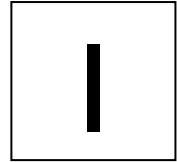


MINUTES OF EVIDENCE

taken before



The Joint Committee on the Able Marine Energy Park Development Order 2014

on the

ABLE MARINE ENERGY PARK DEVELOPMENT
ORDER 2014

Thursday 3 July 2014

in Committee Room 2

Present:

Lord Armstrong of Ilminster
Paul Blomfield MP
Dr Matthew Offord MP
Lord Plant of Highfield
Viscount Ullswater (Chair)

Robert McCracken QC appeared as Counsel on behalf of Associated British Ports

Saira Kabir Sheikh QC appeared as Counsel on behalf of Able Humber Ports Ltd, the applicant
for the order

Ordered at 10.10 am: That the Parties be called in.

1. **CHAIR (VISCOUNT ULLSWATER):** I call the Committee to order and will just announce that we are now in a public session. Perhaps I should deal with one or two housekeeping matters before we come to the real business of the day. First, I should like to explain the fire alarm system to you. Bells are not used on the parliamentary estate; instead, a two-tone sound followed by a series of taped messages are broadcast. If an evacuation is necessary, please follow the instructions of the Doorkeeper. Anyone not in the Committee room itself should find the nearest security officer.

2. Secondly, I should like to remind everyone to switch off their mobile phones, or at least set them to vibrate. Any other electronic equipment should be used sparingly. If you need to make or take a phone call, please leave the Committee room to do so.

3. Hansard is making a verbatim record and therefore I should like everybody to speak up so that they can be clearly recorded. The public session is also being audio-visually webcast.

4. I think that everybody understands what we are up to today. It is a short preliminary hearing where both parties have been invited to make focused legal representations on the scope of the Committee's work. It is expected to last no more than 90 minutes, and I am grateful to everyone for their co-operation in meeting that timescale.

5. Before we kick off, I should like the members of the Committee to introduce themselves. I am Lord Ullswater and I am chairing this meeting. Perhaps I may go round in this direction.

6. **Dr Offord:** I am Matthew Offord, Member of Parliament in the House of Commons.

7. **Paul Blomfield:** Paul Blomfield. I am also a Member of Parliament.

8. **Lord Plant of Highfield:** Lord Plant, a Member of the House of Lords.

9. **Lord Armstrong of Iminster:** Lord Armstrong of Iminster, Cross-Bencher in the House of Lords.

10. **Christine Salmon:** Christine Salmon, House of Lords Clerk to the Committee.

11. **Nicholas Beach:** Nicholas Beach, Deputy Counsel to the Lord Chairman of Committees.

12. **The Chairman:** If you would like to introduce yourselves, that would help us.

13. **Robert McCracken:** I am Robert McCracken. I am Queen's Counsel instructed by Osborne Clark for Associated British Ports.

14. **Saira Kabir Sheikh:** I am Saira Kabir Sheikh, Queen's Counsel, and I am instructed by Bircham Dyson Bell on behalf of Able Marine Energy Park.

15. **The Chairman:** Thank you very much. The Committee has been briefed, but we would expect the petitioner's counsel to speak first, followed by the applicant's counsel, if that is all right with you two. Mr McCracken, could I ask you to address the Committee?

16. **Robert McCracken:** My Lord Chairman, my Lords and gentlemen, I can be quite short this morning. With the Committee's permission, I will address the Committee sitting rather than standing.

17. The hearing is to decide the scope of material to be presented to the Committee later this year about the Able Marine Energy Park development consent order, which is subject to special parliamentary procedure, pursuant to the Planning Act 2008. I hope that the Committee may have received, albeit at a rather late stage, an agreed preliminary statement of facts outlining the key background to the hearings, the scope of which is to be determined this morning.

18. The AMEP DCO relates to the manufacture and transport of offshore renewable energy equipment. I summarise but that is briefly what it is about. It is proposed that it should involve a quay of 1,279 metres, among other things.

