

NORTH LINCOLNSHIRE COUNCIL

CABINET

ABLE MARINE ENERGY PARK

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To update Cabinet on the recent decision by a Parliamentary Joint Committee to support the decision of the Secretary of State for Transport to grant a Development Consent Order for the Able Marine Energy Park.
- 1.2 To update Cabinet on the revised timetable for the delivery of the Able Marine Energy Park.

2. BACKGROUND INFORMATION

- 2.1 The Able Marine Energy (AMEP) Park located on the South Humber Bank is a flagship transformational development for the area. AMEP will form the largest offshore wind park in Europe. It is the 'jewel in the crown' of the Humber's aspirations to become the 'Energy Estuary'. AMEP will help make North Lincolnshire the renewable energy capital of the UK.
- 2.2 The Marine Energy Park will create 4,100 direct jobs. The project will provide almost 1,300 metres of heavy duty quay. The development site covers more than 900 acres (366.7 hectares) and fronts the last undeveloped strategic deep water site in the UK. It is estimated that the development will create £264.5 million GVA in North Lincolnshire and £378 million across the Yorkshire and Humber.
- 2.3 The development will attract a brand new industry into the area. It will also provide a much needed renaissance in the manufacturing and engineering sector that currently accounts for around 22% of the local economy.
- 2.4 AMEP was subject to an exhaustive and lengthy planning process (Appendix 1). It attracted significant support from business, residents, local MP's and the Humber and Lincolnshire Local Enterprise Partnerships.
- 2.5 Associated British Ports (ABP) objected to the AMEP proposals during the planning process. During an almost year-long public examination the Planning Inspectorate considered ABP's objections in some detail. They endorsed the AMEP project in February 2013. The Secretary of State for Transport

subsequently granted AMEP a Development Consent Order (DCO) in December 2013.

2.6 ABP then petitioned Parliament via a 'Special Parliamentary Procedure' to further challenge the AMEP development consent order. This required a Joint Committee of both Houses of Parliament to further consider the AMEP project (*The Joint Committee on the Able Marine Energy Park Development Consent Order 2014*). On 22 October 2014, the Joint Committee voted by a majority verdict of 5 to 1 to reject ABP's petitions in support of AMEP. This paves the way for AMEP to proceed provided that no claim of judicial review.

2.7 The Joint Committee published their report on 30 October 2014 (Appendix 2). It includes the following recommendation:

- **By a majority of 5 to 1, we considered that there was no case for Able to answer in respect of the petitions of general objection and for amendment presented by ABP. We duly report to both Houses the Able Marine Energy Park Development Consent Order 2014, without amendment.**

2.8 Parliament will now proceed to publish the DCO as a Statutory Instrument which will come into force after a short period (of up to 21 days). The process is then subject to a delay of 6 weeks from the publication of the DCO to enable any claims for a judicial review (JR) to be brought forward (Appendix 3). Any interested party could seek a JR. However, any JR sought would be restricted to procedural challenges.

2.8 The JR period for AMEP should close around the end of the year. In the event that no JR claim is brought, Able UK could start development as soon as early 2015. They could then potentially have some berths ready for 2017 with the entire facility completed for 2018. Any claim for a JR could delay the start of the project. However, Government have streamlined the JR process in response to concerns about abuse of the system by those seeking to unfairly stall or hinder projects. As a result, the JR process is much quicker but some delay could still occur should a claim be made.

3. **OPTIONS FOR CONSIDERATION**

3.1 The AMEP development consent order will either be confirmed after a six week period subject to no JR claim or will face a further delay should a claim be made.

4. **ANALYSIS OF OPTIONS**

4.1 The AMEP development has been through an extremely rigorous planning process and been subject to the highest levels of legal and Parliamentary scrutiny. It is undoubtedly one of the most intensively tested and robustly challenged developments ever to pass through the UK planning system. Under these circumstances it is difficult to see how any claim for judicial review could be successful and it is to be hoped that any attempts to further delay will be swiftly dealt with by the judiciary.

5. **RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)**

5.1 The Able Marine Energy Park planning application process has cost around £10 million. Bird mitigation and environmental compensation sites have cost a further £60 million.

5.2 The Able Marine Energy Park will develop 366.7 ha (906 acres) to create the largest offshore wind park in Europe. The project will create 4,100 direct jobs.

6. **OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)**

6.1 The AMEP was subject to a rigorous integrated assessment as part of the planning application process.

7. **OUTCOMES OF CONSULTATION AND CONFLICTS OF INTERESTS DECLARED**

7.1 The AMEP has undergone an extensive and exhaustive process of public consultation and a rigorous process of scrutiny and legal challenge.

7.2 The AMEP has the overwhelming support from the public, business, Local Enterprise Partnerships and government

8. **RECOMMENDATIONS**

8.1 That Cabinet notes and welcomes the outcome reached by the Joint Committee on the Able Marine Energy Park Development Consent Order 2014 as set out in paragraph 2.7 above.

