

Head of TWA Orders Unit
General Counsel's Office
Department for Transport
Zone 1/18
Great Minster House
33 Horseferry Road
London
SW1P 4DR

16 May 2013

For the attention of Mr Robert Fox

Dear Sir

Able Humber Ports Ltd - Able Marine Energy Park - Proposal to build a quay and associated development on the south bank of the River Humber
Planning Inspectorate Reference: TR030001

Further to recent correspondence, I write to advise the Secretary of State on the Environment Agency's final position in respect of the above application by Able Humber Ports Ltd (AHPL).

We have done a significant amount of work to ensure the impacts of the proposed development on the environment are mitigated. To mitigate these risks we have asked for four legal agreements and, requirements in the Development Consent Order. The negotiation of the agreements has been a very lengthy process. As you are aware, we have already finalised the agreements relating to monitoring and salmon compensation. We sent copies of these to you on 19 April and 7 May 2013.

We received confirmation from AHPL yesterday that the two legal agreements in respect of flood defence works and maintenance are now agreed. We are executing these agreements today and sending them to AHPL's solicitors. I attach copies of these agreements at Appendix 1 and 2 for information.

These agreements bind the legal obligations to the land which AHPL currently owns within AMEP and provide for further agreements to be entered into in relation to land within the development which AHPL does not currently have an interest in to ensure the obligations will bind this land also.

The only outstanding issue (as outlined in our letter of 1 March 2013) that we would now reiterate to the Secretary of State is our opinion that the two legal agreements which relate to flood risk issues should be underwritten via a bond. This is because AHPL is a Jersey-based company. AHPL has refused

to provide a bond, but has offered to provide a parent company guarantee. However, such a guarantee would not be acceptable because the parent company is also Jersey-based and we would experience the same difficulties and increased costs trying to enforce the agreements, should AHPL not fulfil its obligations.

Although the issue of the bond is not one we have been able to agree with AHPL, I can confirm our objections on flood risk grounds can be treated as withdrawn once the legal agreements are completed.

In summary, the four legal agreements are now in a form that is acceptable to us. The Environment Agency and AHPL have already executed the salmon compensation and monitoring agreements and we expect that a completion date for these will be agreed shortly. The two flood defence agreements are being executed by us today. We will today send these to AHPL for urgent execution and completion. We will advise you immediately when the agreements have been completed in which case we will be able to confirm that all our objections should be treated as withdrawn.

Yours faithfully

Kate Halka
Environment, Planning and Engagement Manager
Northern Area, Anglian Region



Awarded to the Planning and Corporate Services
Department of Anglian Region, Northern Area

APPENDIX 1

Flood Defence Agreement Able Marine Energy Park

DATED

2013

ABLE HUMBER PORTS LIMITED

AND

ENVIRONMENT AGENCY

A G R E E M E N T

Relating to Flood Defences

at Able Marine Energy Park

Environment Agency

Anglian Region

Kingfisher House

Orton Goldhay

Peterborough PE2 5ZR

Tel No. 01733 464459

BETWEEN

- 1) **ABLE HUMBER PORTS LIMITED**, company number 107029, registered at Ogier House, The Esplanade, St Helier, Jersey, JE4 9WG ("ABLE" which expression shall include its successors in title);
- 2) **ENVIRONMENT AGENCY** whose principal office is at Horizon House, Deanery Road, Bristol, BS1 5AH and whose address for service is Waterside House, Waterside North, Lincoln LN2 5HA ("EA" which expression shall include any statutory successor to its Functions);

Together referred to as the "Parties"

WHEREAS

- A. ABLE is the registered proprietor under title number HS287158, HS319024, HS36151, HS365130, HS282282, HS362150 of AMEP
- B. ABLE wishes to construct a marine energy park on AMEP with a new Quay
- C. ABLE has made an application to the National Infrastructure Directorate of the Planning Inspectorate for a development consent order to permit these works
- D. The EA maintains the existing flood defences on the river frontage of AMEP shown A-B-C-D-E on Plan 1 and requires ABLE to improve such section of flood defences between C and D on Plan 1 where the Quay is being constructed to the Standard of Protection.
- E. The EA requires ABLE to maintain the Quay Strategic Flood Defences and to improve the adjacent defences to provide the required Standard of Protection
- F. The EA requires access to AMEP for the purposes of maintaining the flood defences to the south of AMEP between points D and E.
- G. The EA wishes to ensure that in the event that the Development proceeds the Quay Strategic Flood Defences are constructed and that the flood defences to the AMEP are maintained to an appropriate standard
- H. The EA wishes to ensure in the event that the Development Consent is granted that all persons owning a legal estate in Cherry Cobb Sands have entered into an agreement under s41 of the Yorkshire Water Act 1986 in the form of an agreement of even date prior to commencement of the Development
- I. The EA wishes to ensure in the event that the Development Consent is granted that all persons owning a legal estate in the Quay (excepting the Crown Estate Commissioners) have entered

into an agreement under s30 of the Anglian Water Act 1977 in the form of this Agreement prior to commencement of the Development

- J. The Parties have agreed to enter into this Agreement to seek to address the EA's concerns in relation to the effects of the Development on flood risk and to act reasonably in the discharge of their obligations under the Agreement.

NOW THIS DEED IS AGREED as follows:-

1. In this Agreement:

- 1.1 The following expressions shall, unless the context otherwise requires, have the following meanings:-

AMEP	the land shown edged red on Plan 1
Agreement	This Deed
Business Day	Monday to Friday of each week excluding bank holidays
Cherry Cobb Sands	The land edged red on the CCS Plan
Claim	The submission or the notification of an intention to make a claim against the EA which may reasonably be considered likely to give rise to any indemnity liability under clause 8
Completion	The date on which the Quay reaches substantial completion
Consent	Any consent granted by the EA pursuant to its Functions
Development	The development described in the application by ABLE to the Planning Inspectorate for a development consent order dated 19 th December 2011 as amended in the course of the examination of the application
Development Consent	A development consent order granted by the Secretary of State for Transport authorising the Development

Functions	The statutory duties, powers and obligations imposed upon or granted to the EA by the Water Resources Act 1991 the Environment Act 1995 and all other enabling legislation
Improvement Works	Installation of rock armour for a length of approximately 60 metres as shown on Plan 1 between points B and C at a 1:3.5 slope extending onto the foreshore as shown on Plan 2 to deliver the Standard of Protection.
Initial Construction Works	The initial works to provide the Quay Strategic Flood Defences
Land Drainage Consent	Any consent granted by the EA in connection with land drainage and flood defence pursuant to its Functions, including consents under the Water Resources Act 1991 and Land Drainage Byelaws made under that Act
Market Rent	The rent that the property would command on the open market with a willing landlord and tenant
Material Deterioration	Any deterioration in the Quay Strategic Flood Defences or the Improvement Works that results in those defences no longer providing the Standard of Protection
NELDB	North East Lindsey Internal Drainage Board
NLC	North Lincolnshire Council
Plan 1	Plan No AME-02027 J Showing Land at AMEP, Flood defence and Development into the Estuary
Plan 2	Plan No. AME-06065 B Section of Rock protection
Pumping Station	A pumping station to serve the Development and the wider catchment as shown in pale blue on Plan 1 to evacuate land drainage and surface water runoff on the occurrence of a Rainfall Event
Quay	The area of operational development into the Humber Estuary shown on Plan 1 shaded dark blue

Quay Strategic Flood Defences	Those elements of the Quay that comprise strategic flood defences (shown between points C and D on Plan 1)
Rainfall Event	A rainfall event with a 1% chance of occurring in any one year including allowance of 30% increase in peak rainfall intensity to account for climate change.
Short Tenancy	Any tenancy granted by ABLE to any tenant for a term of no more than 15 years at an open Market Rent of any part of AMEP. Such tenancy may be within or outside the provisions of Part II of the Landlord & Tenant Act 1954.
Standard of Protection	0.5% annual probability of sea flooding and allowing an overtopping rate not exceeding 2 litres per second per metre of structure length (this rate of overtopping during annual storm conditions as calculated using the Eurotop Design Manual "Wave Overtopping of Sea Defences and Related Structures: Assessment Manual" by Pullen T., Allsop, N.W.H., Bruce T., Kortenhaus A., Schutttrumpf H. & van der Meer, J. W. (2007) (or such other manual as the EA may reasonably substitute from time to time) taking into account Climate Change and using those parameters in use by the EA and which have been notified to ABLE in writing at ABLE's request.

1.2 The headings in this Agreement are for ease of reference only, and shall not affect its construction and reference to any 'Clause', 'Schedule' or 'Appendix' shall be references to clauses, schedules or appendices of this Agreement unless expressly stated to the contrary.

1.3 Words importing the singular shall include the plural and vice versa, words importing any gender include every gender and words importing persons include firms, companies and corporations and vice versa.

1.4 Any reference to an enactment includes a reference to it as amended (whether before or after the date of this Agreement) and to any other enactments which may, after the date of this Agreement, directly or indirectly replace it, with or without amendment.

1.5 Any acceptance, communication, consent, estimation, expression of satisfaction, notice, notification, provision, requirement, or similar expression by the EA or ABLE in connection with this Agreement will not be unreasonably withheld conditioned or delayed and shall be given in writing.

