

Date: 1 May 2013  
Our ref: Ltr SoS/AMEP  
Your ref:



The Secretary of State for Transport  
Department of Transport  
Great Minster House  
Horseferry Road  
London  
SW1P 4DR

Hornbeam House  
Crewe Business Park  
Electra Way  
Crewe  
Cheshire  
CW1 6GJ

T 0300 060 3900

Dear Sir

**THE PLANNING ACT 2008  
THE INFRASTRUCTURE PLANNING (ENVIRONMENTAL PROCEDURE RULES) 2010  
ABLE MARINE ENERGY PARK ORDER APPLICATION  
PINS Reference: TR030001**

We refer to the recent submission to the Secretary of State of a legal agreement and three Environmental Management and Monitoring Plans (EMMPs) made by Able Humber Ports Limited (AHPL) in support of the Able Marine Energy Park order application.

Natural England wishes to make clear our position on these documents in the context of our advice submitted to the Examining Authority during the examination of the order application.

Natural England has advised AHPL at all stages of their application and has advised the Examining Authority in our role as statutory consultee throughout the formal Examination. We have continued to work with AHPL after the close of the Examination advising on the content of their EMMPs and in the preparation of the legal agreement. Our advice on these documents is as follows:

1. Natural England welcomes the preparation of the EMMPs having commented previously on earlier versions. We advised AHPL and the Examining Authority that the EMMPs should be worked-up to a sufficient level of detail in order to give confidence in AHPL's proposals for environmental mitigation and compensation and that these should be secured by requirements in the DCO. Subject to paragraph 4 below, we are satisfied that this has now been done and the EMMPs are appended to the legal agreement.
2. We have also advised that irrespective of the provisions in the DCO, a robust legal agreement would provide greater confidence in the mechanisms by which the proposed mitigation and compensation measures will, if appropriate, be secured. This advice is summarised in para. 22 of our written summary dated 23 November 2012, as follows:

*'Natural England made comments on the legal agreement at the Hearing on 12-13 November 2012, in its 9 November submission for that Hearing and in its 16 November summary. Natural England's position remains that a robust legal agreement would provide greater confidence in the mechanism by which the compensatory habitat proposed will be*

*secured. This is for the reasons set out at para.58 of the 16 November summary. It is important to emphasise that this is without prejudice to Natural England's advice to the Secretary of State as to the uncertainties over the effectiveness of the proposals themselves. Whatever one's view of the compensatory habitat, if it is to be relied upon, it should be secured as robustly as possible. In addition to finalising and agreeing the EMMPs, Natural England is willing to enter into a legal agreement with the Applicant to facilitate this. This is subject to the agreement of terms, but Natural England is cautiously optimistic that these can be settled.'*

3. We are satisfied that the document now agreed provides such a robust legal mechanism for the delivery of the Measures described within it. It is important to make clear that Natural England's acceptance of the legal agreement and accompanying EMMPs is, without prejudice to Natural England's advice on the uncertainties and risks over the effectiveness of the proposals themselves. These concerns are set out in detail in our 9 November submission and in paras. 6 to 8 of Natural England's 16 November submission and are matters which the Secretary of State will need to take into account in deciding whether to grant the order for the development consent.
4. There are a small number of matters which were not concluded to the total satisfaction of all parties during the negotiations for the legal agreement. It is important that you are aware of Natural England's advice on these matters which is as follows:
  - i) The status of Cherry Cobb Sands wet grassland and roost

Paragraph 1.1 of the legal agreement refers to 'a new temporary 38 hectare area of wet grassland at Cherry Cobb Sands'. As specified in the EMMP for the compensation site this should provide an area of wet grassland and a roost (formed by islands in an area of open water at the southern end of the wet grassland site). Natural England's advice on the permanency of Cherry Cobb Sands wet grassland and roost remains the same as given at the Examination and set out in paras 22-23 of Natural England's written submission dated 16 November 2012. It is our advice that the roost habitat should be a permanent feature of the compensation package. The wet grassland may be required on a permanent basis depending upon whether the main compensation site provides functionally adequate compensation. Under the arrangements set out in the legal agreement this will be determined by Able following consultation with the Steering Group and in accordance with the achievement of the compensation targets specified in the Compensation EMMP.

- ii) Marine Environmental Management and Monitoring Plan (MEMMP)

The legal agreement includes, at appendix 3, the draft Marine Environmental Management and Monitoring Plan (MEMMP). It is important to note that although the terms of the MEMMP have been agreed between Natural England and AHPL, these are not yet agreed with the Marine Management Organisation (MMO). The MMO has stated that there is currently no formal mechanism by which they can give approval to the MEMMP until such time as the DCO is made (should this be the case).

We trust that this is helpful to you in your consideration of the issues relevant to determining the application for the Able Marine Energy Park.

Should you have any questions about this letter please contact me on the address given below.

Yours faithfully



Andrew Hearle  
Principal Adviser Land Use Operations

Email: [andrew.hearle@naturalengland.org.uk](mailto:andrew.hearle@naturalengland.org.uk)  
Tel: 07900 405350