8.2 That Cabinet support the delivery of the Able Marine Energy Park development as quickly as possible and without further delay or obstruction.

DIRECTOR OF PLACES

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Background Papers used in the preparation of this report: None

From 2003 - ABLE UK / NLC interaction with offshore wind sector

Jan 2009 – initial feasibility (with YF)

June 2009 – initial environmental surveys/design

July 2010 – informal consultation

Jan-March 2011 – formal consultation

Dec 2011 – application submitted

Jan 2012 – application ‘accepted’ examination commences

Nov 2012 – examination concludes

Feb 2013 – Examining Authority passes recommendation to Secretary of State Transport (SoS)

May 2013 – SoS decision delayed – conclude arrangements with Crown Estate

Aug 2013 – SoS ‘minded to approve’ – seeks clarification re Network Rail/Natural England

Dec 2013 – SoS authorises the granting of the AMEP Development Consent Order (DCO)

Feb 2014 - permission ‘laid’ before Parliament

March 2014 – ABP ‘petitions’ in respect of Special Parliamentary Procedure (SPP)

April 2014 – hearing to determine whether SPP progresses

October – SPP hearing commences

October 22 – Joint Committee reject 2 ABP petitions and endorse the Development Consent Order

Able Marine Energy Park Development Consent Order 2014 - Joint Committee on the Able Marine Energy Park Development Consent Order 2014

The Able Marine Energy Park Development Consent Order 2014

Introduction

1. The purpose of this Report is to announce the decision of the Joint Committee on the Able Marine Energy Park Development Consent Order 2014 ("the AMEP Order") in relation to two petitions previously certified as proper to be received and considered by the Joint Committee.

2. The AMEP Order makes provision for the development of the Able Marine Energy Park on the south bank of the River Humber, involving the construction of a new quay and facilities for the manufacture, assembly, storage and transport of marine energy components (primarily off-shore wind turbines). The development is classed as a "nationally significant infrastructure project" (as defined by the Planning Act 2008 ("the 2008 Act")) and development consent is therefore granted by means of a development consent order (DCO).

3. An application for the Order was made by Able Humber Ports Limited ("Able" or "the applicant") on 16 December 2011. In accordance with the 2008 Act, it was considered by a panel of three inspectors, appointed by the Secretary of State for Transport, which recommended, after a six-month examination, approval of the application. The Secretary of State granted consent on 18 December 2013 and made the AMEP Order on 13 January 2014.

Parliamentary procedure prior to referral to the Joint Committee

4. Not all DCOs are laid before Parliament. Section 128 of the 2008 Act, however, required certain sorts of DCO to be subject to special parliamentary procedure (SPP) (under the Statutory Orders (Special Procedure) Act 1945 ("the 1945 Act")). These DCOs, called special procedure orders (SPOs), include those which, as in the case of the AMEP Order, authorise the compulsory purchase of land which has been acquired by a statutory undertaker for the purposes of their undertaking and where the following conditions have been met: (a) a representation has been made by the statutory undertaker about the application for the DCO before the completion of the examination stage; (b) the representation contains an objection to the compulsory purchase; and (c) the objection has not been withdrawn. In this case, a representation was made by Associated British Ports ("ABP" or "the petitioner"), the SPP land having been acquired by ABP's predecessor, the British Transport Docks Board, in 1967. Although section 128 was repealed by the Growth and Infrastructure Act 2013, it continues to apply in those cases, such as this one, where the application for the DCO was made before 19 October 2012.

5. The AMEP Order was laid before Parliament by the Secretary of State on 10 February 2014. During the subsequent 21-day petitioning period, two petitions

were received, both from ABP (one a petition of general objection and the other a petition for amendment). Able lodged memorials (objections) against the petitions. The petitions and memorials were referred to the Lord Chairman of Committees and the Chairman of Ways and Means. On 2 and 3 April 2014 hearings took place, at the conclusion of which the two Chairmen (sitting together) found that the petitions were proper to be received (in accordance with section 3(3) of the 1945 Act). Their decision was reported to the Houses on 3 April 2014.

6. The special parliamentary procedure makes provision for a 21-day period, beginning on the day on which the Chairmen's report is laid, during which either House may resolve to annul an SPO (section 4(1) of the 1945 Act). No such resolution was passed in either House. As a result, the petitions stood referred to the Joint Committee (section 4(2) of the 1945 Act).

The Joint Committee

SCOPE OF INQUIRY

7. The Joint Committee held its first meeting on 30 June 2014 to consider certain procedural issues, in particular the scope of its inquiry. During proceedings on a previous SPO, the Rookery South (Resource and Recovery Facility) Order 2011, "an anomaly in the statutory framework governing operation of the special parliamentary procedure" was identified;^[1] namely, that, whereas the 1945 Act made provision for Parliament to consider the whole SPO, the "natural interpretation"^[2] of section 128(2) of the 2008 Act was that the special parliamentary procedure was limited to those provisions of an SPO authorising the compulsory acquisition of special land. (The report of the two Chairmen relating to the Rookery South Order sets out the issue in detail.) We have noted in paragraph 4 above that this "anomaly" has now been resolved, although transitional provision has the effect that the SPP continues to apply to the application by Able.