2. New Quay

2.1 In the event that ABLE commence development of the Quay, ABLE will carry out the Improvement Works in combination with the development of the Quay to provide the Standard of Protection as soon as practicable and in any event no later than Completion.

2.2 In the event that ABLE constructs the Quay, ABLE will construct the Quay in accordance with the provisions of the Development Consent.

2.3 ABLE shall carry out and proceed regularly, timely and diligently the Improvement Works and the performance of any other obligations it may have set out in this Agreement where there is no period already stated for the performance of the obligations.

2.4 ABLE shall give notice to the EA of Completion within ten Business Days of Completion

3. Flood Defence Maintenance

3.1 After completion of the Improvement Works ABLE at its own cost agrees to inspect, maintain and repair the Improvement Works (including the renewal or replacement of any part of the Improvement Works which is at the end of its life) to provide the Standard of Protection for a period of twenty years from the completion of the Improvement works.

3.2 After completion of the Quay ABLE at its own cost agrees to inspect, maintain and repair the Quay Strategic Flood Defences (including the renewal or replacement of any part of the Quay Strategic Flood Defences which is at the end of its life) to provide the Standard of Protection until such a point that the Quay is removed and replaced with an alternative flood defence meeting the Standard of Protection.

4. EA Access to the Site

4.1 ABLE shall permit the EA and all persons authorised by it to access AMEP with or without vehicles, machinery and equipment on the giving of reasonable notice (except in the case of emergency where no notice shall be required) to allow the EA to inspect the Quay Strategic Flood Defence and Improvement Works to comply with its Functions, its obligations in this Agreement, and to monitor compliance by ABLE with its obligations in this Agreement.

4.2 ABLE shall provide an access route to the flood defences to the south of AMEP as shown coloured Brown between points F and D on Plan 1 or other suitable route as shall be agreed from time to time and ABLE will keep the said access route available to a minimum width of four metres and shall allow the EA to use it with or without vehicles on the giving of reasonable notice (except in the case of an emergency when no notice shall be required) provided that the

EA shall be responsible to pay compensation for any damage caused in the course of the use of such access as provided in Schedule 21 of the Water Resources Act 1991.

4.3 For the avoidance of doubt nothing in this Clause shall restrict the EA's statutory powers of entry under the Water Resources Act 1991.

5. Pumping Station

5.1 In the event that either NELDB or NLC have not constructed the Pumping Station prior to commencement of construction of the Quay then ABLE shall construct the Pumping Station

5.2 No construction of the Pumping Station by ABLE pursuant to clause 5.1 shall commence until an operating regime for the Pumping Station has been agreed (all parties acting reasonably) between the EA and ABLE or NELDB or NLC as appropriate.

5.3 In the event of any dispute between the parties mentioned in clause 5.2 as to the form or content of the operating regime to be agreed under that clause then the dispute shall be referred to the determination of an independent expert (who shall act and be deemed to act as an expert and not as an arbitrator) to be appointed as the Parties may agree in writing or failing such agreement to be nominated on the application of either of the Parties by the President for the time being of the Institution of Civil Engineers and the decision of the expert so appointed or nominated shall be final and binding on the Parties and the fees payable to any such expert in respect of any decision made by him shall be borne and paid by the Parties in such shares and in such manner as he in his absolute discretion shall determine.

5.4 The operating regime pursuant to Clause 5.2 shall be implemented prior to any obstruction by the Quay of the NELDB outfall shown marked G on plan 1.

5.5 In the event that ABLE constructs the pumping station ABLE will make provision for a switched connection for a generator to be connected to ensure that there is no interruption in operation in the event of power failure at the Pumping Station.

5.6 If the EA confirms in writing that ABLE is released from the need to comply with Clauses 5.1, 5.2, 5.3 and 5.5 ABLE shall no longer be required to comply with these Clauses

5.7 For the avoidance of doubt nothing in 5.1 to 5.6 above shall release ABLE from the need to obtain consent under the Anglian Region Land Drainage and Sea Defence Byelaws for the works to construct the Pumping Station and any associated works.

5.8 If NELDB or NLC do not maintain the Pumping Station then ABLE shall (subject to all necessary rights having first been granted to enable ABLE to discharge the obligation in question) maintain the pumping station pumps, channel, screens, and any other ancillary apparatus necessary for the efficient operation of the Pumping Station to ensure evacuation of the flows arising from the occurrence of a Rainfall Event.

6. Initial Condition Survey

- 6.1 ABLE shall at its own cost engage the services of a suitably experienced chartered civil engineer to carry out an Initial Condition Survey within 21 days of the completion of the construction of the Quay and the Improvement Works
- 6.2 The Initial Condition Survey pursuant to clause 6.1 shall report on:
- 6.2.1 The height of the Quay Strategic Flood Defences and the Improvement Works in metres above Ordnance Datum (Newlyn);
 - 6.2.2 The structural condition of the Quay Strategic Flood Defences and the Improvement Works;
 - 6.2.3 A statement as to the standard of compliance of the Quay Strategic Flood Defences and the Improvement Works with the Standard of Protection;
 - 6.2.4 Recommendations for any works to repair or alter the Quay Strategic Flood Defences and/or the Improvement Works such that they give the Standard of Protection; and.
 - 6.2.5 A photographic record of the inspection of the Quay Strategic Flood Defences and the Improvement Works, highlighting the key features of the Quay Strategic Flood Defences and the Improvement Works.
- 6.3 Within 28 days of the completion of the Initial Condition Survey ABLE shall, taking into account any recommendations made in the Initial Condition Survey, produce a Work Schedule and shall send a copy to the EA's Area Manager at Waterside House, Waterside North, Lincoln LN2 5HA (or such other person and/or address as the EA shall notify to ABLE in writing).
- 6.4 The EA may, acting reasonably and within 28 days (or where an application for Land Drainage Consent is made to the EA in respect of the Maintenance Schedule, whatever statutory period for determination applies in respect of that consent ("the alternative period")) of receipt of the Work Schedule, require ABLE to carry out additional works or to amend the method or timing of any works recommended in the Work Schedule for the purpose of ensuring that the Standard of Protection (the Work Schedule together with any such additions or amendments the (" the Amended Work Schedule")) is put in place.
- 6.5 Upon receipt of the Amended Work Schedule from the EA under clause 6.4 ABLE shall undertake at its cost all works stated in and in accordance with the Amended Work Schedule.
- 6.6 If ABLE has not received an Amended Work Schedule within the 28 day period or the alternative period, or as soon as the EA notifies ABLE of its approval of the Work Schedule, ABLE shall undertake the works set out in and in accordance with the Work Schedule to the reasonable satisfaction of the EA.

7. Annual Condition Surveys

7.1 On each anniversary of the date which is the later of:

a)_the completion of the Quay; and

b) the completion of the Improvement Works;

nominated representatives of ABLE will carry out a visual survey of the Quay Strategic Flood Defences and the Improvement Works with the objective of identifying any Material Deteriorations in the condition of the defences compared to that described in the Initial Condition Survey.

7.2 Should the EA reasonably believe that one or more Material Deteriorations has occurred to the condition of the Quay Strategic Flood Defences, they may require ABLE to instruct a suitably experienced chartered civil engineer to carry out a Deterioration Survey (the cost of such survey to be borne by ABLE).

7.3 A Deterioration Survey pursuant to 7.2 shall provide:

7.3.1 A statement as to whether any Material Deterioration in the Quay Strategic Flood Defences and/or the Improvement Works has occurred;

7.3.2 A statement as to the structural condition of the Quay Strategic Flood Defences and the Improvement Works;

7.3.3 A statement as to the standard of compliance of the Quay Strategic Flood Defences and the Improvement Works with the Standard of Protection;

7.3.4 Recommendations for any works to inspect, maintain or repair (including the renewal or replacement of any part of the Quay Strategic Flood Defences and/or the Improvement Works which is at the end of its life) the Quay Strategic Flood Defences and the Improvement Works to ensure that they continue to give the Standard of Protection;

7.4 Able shall as soon as reasonably practicable following completion of any Deterioration Survey send a copy to the EA's Area Manager at Waterside House, Waterside North, Lincoln LN2 5HA (or such other person and/or address as the EA shall notify to ABLE in writing).

7.5 Within 28 days of the completion of the Deterioration Survey ABLE shall, taking into account any recommendations made in the Deterioration Survey, produce a Maintenance Schedule and shall send a copy to the EA's Area Manager at Waterside House, Waterside North, Lincoln LN2 5HA (or such other person and/or address as the EA shall notify to ABLE in writing).

7.6 The EA may, acting reasonably and within 28 days (or where an application for Land Drainage Consent is made to the EA in respect of the Maintenance Schedule, whatever statutory period for determination applies in respect of that consent ("the statutory period") of receipt of the

Maintenance Schedule, require ABLE to carry out additional works or to amend the method or timing of any works recommended in the Maintenance Schedule for the purpose of ensuring that the Standard of Protection (the Maintenance Schedule together with any such additions or amendments shall be the "Amended Maintenance Schedule") is put in place.