19. The order made under the Planning Act 2008 is one that provides, in a sense, one-stop shopping for prior authorisation of projects of national significance. Therefore, the order is able to include, and does include, powers that would enable Able compulsorily to acquire land belonging to other people, one of whom is Associated British Ports.

20. The Planning Act 2008 provides special protection for the property of statutory undertakers, such as Associated British Ports, which provide facilities that are important in the local, regional and national economy.

21. The question to be determined this morning by the Committee is how wide-ranging the Committee's examination should be in October. There is only one precedent, which is the Covanta waste-to-energy DCO hearings. In that case, the petitioners were allowed to cover all aspects of the development consent order.

22. I think that the petitioners owned a small part of the site that was to be used for the incinerator, and effectively they were able to have a re-run of the whole process of examination which had led to the making of the DCO. We, for the purposes of the presentation of the ABP case, do not seek to adopt such a broad approach to the scope of our submissions.

23. The chairmen of the Committees of the House of Lords and of Ways and Means in the House of Commons have recommended that this Committee should take a narrow approach. Common sense supports an approach in which this Committee focuses on the compulsory acquisition of the statutory undertaker's land.

24. That is why Parliament, in the 2008 Act, provided for a special parliamentary procedure, and therefore that should naturally determine the scope of the hearings. That is what we suggest.

25. In the light of that, we have already written to the Committee to indicate that we would not seek to cover one matter that was raised in our petition—that is, the

Killingholme railway line. We accept that that is the responsibility of a different statutory undertaker and will be subject to the procedures that govern rail changes of that sort.

26. We suggest that the approach of the Committee should be that the material to be presented should be as follows: all material relating to all issues raised in ABP's petition that relate to or arise from the compulsory acquisition of land which ABP holds for the purpose of its statutory port undertaking and the land over which ABP enjoys rights for that purpose—that is, all the matters in ABP's petitions, except those relating to the acquisition of rights over the Killingholme branch railway.

27. We do not propose to seek to re-run a lot of issues that were discussed at the examination, such as the effect on black-tailed godwits and so on. There are any number of issues that we might seek to raise if we were, as it were, relying on the Covanta precedent, but we see the sense of what the chairmen suggested to this Committee. In a sense, that is one of the reasons why I think I can be quite short this morning, because what the Committee might have anticipated would be the scope of debate will not actually arise.

28. I do not know to what extent the Committee has had an opportunity to read through the agreed statement. I suspect that it only glanced through it this morning. But just as I sought to characterise the AMEP project very, very briefly, I shall characterise ABP's concerns equally briefly.

29. ABP owns and has various rights—for example, over the foreshore—associated with land that is close to deep water in the Humber, close to the government pipeline and storage system and close to some storage tanks. What ABP wants to do there is to construct the Immingham western deepwater jetty, which will be used for the importation of bulk liquids.

30. One of the issues that will no doubt be explored at subsequent hearings is the importance of that to the national interest in securing our security of supply and range of sources of fuel.

31. Associated British Ports also needs to be able to do that because it wants to increase its facilities for the importation of biomass, which is a more bulky source of energy than coal because it is less concentrated. To do that, it needs to relocate some existing facilities for the importation of liquids. Then it will be able to construct what in shorthand terms may be described as Humber International Terminal 3.

32. At the examination, ABP objected to what Able wanted to do, because it would prevent it from realising these projects, but ABP seeks a compromise with Able. ABP is willing to accept that it achieved a somewhat scaled-down version of the Immingham western deepwater jetty, and that could be achieved—and the national interest in the achievement of that could be realised—without interfering with the realisation of the essence, as we see it, of the AMEP project.

33. It would involve a reduction in the full length of the quay from 1,279 metres to 1,000 metres. But the way that Associated British Ports sees this, it would be a win-win for the nation because the nation would have both the project which Able wishes to pursue in its essence and the project which Associated British Ports wishes to achieve in its essence.

34. There are two petitions. The one that, as it were, we are most interested in is the petition of amendment, but we also have a petition of general objection, which is there should there be technical difficulties that the Committee view as persuasive in relation to the petition of amendment.