8. The Joint Committee heard submissions from counsel for each of the parties on 3 and 7 July 2014 on the issue of scope. Their arguments dealt principally with whether we should hear evidence on an area of foreshore over which ABP claimed riparian rights as well as adjacent land owned by ABP. On considering the submissions, we concluded that we would hear evidence on all matters raised in the petitions, including those relating to the foreshore.^[3]

SUBSTANTIVE HEARINGS

9. The Joint Committee held substantive hearings from 15 to 22 October 2014. During that period, in accordance with Standing Orders 209(1) (HL) and 243(1) (HC), we heard counsel for the applicant who explained the AMEP Order by reference to a factual statement agreed by the parties but also including reference to a compromise proposal made on behalf of ABP but not accepted by Able. We then heard the case for the petitioner in support of their petition, including evidence in relation to the compromise. The names of those who gave evidence are set out in the Minutes of meetings accompanying this Report. After the case for the petitioner had finished, we heard submissions from both parties, in the light of which evidence and submissions we considered whether the

applicant had a case to answer (Standing Orders 209(1)(c) (HL) and 243(1)(c) (HC)). We concluded that there was no case to answer and, as a result, we did not invite the applicant to put their case against the petitions.

Conclusion

10. By a majority of 5 to 1, we considered that there was no case for Able to answer in respect of the petitions of general objection and for amendment presented by ABP. We duly report to both Houses the Able Marine Energy Park Development Consent Order 2014, without amendment.

1 The Rookery South (Resource Recovery Facility) Order 2011, First Special Report of Session 2012-13, HL Paper 120, HC 991.

2 The Rookery South (Resource Recovery Facility) Order 2011: Report on petitions against the Order, First Special Report of Session 2010-12, HL Paper 294, HC 1956.

3 But excluding those relating to the Killingholme Branch Railway which the petitioner indicated they would no longer be pursuing.

Joint Committee and Publication Timetable

The Joint Committee will imminently publish their report and recommendation that the DCO proceeds without amendment. Once the report is published Parliament will then have to publish the DCO as a Statutory Instrument. It is considered published once it is uploaded to legislation.gov.uk.

Order coming into force

The DCO once made and published does not come into force straight away as there is usually (but not always) a period of 21 days between the making of the Order and it coming into force. The specific date will be stated on the front of the published DCO.

Notices

Section 134(3) of the Planning Act requires the “prospective purchaser” (Able) to—

- (a) make a copy of the order available, at a place in the vicinity of the land, for inspection by the public at all reasonable hours,
- (b) serve a compulsory acquisition notice on each person to whom section 134(4) applies, and
- (c) affix a compulsory acquisition notice to a conspicuous object or objects on or near the order land.”.

Section 134(6) of the Planning Act requires the prospective purchaser to publish a compulsory acquisition notice in one or more local newspapers circulating in the locality in which the order land is situated.

Section 134(4) applies to any person who, if the order granting development consent were a compulsory purchase order, would be a qualifying person for the purposes of section 12(1) of the Acquisition of Land Act 1981 (c.67) (notice to owners, lessees and occupiers).

Able are therefore required to—

- (a) serve a compulsory acquisition notice on each person to whom section 134(4) applies (ie those in the Book of Reference);
- (b) affix a compulsory acquisition notice to a conspicuous object or objects on or near the order land which is addressed to the persons occupying or having an interest in the order land, and must, so far as practicable, be kept in place by the prospective purchaser until the end of the period of 6 weeks beginning with the date on which the Order is published; and
- (c) publish a compulsory acquisition notice in one or more local newspapers circulating in the locality in which the order land is situated in a prescribed form which—
 - (i) describes the order land;

- (ii) in a case where the order granting development consent authorises the compulsory acquisition of a right over land by the creation of a new right, describes the right;
- (iii) states that the order granting development consent includes provision authorising the compulsory acquisition of a right over the land by the creation of a right over it or (as the case may be) the compulsory acquisition of the land;
- (iv) states where and when a copy of the order is available for inspection in accordance with section 134(3)(za) of the Planning Act; and
- (v) states that a person aggrieved by the order may challenge the order only in accordance with section 118 of the Planning Act (see below).

Legal Challenge under s.118 of Planning Act 2008

Section 118 of the Planning Act 2008 provides that a legal challenge may only be made if:

- (a) the claim is brought by way of a claim for judicial review; and
- (b) the claim for judicial review is made during the period of 6 weeks following the day on which the decision/order is published or, if later, the day on which the statement of reasons for the making of the decision/order is published. In AMEP's case it will be the publication date of the DCO.