- 7.7 Upon receipt of the Amended Maintenance Schedule from the EA under clause 7.6 ABLE shall undertake at its cost all works stated in and in accordance with the Amended Maintenance Schedule.
- 7.8 If ABLE has not received an Amended Maintenance Schedule within the 28 day period or the statutory period, or as soon as the EA notifies ABLE of its approval of the Maintenance Schedule, ABLE shall undertake the works set out in and in accordance with the Maintenance Schedule to the reasonable satisfaction of the EA.
- 7.9 Able shall comply with the requirements of clauses 7.1 to 7.8 in perpetuity in respect of the Quay Strategic Flood Defences and for twenty years (from the completion of the Improvement Works) in respect of the Improvement Works

8. Indemnity

- 8.1 Subject to paragraphs 8.2-8.3 ABLE agrees to fully and completely release and indemnify and keep indemnified the EA from and against all actions suits claims charges costs expenses damages and demands and any other proper and enforceable liabilities whatsoever arising out of or in connection with the implementation of this Agreement and/or the maintenance, repair, improvement and replacement of the Quay and the Quay Strategic Flood Defences and each and every part thereof and for avoidance of doubt, this indemnity extends to any death or personal injury arising out of or in connection with this Agreement.
- 8.2 This indemnity shall not cover the EA to the extent that a claim under it results from the EA's negligence or wilful misconduct.
- 8.3 For the avoidance of doubt this indemnity shall not cover the EA when a liability arises concerning the Quay, the Quay Strategic Flood Defences or the Improvement Works and they meet the Standard of Protection. If any third party makes a Claim the EA shall (subject to ABLE meeting the EA's reasonable costs in complying with the following provisions):
- 8.3.1 As soon as reasonably practicable and in any event within two Business Days give written notice of the Claim to ABLE specifying the nature of the Claim in reasonable detail and passing on copies of all information received.
- 8.3.2 Not make any admission of liability agreement or compromise in relation to the Claim without the prior written consent of ABLE provided that the EA may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to ABLE but without being obliged to obtain ABLE's consent) if the EA reasonably believes that failure to settle the Claim would be prejudicial to it in any

material respect. ABLE will not be liable for any liability for any monies paid without ABLE's written consent such consent not to be unreasonably delayed or withheld.

8.3.3 Give ABLE access at reasonable times (on reasonable prior notice) to its officers, employees, agents, representatives or advisers and to any relevant assets, accounts, documents and records within the power or control of the EA that ABLE might reasonably require so as to enable ABLE and their respective professional advisers to examine them (and to take copies at ABLE's reasonable expense) for the purpose of assessing the Claim (subject to the EA's right to withhold information in compliance with its obligations under the Data Protection Act 1998 and for reasons of national security) and.

8.3.4 Subject to ABLE providing security to the EA's reasonable satisfaction against the relevant Claim, and any related liability costs, expenses, damages or losses which may be incurred take such action as ABLE may reasonably request to avoid dispute, compromise or defend the Claim.

8.4 Nothing in this clause shall restrict or limit the EA's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a Claim.

9. Commencement of Development

9.1 ABLE will not commence the Development until

(i) all persons owning a legal estate in the Quay other than the Crown Estate Commissioners have entered into obligations in an agreement with the EA under s30 Anglian Water Authority Act 1977 in the same form as the obligations set out in this Agreement

(ii) all persons owning a legal estate in Cherry Cobb Sands have entered into obligations in an agreement with the EA under s41 of the Yorkshire Water Authority Act 1986 in the same form as the obligations set out in an agreement of even date between ABLE and the EA .

10. Breach of Agreement

10.1 If ABLE breaches any of its obligations in this Agreement the EA shall be entitled to serve notice on ABLE specifying:-

10.1.1 The breach alleged;

10.1.2 The action considered reasonably necessary by the EA to remedy the effect of the breach;

10.1.3 A reasonable time within which these actions shall be carried out.

10.2 Except in cases of genuine emergency, subject to the resolution in accordance with the terms of this Agreement of any dispute about the reasonableness of any matters raised in a notice under clause 10.1, if the EA serves a notice under clause 10.1 above and ABLE fails to carry out the

specified action within the specified time, the EA shall be entitled and have power to enter AMEP and carry out such works as are necessary to remedy the effect of the breach and may recover its reasonable and proper expenses incurred in so doing from ABLE Provided That the EA shall cause as little damage and disturbance to AMEP as necessary and shall make good any damage caused without reasonable delay.

10.3 The provisions of this clause are without prejudice to any other remedies that may be open to the EA by virtue of this Agreement or through the exercise of the Functions.

11. **Conditionality and Term**

This Agreement is conditional upon Development Consent being granted and ABLE commencing the construction of the Quay.

12. **Waiver**

No condoning, excusing or overlooking by or on behalf of the EA of any breach of the covenants, provisions, conditions, restrictions or stipulations contained in this Agreement shall take effect or be binding upon the EA unless expressed in writing under the authority of the EA and any waiver so given shall extend only to the particular breach so raised and shall not limit or affect any rights with respect to any other or future breach.

13. **Costs**

ABLE will pay the EA's reasonable and proper legal fees in connection with and incidental to the preparation and completion of this Agreement plus VAT upon completion of this Agreement.

14. **Local Legislation**

14.1 This Agreement is made under Section 30 of the Anglian Water Act 1977 (the terms of which are set out in the Schedule to this Agreement) in connection with the land in which ABLE owns a legal estate which forms part of AMEP and shall be binding (without any limit of time) upon ABLE and all persons deriving title to AMEP by, through or under it save that the EA agrees that:

14.1.1 none of the obligations set out in this Agreement shall apply to any person who holds an interest in AMEP solely by virtue of a Short Tenancy

14.1.2 that it will not enforce any of the obligations set out in this Agreement against a person who holds an interest in AMEP solely by virtue of a Short Tenancy.

and it will on request from ABLE provide a letter of comfort in the form set out at Schedule 2 to this Agreement

14.2 The EA shall make an application to the local land charges registration authority for registration of this Agreement as a local land charge pursuant to the said Section 30.

15. **Non Conflict**

This Agreement is made without prejudice to any Land Drainage Consent that may be required and without prejudice to the generality of the foregoing ABLE acknowledges that the works required by this Agreement may require Consent from the EA or from other bodies independent of the terms of this Agreement and shall be responsible for obtaining the same prior to commencing any such works.

16. **Entire Agreement**

Each party acknowledges that in entering into this Agreement it has not relied on and shall have no right or remedy in respect of any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud.

17. **Invalidity**

If any provision of this Agreement is held by any court, tribunal or administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect, then that provision will, to the extent required, be severed from this Agreement and will be ineffective without, as far as is possible, modifying any other clause or part of this Agreement which will remain in full force and effect.

18. **Notices**

18.1 Any approval, communication, consent, demand, estimation, expression of satisfaction, notice, notification, provision, requirement, withholding of approval or similar expression must be in writing and may be given by hand or sent by first class pre-paid recorded delivery post and shall be deemed to have been duly served:

18.1.1 If delivered by hand, when left at the proper address for service;

18.1.2 If given or made by prepaid recorded delivery first class post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays);

Provided that, where in the case of delivery by hand, such delivery occurs either after 4.00 p.m. on a Business Day, or on a day other than a Business Day, service shall be deemed to occur at 9.00 a.m. on the next following Business Day (such times being local time at the address of the recipient).

18.2 Any approval, communication, consent, demand, estimation, expression of satisfaction, notice, notification, provision, requirement, withholding of approval or similar expression shall be addressed to:

18.2.1 In the case of the EA the EA's Area Manager at Waterside House, Waterside North, Lincoln LN2 5HA (or such other person and/or address as the EA shall notify to ABLE in writing)

18.2.2 In the case of ABLE at the address stated at the head of this Agreement (with a copy to Able UK Ltd. Able House, Billingham, TS23 1PX) or such other address or addresses as may be notified to the EA in writing from time to time.

19. Dispute Resolution

19.1 The parties hereby undertake to act reasonably at all times in implementation of their respective duties and obligations under this Agreement.

19.2 Without prejudice to any other provision of this Agreement, the Parties must attempt to resolve any lack of agreement, dispute or difference between them by discussion and agreement.

19.3 Any dispute or difference arising between the Parties as to their respective rights, duties and obligations under this Agreement or as to any matter arising out of or in connection with the subject matter of this Agreement which is not capable of resolution pursuant to clause 18.2 is, in the first instance, to be referred to a representative of each Party, each of whom holding a senior management position. Those representatives are to meet as soon as possible and endeavour in good faith to resolve any dispute or difference amicably.

19.4 Except where clause 5.3 applies, any dispute or difference arising between the Parties as to their respective rights, duties and obligations under this Agreement or as to any other matters arising out of or in connection with the subject matter of this Agreement (other than a difference as to meaning or construction) which cannot be resolved under clause 18.3 is to be referred to and settled by arbitration in the manner provided by article 59 (Arbitration) of the draft Order.

20. Contracts (Rights Of Third Parties) Act 1999

The Parties do not intend that any of the terms of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

21. Jurisdiction

The formation, construction, performance, validity and all aspects whatsoever of this Agreement shall be governed by English Law and the Parties hereby agree to submit to the exclusive jurisdiction of the English Courts.

22. Representations and Agreement

22.1 The Parties warrant that they have not been induced to enter into this Agreement by any representation of any other Party other than representations reduced to writing in this Agreement.