35. It may be useful if very briefly I identify for the Committee features of the petition of amendment that seem to us to be potentially important in the debate that takes place in

October. That will indicate to you the practical implications of accepting the scoping formulation that I have suggested.

36. If the Committee takes to hand our petition, it will see, first, in paragraphs 1 to 5 a general introduction setting out what Associated British Ports does and what happens at the Port of Immingham, but paragraph 2 indicates just the enormous importance of the port of Immingham to the regional and national economy.

37. Paragraph 6 sets out what goes to the heart of the problem for us with the compulsory purchase order. It shows that what Able wants to do is to put on ABP's land a surface water drainage pumping station, drainage channel and landscaping, with overspill low level storage. We have quoted the words that are used by Able in its various application documents.

38. To achieve that, the order provides for the compulsory acquisition of various pieces of land. I hope that members of the Committee have two plans in front of them, one of them ABP 1, which shows the various pieces of land with which we are concerned. You can see on the plan a piece of land that we call the triangle land, and access ways to it.

39. Next to the triangle land, one can see various storage tanks. Shown with a broken red line is part of a plot of land over which ABP has riparian rights—that is, rights to gain access to the water of the estuary and to moor and to load and unload.

40. Plan ABP 2 sets the broad context in the Humber of the land that we have and the land that is proposed for the AMEP development. There are three wedges of colour on the south bank of the Humber, and at the centre you can see the AMEP development site, and alongside it a logistics park that is also operated by or proposed by Able.

41. Then you can see in red the area that is the subject of dispute that the Committee is going to examine. Paragraph 6 of the petition explains the three broad categories of land with which we are concerned.

42. Paragraph 10 introduces the two plans that we will submit in support of what we are proposing. One is the North Lincolnshire local plan, which is a local authority development plan, and the other is the Associated British Ports master plan, which was the subject of extensive consultation.

43. Paragraphs 11 and 12 set out why it is important to us to retain the land, the compulsory acquisition of which we object to.

44. Paragraph 13 draws attention to the need to secure and protect UK's energy supplies and paragraph 14 discusses the importance of this location. In particular, you will notice, in the penultimate sentence of that paragraph, that our petition prays in aid the fact that the triangle has the, "last remaining piece of undeveloped port operational land which has unrestricted deep water estuary frontage" within ABP's ownership.

45. Paragraph 15 draws attention to the proximity to the Government's pipeline and storage system and to underground gas storage caverns.

46. In paragraph 16, we draw attention to the importance of avoiding compulsory acquisition in respect of the pieces of land with which we are concerned.

47. Paragraph 17 draws attention to national policy, and so on.

48. In paragraph 19, we set out what we want to say about the AMEP—that they have not shown that they need the triangle for the purposes of the works. In other words, they could achieve the essence of what they want without the triangle land. They have not shown that they need to have a quay as long as the quay that they propose. Therefore, they fail to show that there is a compelling case in the public interest to deprive Associated British Ports of the land that it currently has, and the rights over land.

49. We note in paragraph 20 that Able in giving evidence to the examining authority accepted that there were two viable alternative sites for the location of the surface water

pumping station, which would not require the compulsory acquisition of our land, and that those alternatives were discounted solely on the grounds of cost.

50. Paragraphs 21 to 23 discuss the compromise that ABP proposes.

51. In paragraph 22, the petitioner refers to the exchanges that have taken place between ABP and Able, where ABP has put before Able various proposals to achieve a compromise.

52. The remainder of the petition sets out matters of detail, at least from paragraphs 24 to 30, relating to those broad matters of disagreement. I see no point in going through those with this Committee now, because it is a matter that we will go through in the autumn. There is a section that deals with Killingholme branch railway, and that is not something with which we need to be concerned today.

53. That is probably as much as I need to say in opening. I hope by way of reassurance to the Committee that we are not proposing to adopt the approach that was permitted in Covanta of a rerun of everything, but we are focusing very much on the particular interest that Section 128 of the Planning Act seeks to protect. I think I have taken 20 or 25 minutes. If I may, I shall reserve any more time that I have for reply to anything that Ms Sheikh says.

