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Your Ref  
TWA 8/1/4  
Our Ref  
ADW/124645.Y059258  
Date  
15 October 2013

Dear Martin

**The Able Marine Energy Park  
Response to 'minded to approve' letter**

1. This is a response to your letter dated 28 August 2013 stating that the Secretary of State is minded to approve the Able Marine Energy Park project subject to assurance on two issues. This letter is suitable for publication as an introduction to the consultation referred to at paragraph 57 of your letter.

2. In summary, the applicant has been able to address the two issues referred to at paragraph 6 of your letter, and we hope that this will allow the Secretary of State to grant consent for the project following the consultation exercise. We are grateful that more time was allowed for the preparation of the information accompanying this letter as it has allowed for significant progress to be made on both issues.

**Issues on which further evidence has been requested**

3. In paragraph 6 of your letter you stated that the Secretary of State was minded to approve the project subject to receiving satisfactory evidence of the following:

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

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

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



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

### **Issue (1) – compensation measures**

4. In relation to the first issue, the effectiveness of the compensation measures, progress has been made on both of the alternatives (a) and (b) set out above. On reasonable additional measures, the applicant has agreed to provide its land at East Halton Marshes as further compensation, as recommended by the Panel in its report. On the risk that the compensation measures are ineffective, Natural England has downgraded its assessment from a 'substantial risk' to a 'residual risk' in a letter dated 11 October 2013.

### **Issue (2) – railway**

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

### **Delivery mechanisms**

6. The provision of East Halton Marshes as further compensation for as long as it is needed will be delivered via the Compensation Environmental Monitoring and Management Plan, which is a document required to be signed off by Natural England by virtue of requirement 19(1) of the Development Consent Order. Natural England will not sign off the CEMMP until it is satisfied that East Halton Marshes will be provided.

7. The remainder of the submissions that led to Natural England downgrading its risk assessment do not require any changes to the project documentation.

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

### **Supporting information**

9. To support the compensation issue, the applicant has prepared a report setting out each element of Natural England's assessment of the risk of the compensation measures being ineffective and what further information it has provided to Natural England to increase the latter's confidence. The report is entitled '*Response to Department for Transport's 'Minded to Approve' Letter in Respect of Compensatory Measures*'. In particular, Natural England's letter of 11 October referred to above is appended as the last item of correspondence at annex 3.1 of the report (pages 117-123).

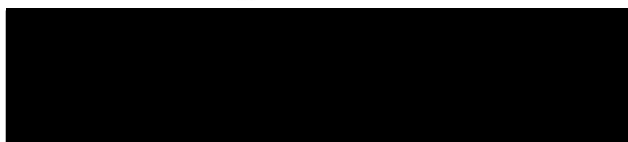


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10. To support the railway issue, the applicant has prepared a separate report setting out the progress that has been made since 28 August, in particular how the ORR was able to conclude that there was no reasonable alternative to providing level crossings, and how Network Rail and the applicant are now undergoing the 'network change' process to allow these. The report is entitled '*Response to Department for Transport's 'Minded to Approve' letter in Respect of Network Rail Matters and the Killingholme Branch Line*'. In particular the Network Rail statement of common ground is at appendix 1 to the report (page 12) and the letter from the ORR accepting that new level crossings can be created is at appendix 2 (pages 17-18).

11. We trust that this letter and the accompanying information is suitable for the conduct of the consultation and that the evidence they contain is sufficient for the Secretary of State to grant development consent for the project in due course.

Yours sincerely



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