22.2 Each Party warrants that this Agreement constitutes the whole of the Agreement between the Parties relating to the subject matter of this Agreement and supersedes all prior agreements and understandings relating thereto.

23. Variation and Amendment

No variation or amendment of this Agreement shall bind any Party unless made in writing and agreed to in writing by duly authorised officers of the Parties.

24. Force Majeure

If the performance of this Agreement is rendered not reasonably practicable by any cause of event beyond the reasonable control of any of the Parties further performance of the Agreement shall be suspended until such time as the cause or event rendering performance not reasonably practicable shall no longer be present or shall have been remedied and thereupon this Agreement shall again take full effect.

25. Headings

The headings in this Agreement are for reference purposes only and shall not be deemed to be any indication of the meaning of the clauses to which they relate.

IN WITNESS of which ABLE and the EA have executed this Agreement as a Deed on the date first mentioned.

SCHEDULE ONE

SECTION 30 ANGLIAN WATER AUTHORITY ACT 1977

(as amended by Section 37 (2) of that Act)

30. (1) (a) Every undertaking given to the Authority by the owner of a legal estate in land (hereinafter referred to in this section as "the owner") and every agreement made between the Authority and the owner, being an undertaking or agreement
- (i) given or made in connection with the land; and
 - (ii) expressed to be given or made in pursuance of this section; and
 - (iii) which defines that land as land the legal estate in which at the date of execution is vested in the owner;
- shall be binding (without any limit of time) upon the owner and all persons deriving title by, through or under him.
- (b) An undertaking or agreement given or made in pursuance of this section shall be a local land charge.
- (2) Without prejudice to the generality of subsection (1) of this section it is hereby declared that an undertaking or agreement made binding thereby may consist of or include provision ----
- (a) for covenants by the owner to carry out any works or do anything on or in relation to the land in question (including the making of any payment of a sum or sums of money);
 - (b) whereby the owner for valuable consideration agrees not to exercise a right conferred by any enactment.
- (3) Any person against whom such an undertaking or agreement is enforceable shall be entitled to require from the Authority a copy thereof.

SCHEDULE TWO

Letter of comfort

To whom it may concern

By an Agreement dated the [] the Environment Agency and AHPL agreed that AHPL and all persons deriving title through or under it would construct and maintain flood defences at Able Marine Energy Park. It is not the intention that the obligations extend to any person who takes a lease, at market rent, of any part of Able Marine Energy Park for no more 15 years (a short tenancy) and Clause [] specifically excludes those holding an interest by virtue of a short tenancy in Able Marine Energy Park from complying with the obligations.

For the avoidance of doubt it is confirmed that the Environment Agency will not seek to enforce any potential breach of any local land charge registered over Able Marine Energy Park nor the obligations set out in [] against the Crown Estate Commissioners or any person in its capacity as tenant by virtue of a short tenancy.

EXECUTED as a **DEED** by)

ABLE HUMBER PORTS LIMITED)

by affixing the common)

seal in the presence of:

SIGNED and **DELIVERED** as a **DEED**)

on behalf of the above named)

ENVIRONMENT AGENCY by its attorney)

ROBIN GERALD BAILEY Solicitor)

Anglian Region acting pursuant to a)

Power of Attorney dated 23 May 2012)

in the presence of:-

Witness Signature.....

Witness Name.....

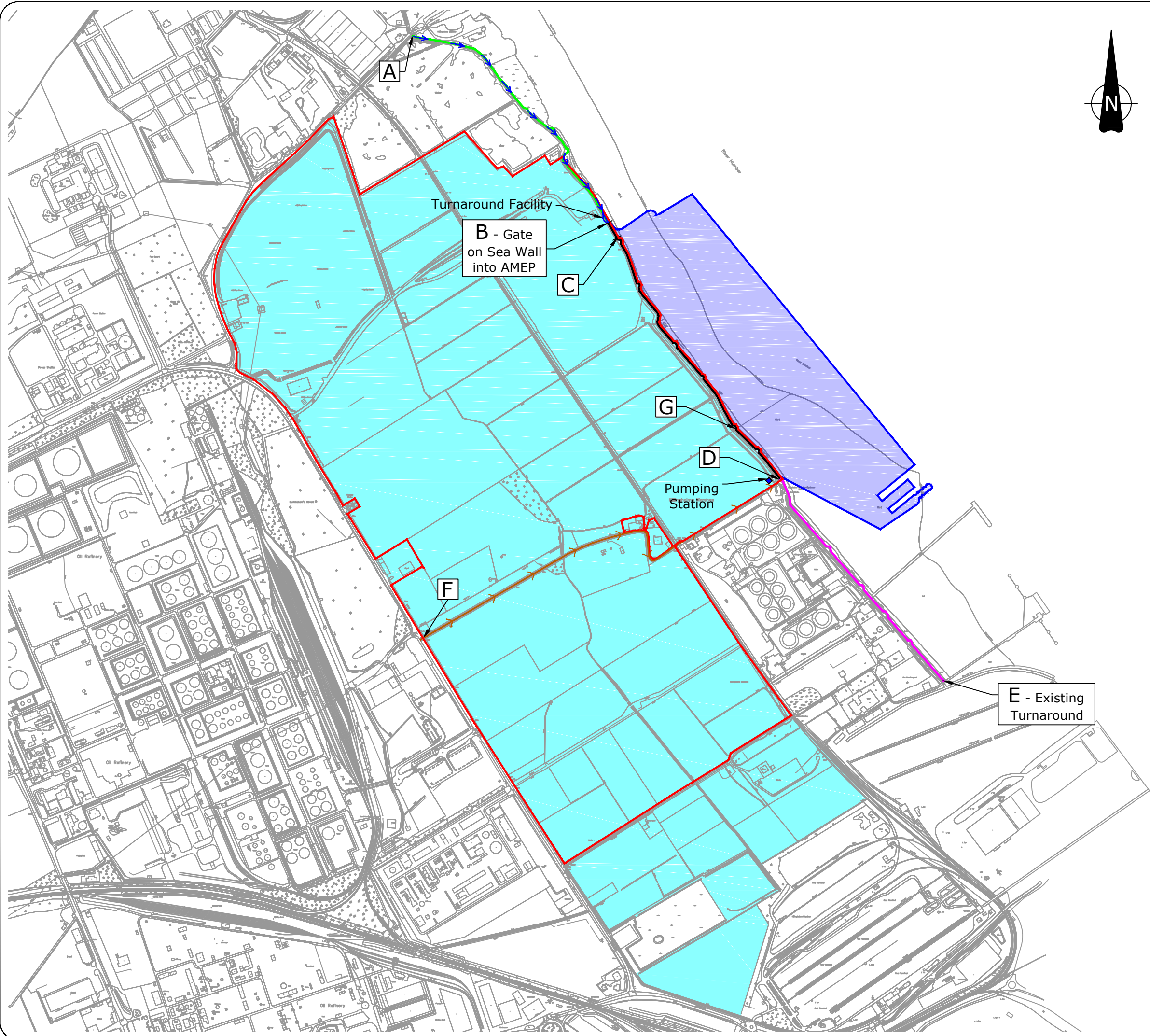
Environment Agency

Kingfisher House

Orton Goldhay

Peterborough PE2 5ZR

Witness Occupation.....



KEY

- AMEP Quay
- Operational Development Landward
- A to B Existing Access Route to Northern Sea Defence →
- B to C 60m Improvement Works
- C to D Strategic Flood Defence
- D to E Sea Defence →
- F to D Access Route to Southern Sea Defence →
- G Surface Water Drainage Outfall
- Killingholme Marshes Catchment Area

Rev	Date	Comments	Drw	Chk	App
J	02/05/13	Boundary marked clearly	RK		
H	12/04/13	Drainage Outfall Located	FM		
G	06/02/13	Turnaround Facil. Amended	JH	PMS	PMS
F	04/02/13	Accesses Amended	JH	PMS	PMS
E	19/11/12	Updated to EA comments	FM	RC	RC
D	09/11/12	Surface Outfall Added	RK	PMS	PMS
C	23/10/12	Pumping Station Added	JH	PMS	PMS
B	26/09/12	Access Added	JH	PMS	PMS
A	24/09/12	Preliminary Issue	RK	PMS	PMS