54. **The Chairman:** Thank you, Mr McCracken. It has been pointed out to me that perhaps you would like to address paragraphs 38 to 40 of the petition for a moment, because concerns were expressed about certain protective provisions in paragraph 40, and amendments are requested in the light of these concerns. They are not referred to in the preliminary statement. Are these matters still being pursued?

55. **Robert McCracken:** They are, and there is a reason why they are not included in the preliminary statement.

56. On one matter at any rate, I am sure that Ms Sheikh and I are as one. We apologise to the Committee that the preliminary statement arrived so late. I think that there was a

misunderstanding. Everybody thought that the agreed statement would be one statement for the substantive hearings in the autumn.

57. Not surprisingly, perhaps, but unexpectedly to us, the Committee said that it would quite like to know what it is that we are talking about today. I think it was late last night that the statement, due to very considerable efforts on both sides, was prepared. The fact that the protective provisions were not covered is not an indication that they would not be pursued, but they are only being pursued in so far as they relate to the broad category of protection of our statutory interests.

58. I hope that that answers your question satisfactorily.

59. **The Chairman:** Thank you. Any questions? No.

60. **Saira Kabir Sheikh:** I will stand, only because I am not as tall as Mr McCracken. I knew that, but I did not realise that I would be quite so hidden. I apologise, because I had agreed to sit—but I am going to stand. I shall start by looking at the agreed statement of fact.

61. I shall make one small point, very much in the vein of Mr McCracken, that when this was agreed an error crept in, and I would like members to note that.

62. The first page has the definitions, and you can see in the penultimate line “SPP Land”, which refers to a number of plots. Paragraph 7 has a statement, saying: “The SPP Land was acquired by ABP’s predecessor, the British Transport Docks Board in 1967”. That includes all the SPP land.

63. In fact, plot 9001 was not acquired by the predecessor; it was acquired by the Conservancy Authority. I do not believe that to be in dispute. That is quite important to the points I am going to make about scope. Save for that plot, the rest of the paragraph is accurate.

64. I have also prepared outline submissions, which I would like to hand out, so that members can follow them as I go through, as that would be helpful.

65. I start with the obvious point. It is for the Committee to deal with scope today; that is what we are here for. So in a sense, the substance of the case is not really of interest or relevance. It might become so, but it is not at the moment.

66. In terms of the extent of your Committee's work, I would submit that it needs to be far narrower than my learned friend submits, for a number of reasons. First, it is not in dispute, and I am sure that it is well known, that the provisions that allow the petitioner to come here today have been revoked by the Growth and Infrastructure Act 2013. So the land in question would not be the subject of the special parliamentary procedure today, because those provisions are revoked for any scheme after October of last year—but this process fell before that period.

67. So it is quite important to know that, although we all recognise that we are caught by the SPP process, it is not the case today for similar land. The relevance of that is that those changes brought about by Parliament indicate that Parliament no longer thinks that this process serves a useful purpose in terms of duplicating the work of the examining authority and Secretary of State in examining, considering and debating all the issues that arise in connection with the approval of this scheme. I just make that point as a preliminary point.

68. Although of course I recognise that we are caught by it, it is important in understanding Parliament's intention. That is different from the scope of the Rookery hearings. I appeared in those hearings, on behalf of the petitioners, and I argued that the scope should be wide in those hearings. But that is entirely consistent with the position that I am adopting now, because at that time—and the Joint Committee agreed—there was no indication that Parliament intended to restrict the scope of SPP in any way.

69. The provisions in the Growth and Infrastructure Act as they are now were not even in a Bill; there was nothing. So there was no reason to limit the ambit in that case. That is obviously not the case today, because, by removing that category, Parliament is speaking and

saying that, whatever the results of the 2008 Act led to then, it is not something that is useful now.

70. When we look at the scope of the work of this Committee, it should be considered in the light of what we now know. As a preliminary point, we should look retrospectively at the 2008 Act and conclude that the scope should not be so wide as to enable a comprehensive consideration for the need for the scheme or the issues relating to what other purposes that ABP would like to put its land to.

71. