Holder must ensure percussive piling of marine piles (the marine element being defined as a pile that will, during construction, be in a free water condition and the term “percussive piling” referring to the driving of piles, but excluding the handling, placing and vibro-driving of piles) shall be restricted in the following way:

- Timeframe 1: From 2nd June to 22nd July inclusive in any one calendar year, the maximum amount of percussive piling permitted within each four-week work-block shall be limited to:
101 hours where a single rig is in operation; or
A combined total of 168 hours where two or more rigs are in operation.
- Timeframe 2: From 23rd July to 10th September inclusive in any one calendar year, the maximum amount of percussive piling permitted each week-long work-block shall be limited to:
25 hours where a single rig is in operation; or
A combined total of 42 hours where two or more rigs are in operation;
- Timeframe 3: From 11th September to 31st October inclusive in any one calendar year, the maximum amount of percussive piling permitted within each four-week work-block shall be limited to:
134 hours where a single rig is in operation; or
A combined total of 224 hours where two or more rigs are in operation.
- Timeframe 4: From 1st November to 6th April inclusive in consecutive calendar years, the maximum amount of percussive piling permitted within each eight-week work-block shall be limited to:
336 hours where a single rig is in operation; or
A combined total of 560 hours where two or more rigs are in operation.

The measurement of time during each work-block shall begin at the start of each timeframe, roll throughout it, then cease at the end. Measurement will begin again at the start of the next timeframe. This process will be repeated until the end of piling works.

Reason: To reduce the risk to migratory fish species including Atlantic Salmon, Sea Trout, River and Sea Lamprey, and Eel.

Condition 6

The Licence Holder must ensure percussive piling of marine piles (for the purposes of this condition percussive piling means the driving of piles by percussive means but does not include the handling, placing and vibro-driving of piles and a marine pile means a pile which will, during construction, be in a free-water state) in connection with the development shall be restricted in the following way:

- there shall be at least a 180 second "soft start" period for percussive piling of marine piles . The exact form of “soft start” shall be agreed prior to the commencement of piling with the MMO in consultation with Natural England.

- a 100m marine mammals observation zone, the centre-point being the location of the marine pile being driven percussively piled, shall be followed with the purpose of identifying any marine mammals within that zone and no piling shall take place whilst marine mammals are within the zone.

Reason: To ensure there is no adverse effect on the interest features of the Humber Estuary SAC/Ramsar site.

Condition 7

No piling shall take place between 22.00hours on a Saturday and 06.00hours on the following Monday.

Reason: To ensure periods of quiet when no percussive piling is taking place for the benefit of fish species including Atlantic Salmon, Sea Trout, River and Sea Lamprey, Eel, Herring, Sole and Plaice.

Condition 8

No piling shall take place between 22.00hours and 06.00hours.

Reason: To ensure periods of quiet when no percussive piling is taking place for the benefit of fish species including Atlantic Salmon, Sea Trout, River and Sea Lamprey, Eel, Herring, Sole and Plaice.