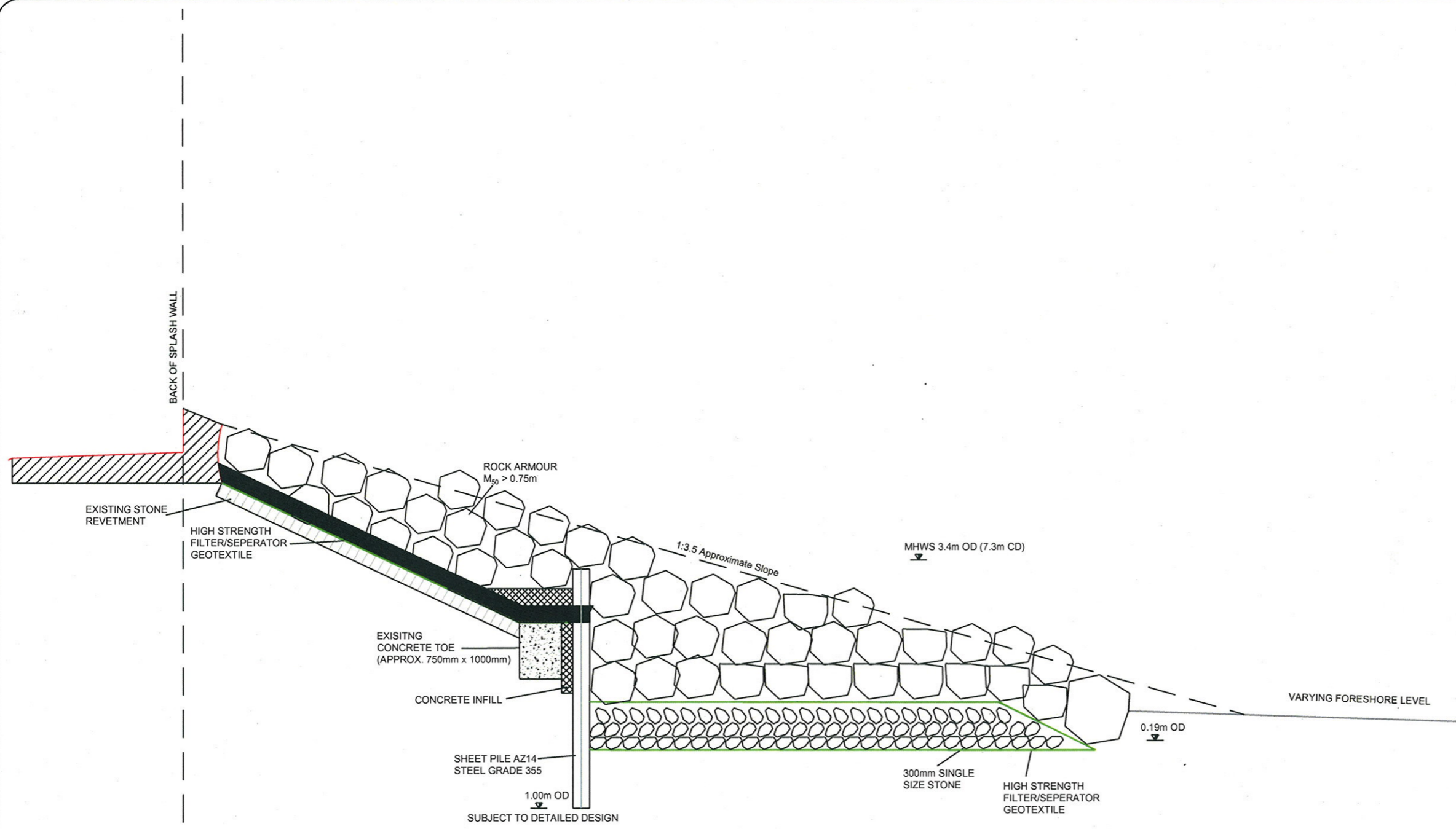
Able UK Ltd
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Fax: +44(0)1642 655655
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www.ableuk.com

Project:	ABLE Marine Energy Park
Client:	Environment Agency
Title:	AMEP Flood Risk Agreement

PRELIMINARY

Scale:	Drawn	Checked	Approved
1:12,500@A3	F Maddison	R Cram	R Cram
Date	24/09/2012	24/09/2012	24/09/2012
Drawing No.	AME - 02027		Revision: J



KEY

Rev	Date	Comments	Drw	Chk	App
B	07/12/11	Splash Wall Removed	JH	RC	RC
A	03/11/11	Preliminary Issue	JH	RC	RC

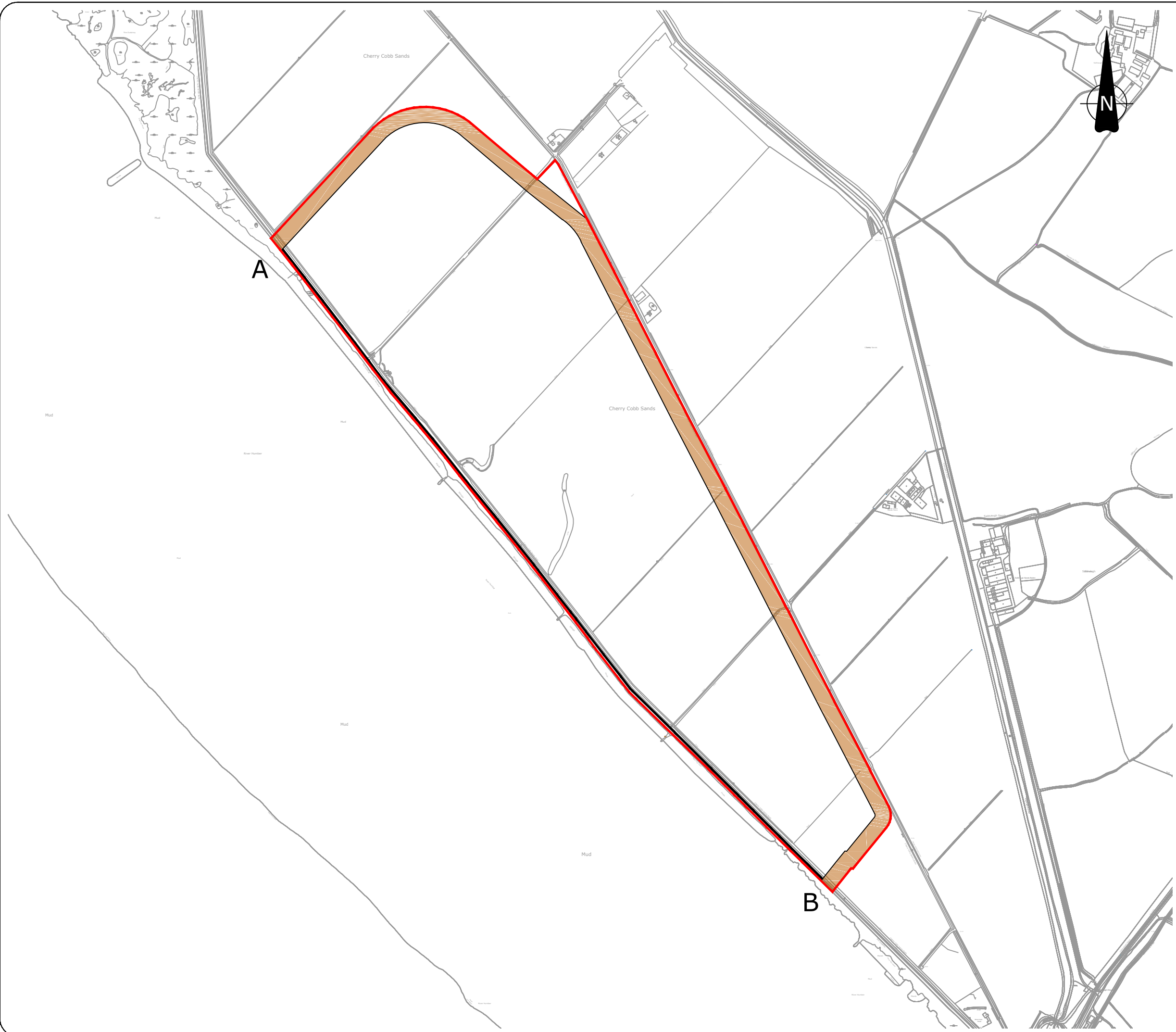


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 email: info@ableuk.com
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Project:	ABLE Marine Energy Park
Client:	ABLE UK Ltd
Title:	Indicative Rock Armour Protection to Existing Northern Defences

Scale:	1:80@A3	Drawn:	J Harris	Checked:	R Cram	Approved:	R Cram	
Date	03/11/2011	Date	03/11/2011	Date	03/11/2011			
Drawing No.	AME - 06065	Revision:	B					



KEY

- Operational Development
- Existing Flood Defences
- Proposed Flood Embankment

C	19/11/12	Amended to Comments	RK	PMS	PMS
B	15/11/12	New Embankment Design	RK	NE	PMS
A	24/09/12	Preliminary Issue	RK	PMS	PMS
Rev	Date	Comments	Drw	Chk	App

 www.ableuk.com	Able UK Ltd Able House Billingham Teesside TS23 1PX United Kingdom	Tel: +44(0)1642 806080 Fax: +44(0)1642 655655 info@ableuk.com www.ableuk.com
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Project:	Cherry Cobb Sands Compensation Site
Client:	Environment Agency
Title:	Flood Defence Plan

PRELIMINARY			
Scale:	Drawn	Checked	Approved
1:1,250@A3	R Keirl	PMS	PMS
Date	24/09/2012	24/09/2012	24/09/2012
Drawing No.	CCS - 02001		Revision: C

APPENDIX 2

Flood Defence Agreement Cherry Cobb Sands

DATED

2013

ABLE HUMBER PORTS LIMITED

AND

ENVIRONMENT AGENCY

A G R E E M E N T

Relating to Flood Defences

at Cherry Cobb Sands

Environment Agency

Anglian Region

Kingfisher House

Orton Goldhay

Peterborough

PE2 5ZR

Tel No. 01733 464459

BETWEEN

- 1) **ABLE HUMBER PORTS LIMITED**, company number 107029, registered at Ogier House, The Esplanade, St Helier, Jersey, JE4 9WG (“ABLE” which expression shall include its successors in title);
- 2) **ENVIRONMENT AGENCY** whose principal office is at Horizon House, Deanery Road, Bristol, BS1 5QH and whose address for service is Coverdale House, Amy Johnson Way, Clifton Moor, York YO30 4GZ (“EA” which expression shall include any statutory successor to its Functions);

Together referred to as the “Parties”

WHEREAS

- A. ABLE intends to acquire Cherry Cobb Sands
- B ABLE wishes to construct a compensatory habitat on Cherry Cobb Sands by creating a breach in the Existing Flood Defences and constructing the New Flood Defences
- C The EA accepts that in order to construct and operate the compensatory habitat a breach in the Existing Flood Defences will be required
- D ABLE has made an application to the National Infrastructure Directorate of the Planning Inspectorate for a Development Consent Order to permit these works
- E The EA wishes to ensure that in the event that the Development proceeds the New Flood Defences are constructed and maintained to an appropriate standard
- F By an agreement of even date with this Agreement ABLE has agreed that in the event that the Development Consent Order is granted it will not commence the Development until all persons owning a legal estate in Cherry Cobb Sands have entered into an agreement under s41 of the Yorkshire Water Authority Act 1986 (a copy of which is attached to this Agreement) in the form of this Agreement

G The Parties have agreed to enter into this Agreement to seek to address the EA's concerns in relation to the effects of the Development on flood risk and to act reasonably in the discharge of their obligations under this Agreement.

NOW THIS DEED IS AGREED as follows:-

1. In this Agreement:

1.1 The following expressions shall, unless the context otherwise requires, have the following meanings:-

Agreed Defence Level A flood defence designed to a height equivalent to 7.5 metres Above Ordnance Datum (Newlyn) where the defence is subject to direct wave action and 7.0 metres Above Ordnance Datum (Newlyn) elsewhere which is in at least Grade 2 condition (i.e. in 'good condition') according to the EA's condition assessment criteria or any subsequent, equivalent methodology

Agreement This Deed

Business Day Monday to Friday of each week excluding bank holidays

Cherry Cobb Sands The land on the north bank of the River Humber edged red on the Plan

Claim The submission or the notification of an intention to make a claim against the EA which may reasonably be considered likely to give rise to any indemnity liability under clause 12

Commencement Date The date at the head of this Agreement

Consent Any consent granted by the EA pursuant to its Functions

Development	The development described on the application by ABLE to the Planning Inspectorate for a development consent order dated 19 December 2011 as amended in the course of examination of the application
Development Consent	Any development consent order granted by the Secretary of State for Transport authorising the development
Draft Order	The draft development consent order for the Able Marine Energy Park as submitted to the National Infrastructure Directorate of the Planning Inspectorate by ABLE on 19 December 2011
Existing Flood Defence	The existing flood defence on Cherry Cobb Sands shown indicatively coloured black on the Plan
Functions	The statutory duties, powers and obligations imposed upon or granted to the EA by the Water Resources Act 1991 the Environment Act 1995 and all other enabling legislation
Initial Construction Works	The works to provide the New Flood Defence
Land Drainage Consent	Any consent granted by the EA in connection with land drainage and flood defence pursuant to its Functions, including consents under the Water Resources Act 1991 and Land Drainage Byelaws made under that Act
Material Deterioration	Any deterioration of the New Flood Defence that results in it no longer providing the Agreed Defence Level
New Flood Defence	The new flood defence on the North bank of the Humber shown indicatively coloured brown on the Plan
Plan	The plan of the Operational Development at Cherry Cobb Sands with reference CCS – 02001 E

Works Schedule A statement of the overall sequence in which the Initial Construction Works are to be designed and carried out which shall include detailed drawings, an estimate of the amount of time to be spent in carrying out and completing the various parts of the Initial Construction Works and the dates and times that the Initial Construction Works shall be undertaken

1.2 The headings in this Agreement are for ease of reference only, and shall not affect its construction and reference to any 'Clause', 'Schedule' or 'Appendix' shall be references to clauses, schedules or appendices of this Agreement unless expressly stated to the contrary.

1.3 Words importing the singular shall include the plural and vice versa, words importing any gender include every gender and words importing persons include firms, companies and corporations and vice versa.

1.4 Any reference to an enactment includes a reference to it as amended (whether before or after the date of this agreement) and to any other enactments which may, after the date of this Agreement, directly or indirectly replace it, with or without amendment

1.5 Any acceptance, communication, consent, estimation, expression of satisfaction, notice, notification, provision, requirement, or similar expression by the EA or ABLE in connection with this Agreement will not be unreasonably withheld conditioned or delayed and shall be given in writing.

Cherry Cobb Sands

2.1 The Existing Flood Defence shall remain in place until:-

- 2.1.1 ABLE has completed construction of the New Flood Defence in accordance with the Development Consent Order and to a specification that provides the Agreed Defence Level to Cherry Cobb Sands; and
 - 2.1.2 ABLE has undertaken the Initial Condition Survey in accordance with clauses 4.1 to 4.6 and the EA has confirmed that it is satisfied with the condition of the New Flood Defence.
- 2.2 ABLE shall not alter, remove or make any breach in the Existing Flood Defence without the written consent of the EA not to be unreasonably withheld or delayed, with any dispute as to reasonableness of the EA withholding a consent to be resolved pursuant to clause 16 of this Agreement prior to any breach of the Existing Flood Defence being made.
- 2.3 ABLE at its own cost agrees to inspect, maintain and repair that part of the Existing Flood Defence between points A and B on the Plan to its current height and specification to provide Cherry Cobb Sands at all times with storm and wave protection to the reasonable satisfaction of the EA.
- 2.4 ABLE shall as soon as reasonably practicable (but no later than 28 days prior to the intended commencement of the Initial Construction Works) submit to the EA for its approval the Initial Construction Works Programme.
- 2.5 Following receipt of the Initial Construction Works Programme in accordance with clause 2.4 the EA shall within 28 days (or where an application for Land Drainage Consent is made to the EA in respect of the Initial Construction Works Programme, whatever statutory period for determination applies in respect of that consent (“the alternative period”)) either approve or withhold its approval.
- 2.6 If the EA reasonably decides to withhold its approval for the Initial Construction Works Programme it shall, at the same time as confirming its withholding of approval under clause 2.5, submit to ABLE its written reasonable reasons for its withholding of

approval and ABLE shall re-design the Initial Construction Works Programme taking into account the EA's reasons for withholding.

- 2.7 Upon the EA's approval of the Initial Construction Works Programme or following the expiry of either the 28 day period or the alternative period referred to in clause 2.5 above without any response from the EA, ABLE shall at its own cost carry out the Initial Construction Works in accordance with the Initial Construction Works Programme subject to any Consent for the Initial Construction Works.
- 2.8 ABLE shall give notice to the EA of the date of substantial completion of the New Flood Defence within ten Business Days of that substantial completion.

Maintenance of the New Flood Defence

- 3.1 ABLE at its own cost agrees to inspect, maintain and repair (including the renewal or replacement of any part of the New Flood Defence which is at the end of its life) the New Flood Defence to provide Cherry Cobb Sands at all times with the Agreed Defence Level for one hundred years from the substantial completion of the New Flood Defence to the reasonable satisfaction of the EA in accordance with the terms of this Agreement.
- 3.2 Otherwise than in accordance with the provisions of this Agreement ABLE shall not alter or remove the New Flood Defence (once constructed) or any part without the prior written consent of the EA, not to be unreasonably withheld or delayed with any dispute as to the reasonableness of the EA withholding a consent to be resolved pursuant to Clause 16 prior to any alteration or removal of the New Flood Defence or part thereof.

Initial Condition Survey

- 4.1 ABLE shall at its own cost engage the services of a suitably experienced chartered civil engineer to carry out an Initial Condition Survey of the New Flood Defence within 21 days of its substantial completion.
- 4.2 The Initial Condition Survey pursuant to clause 4.1 shall report on:
- 4.2.1. the height of the New Flood Defence in metres above Ordnance Datum (Newlyn);
 - 4.2.2. the structural condition of the New Flood Defence;
 - 4.2.3. the structural condition of any foundations or revetments on which the New Flood Defence is built;
 - 4.2.4. a statement as to the standard of compliance of the New Flood Defence with the Agreed Defence Level;
 - 4.2.5. Recommendations for any works to repair or alter the New Flood Defence such that it protects Cherry Cobb Sands to the Agreed Defence Level; and
 - 4.2.6. a photographic record of the inspection of the New Flood Defence highlighting the key features of the New Flood Defence.
- 4.3 Within 28 days of the completion of the Initial Condition Survey ABLE shall, taking into account any recommendations made in the Initial Condition Survey, produce a Work Schedule and shall send a copy to the EA's Area Manager at Coverdale House, Amy Johnson Way, Clifton Moor, York YO30 4GZ (or such other person and/or address as the EA shall notify to ABLE in writing).
- 4.4 The EA may, acting reasonably and within 28 days (or where an application for Land Drainage Consent is made to the EA in respect of the Work Schedule, whatever statutory period for determination applies in respect of that consent ("the alternative

period”)) of receipt of the Work Schedule, require ABLE to carry out additional works or to amend the method or timing of any works recommended in the Work Schedule for the purpose of ensuring that the Agreed Defence Level (the Work Schedule together with any such additions or amendments (“the Amended Work Schedule”) is put in place.

- 4.5 Upon receipt of the Amended Work Schedule from the EA under clause 4.4 ABLE shall undertake at its cost all works stated in and in accordance with the Amended Work Schedule.
- 4.6 If ABLE has not received an Amended Work Schedule within the 28 day period or the alternative period, or as soon as the EA notifies ABLE of its approval of the Work Schedule, ABLE shall undertake the works set out in and in accordance with the Work Schedule to the reasonable satisfaction of the EA.

Annual Condition Surveys

- 5.1 On each anniversary of the substantial completion of the New Flood Defence nominated representatives of ABLE will carry out a visual survey of the New Flood Defence with the objective of identifying any Material Deteriorations in the condition of the New Flood Defence compared to that described in the Initial Condition Survey.
- 5.2 Should the EA reasonably believe that one or more Material Deteriorations has occurred to the condition of the New Flood Defence they may require ABLE to instruct a suitably experienced chartered civil engineer to carry out a Deterioration Survey (the cost of such survey to be borne by ABLE).
- 5.3 A Deterioration Survey pursuant to 5.2 shall provide:
 - 5.3.1 A statement as to whether any Material Deterioration in the New Flood Defence has occurred;
 - 5.3.2 A statement as to the structural condition of the New Flood Defence;
 - 5.3.3 A statement as to the standard of compliance of the New Flood Defence with the Agreed Defence Level;
 - 5.3.4 Recommendations for any works to inspect, maintain or repair (including the renewal or replacement of any part of the New Flood Defence which is at the end of its life) the New Flood Defence to ensure that it continues to provide the Agreed Defence Level;

- 5.4 ABLE shall as soon as reasonably practicable following completion of any Deterioration Survey send a copy to the EA's Area Manager at Coverdale House, Amy Johnson Way, Clifton Moor, York YO30 4GZ (or such other person and/or address as the EA shall notify to ABLE in writing).
- 5.5 Within 28 days of the completion of the Deterioration Survey ABLE shall, taking into account any recommendations made in the Deterioration Survey, produce a Maintenance Schedule and shall send a copy to the EA's Area Manager at Coverdale House, Amy Johnson Way, Clifton Moor, York YO30 4GZ (or such other person and/or address as the EA shall notify to ABLE in writing).
- 5.6 The EA may, acting reasonably and within 28 days (or where an application for Land Drainage Consent is made to the EA in respect of the Maintenance Schedule, whatever statutory period for determination applies in respect of that consent ("the statutory period") of receipt of the Maintenance Schedule, require ABLE to carry out additional works or to amend the method or timing of any works recommended in the Maintenance Schedule for the purpose of ensuring that the Agreed Defence Level (the Maintenance Schedule together with any such additions or amendments shall be the "Amended Maintenance Schedule") is maintained.
- 5.7 Upon receipt of the Amended Maintenance Schedule from the EA under clause 5.6 ABLE shall undertake at its cost all works stated in and in accordance with the Amended Work Schedule.
- 5.8 If ABLE has not received an Amended Work Schedule within the 28 day period or the statutory period, or as soon as the EA notifies ABLE of its approval of the Maintenance Schedule, ABLE shall undertake the works set out in and in accordance with the Maintenance Schedule to the reasonable satisfaction of the EA.
- 5.9 ABLE shall comply with the requirements of clauses 5.1 to 5.8 for 100 years from the substantial completion of the New Flood Defence.

EA Access to the New Flood Defence

- 6.1 ABLE shall permit the EA and all persons authorised by it to access the New Flood Defence with or without vehicles, machinery and equipment on the giving of reasonable notice (except in the case of emergency where no notice shall be required) to allow the EA to inspect the New Flood Defence to comply with its

Functions, its obligations in this Agreement, and to monitor compliance by ABLE with its obligations in this Agreement.

- 6.2 ABLE shall make reasonable provision to provide the EA with access to Cherry Cobb Sands including the New Flood Defence for the purposes of the exercise of its Functions.

Indemnity

- 7.1 Subject to clauses 7.2 to 7.5 ABLE agrees to fully and completely release and indemnify and keep indemnified the EA from and against all actions suits claims charges costs expenses damages and demands and any other proper and enforceable liabilities whatsoever arising out of or in connection with the implementation of this Agreement and/or the maintenance, repair, improvement and replacement of the New Flood Defence and each and every part thereof, and for the avoidance of doubt, this indemnity extends to any death or personal injury arising out of or in connection with this Agreement.

- 7.2 This indemnity shall not cover the EA to the extent that a claim under it results from the EA's negligence or wilful misconduct.

- 7.3 For the avoidance of doubt this indemnity shall not cover the EA when a liability arises concerning the New Flood Defence and it meets the Agreed Defence Level or where, at the time that the liability arose, the EA had assumed liability for the maintenance, repair, improvement and replacement of the New Flood Defence under the terms of this Agreement.

- 7.4 If any third party makes a Claim the EA shall (subject to ABLE meeting the EA's reasonable costs in complying with the following provisions):

- 7.4.1 As soon as reasonably practicable and in any event within two Business Days give written notice of the Claim to ABLE specifying the nature of the Claim in reasonable detail and passing on copies of all information received.

7.4.2 Not make any admission of liability agreement or compromise in relation to the Claim without the prior written consent of ABLE provided that the EA may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to ABLE but without being obliged to obtain ABLE's consent) if the EA reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect. ABLE will not be liable for any monies paid without ABLE's written consent.

7.4.3. Give ABLE access at reasonable times (on reasonable prior notice) to its officers, employees, agents, representatives or advisers and to any relevant assets, accounts, documents and records within the power or control of the EA that ABLE might reasonably require so as to enable ABLE and their respective professional advisers to examine them (and to take copies at ABLE's reasonable expense) for the purpose of assessing the Claim (subject to the EA's right to withhold information in compliance with its obligations under the Data Protection Act 1998 and for reasons of national security); and

7.4.4 Subject to ABLE providing security to the EA's reasonable satisfaction against the relevant Claim and any related liability, costs, expenses, damages or losses which may be incurred take such action as ABLE may reasonably request to avoid dispute, compromise or defend the Claim.

7.5 Nothing in this clause shall restrict or limit the EA's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a Claim.

Breach of Agreement

8.1 If ABLE breaches any of its obligations in this Agreement the EA shall be entitled to serve notice on ABLE specifying:-

8.1.1 The breach alleged;

8.1.2 The action considered reasonably necessary by the EA to remedy the effect of the breach;

8.1.3 A reasonable time within which these actions shall be carried out.

8.2 Except in cases of genuine emergency, subject to the resolution in accordance with the terms of this Agreement of any dispute about the reasonableness of any matters raised in a notice under clause 8.1, if the EA serves a notice under clause 8.1 above and ABLE fails to carry out the specified action within the specified time, the EA shall be entitled and have power to enter Cherry Cobb Sands and carry out such works as are necessary to remedy the effect of the breach and may recover its reasonable and proper expenses incurred in so doing from ABLE Provided That the EA shall cause as little damage and disturbance to Cherry Cobb Sands as necessary and shall make good any damage caused without reasonable delay.

8.3 The provisions of this clause are without prejudice to any other remedies that may be open to the EA by virtue of this Agreement or through the exercise of the Functions.

Conditionality and Term

9 This Agreement is conditional upon Development Consent being granted and ABLE commencing construction of the Development.

Waiver

10. No condoning, excusing or overlooking by or on behalf of the EA of any breach of the covenants, provisions, conditions, restrictions or stipulations contained in this Agreement shall take effect or be binding upon the EA unless expressed in writing under the authority of the EA and any waiver so given shall extend only to the particular breach so raised and shall not limit or affect any rights with respect to any other or future breach.

Costs

11. ABLE will pay the EA's reasonable and proper legal fees in connection with and incidental to the preparation and completion of this Agreement plus VAT upon completion of this Agreement.

Non Conflict

- 12 This Agreement is made without prejudice to any Land Drainage Consents that may be required and without prejudice to the generality of the foregoing ABLE acknowledges that the works required by this Agreement may require Consent from the EA or from other bodies independent of the terms of this Agreement and shall be responsible for obtaining the same prior to commencing any such works.

Entire Agreement

- 13 Each party acknowledges that in entering into this Agreement it has not relied on and shall have no right or remedy in respect of any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud.

Invalidity

14. If any provision of this Agreement is held by any court, tribunal or administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect, then that provision will, to the extent required, be severed from this Agreement and will be ineffective without, as far as is possible, modifying any other clause or part of this Agreement which will remain in full force and effect.

Notices

15.1 Any approval, communication, consent, demand, estimation, expression of satisfaction, notice, notification, provision, requirement, withholding of approval or similar expression must be in writing and may be given by hand or sent by first class pre-paid recorded delivery post and shall be deemed to have been duly served:

15.1.1 if delivered by hand, when left at the proper address for service; or

15.1.2 if given or made by prepaid recorded delivery first class post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays);

Provided that, where in the case of delivery by hand, such delivery occurs either after 4.00 p.m. on a Business Day, or on a day other than a Business Day, service shall be deemed to occur at 9.00 a.m. on the next following Business Day (such times being local time at the address of the recipient).

15.2 Any approval, communication, consent, demand, estimation, expression of satisfaction, notice, notification, provision, requirement, withholding of approval or similar expression shall be addressed to:

15.2.1 In the case of the EA the EA's Area Manager at Coverdale House, Amy Johnson Way, Clifton Moor, York YO30 4GZ (or such other person and/or address as the EA shall notify to ABLE in writing)

15.2.3 In the case of ABLE at the address stated at the head of this Agreement (with a copy to Able UK Ltd., Able House, Billingham, TS23 1PX) or such other address or addresses as may be notified to the EA in writing from time to time.

Dispute Resolution

- 16.1 The parties hereby undertake to act reasonably at all times in implementation of their respective duties and obligations under this Agreement.
- 16.2 Without prejudice to any other provision of this Agreement, the Parties must attempt to resolve any lack of agreement, dispute or difference between them by discussion and agreement.
- 16.3 Any dispute or difference arising between the Parties as to their respective rights, duties and obligations under this Agreement or as to any matter arising out of or in connection with the subject matter of this Agreement which is not capable of resolution pursuant to clause 16.2 is, in the first instance, to be referred to a representative of each Party, each of whom holding a senior management position. Those representatives are to meet as soon as possible and endeavour in good faith to resolve any dispute or difference amicably.
- 16.4 Any dispute or difference arising between the Parties as to their respective rights, duties and obligations under this Agreement or as to any other matters arising out of or in connection with the subject matter of this Agreement (other than a difference as to meaning or construction) which cannot be resolved under clause 16.3 is to be referred to and settled by arbitration in the manner provided by article 59 (Arbitration) of the Draft Order.

Contracts (Rights Of Third Parties) Act 1999

17. The Parties do not intend that any of the terms of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

Jurisdiction

18. The formation, construction, performance, validity and all aspects whatsoever of this Agreement shall be governed by English Law and the Parties hereby agree to submit to the exclusive jurisdiction of the English Courts.

Representations and Agreement

- 19.1 The Parties warrant that they have not been induced to enter into this Agreement by any representation of any other Party other than representations reduced to writing in this Agreement.
- 19.2 Each Party warrants that this Agreement constitutes the whole of the Agreement between the Parties relating to the subject matter of this Agreement and supersedes all prior agreements and understandings relating thereto.

Variation and Amendment

20. No variation or amendment of this Agreement shall bind any Party unless made in writing and agreed to in writing by duly authorised officers of the Parties.

Force Majeure

21. If the performance of this Agreement is rendered not reasonably practicable by any cause of event beyond the reasonable control of any of the Parties further performance of the Agreement shall be suspended until such time as the cause or event rendering performance not reasonably practicable shall no longer be present or shall have been remedied and thereupon this Agreement shall again take full effect.

Headings

22. The headings in this Agreement are for reference purposes only and shall not be deemed to be any indication of the meaning of the clauses to which they relate.

IN WITNESS of which ABLE and the EA have executed this Agreement as a Deed on the date first mentioned.

EXECUTED as a **DEED** by)

ABLE HUMBER PORTS LIMITED)

by affixing the common)

seal in the presence of:

SIGNED and **DELIVERED** as a **DEED**)

on behalf of the above named)

ENVIRONMENT AGENCY by its attorney)

Solicitor Anglian Region)

acting pursuant to a Power of Attorney)

dated 23 May 2012 in the presence of:-

Witness Signature.....

Witness Name.....

Environment Agency

Kingfisher House

Orton Goldhay

Peterborough PE2 5ZR

Witness Occupation.....

SECTION 41 YORKSHIRE WATER AUTHORITY ACT 1986

41 (1) (a) Every undertaking given to the Authority by the owner of a legal estate in land (in this section referred to respectively as "the owner" and "the land") and every agreement made between the Authority and the owner, being an undertaking or agreement

- (i) given or made in connection with the land; and
- (ii) expressed to be given or made under this section; and
- (iii) defining that land as land;

shall be binding upon the owner and all persons deriving title to the land by, through or under him.

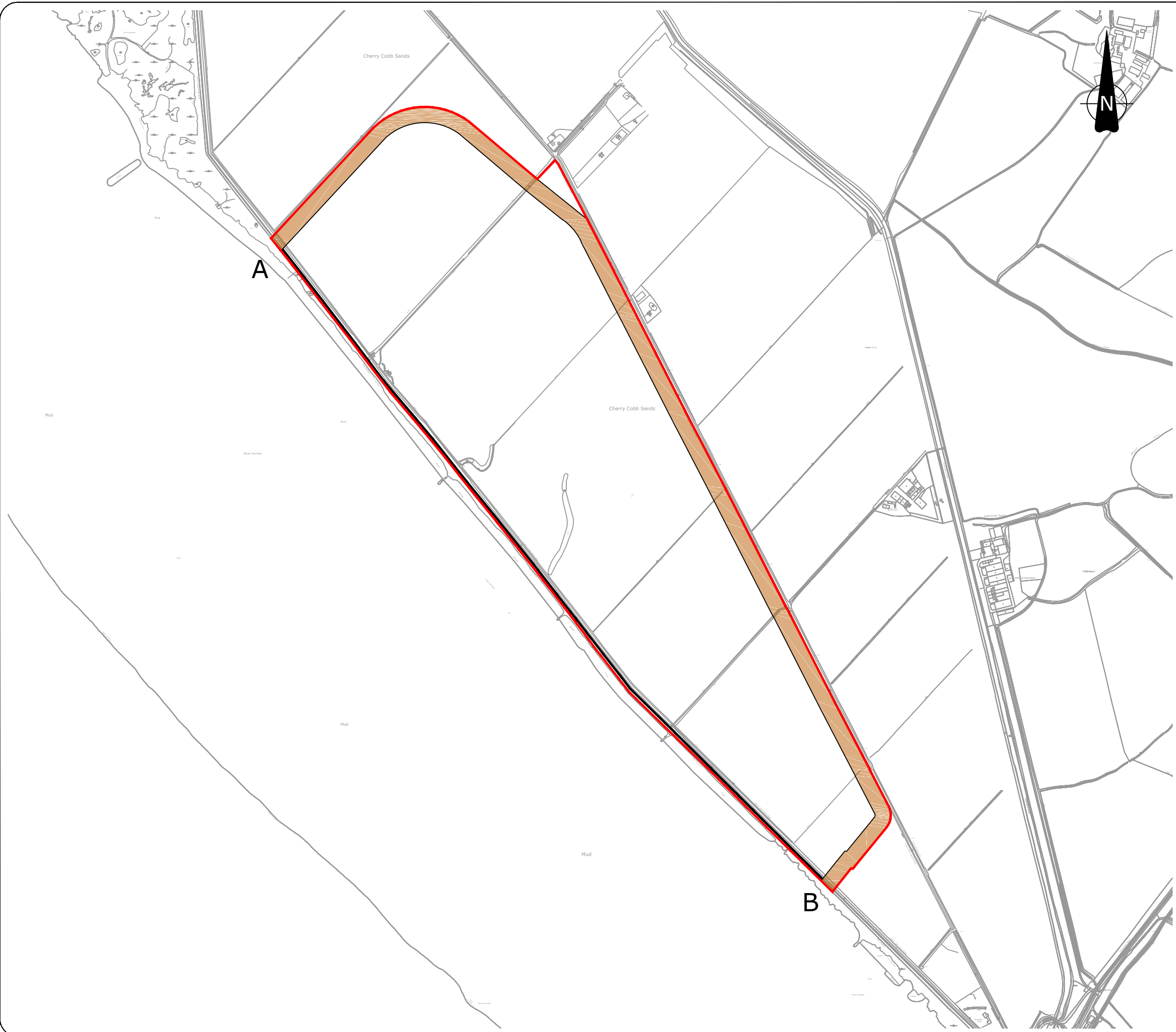
(b) An undertaking or agreement under this section shall be a local land charge.

(2) Without prejudice to the generality of the foregoing subsection an undertaking or agreement under this section may consist of or include-

- (a) a covenant by the owner to carry out any works or to do anything on or in relation to it (including the making of any payment of a sum of money), or to permit the Authority to do anything on or in relation to it;
- (b) an agreement by the owner for valuable consideration not to exercise a right conferred by any enactment;

but nothing in this section shall make binding an agreement not to exercise a right conferred by any enactment where the enactment provides (in whatever terms) that any such agreement shall be void or unenforceable.

(3) Any person against whom such an undertaking or agreement under this section is enforceable shall be entitled to require a copy of it from the Authority.



KEY

- Operational Development
- Existing Flood Defences
- Proposed Flood Embankment

C	19/11/12	Amended to Comments	RK	PMS	PMS
B	15/11/12	New Embankment Design	RK	NE	PMS
A	24/09/12	Preliminary Issue	RK	PMS	PMS
Rev	Date	Comments	Drw	Chk	App

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Project:	Cherry Cobb Sands Compensation Site
Client:	Environment Agency
Title:	Flood Defence Plan

PRELIMINARY			
Scale:	Drawn	Checked	Approved
1:1,250@A3	R Keirl	PMS	PMS
Date	24/09/2012	24/09/2012	24/09/2012
Drawing No.	CCS - 02001		Revision: C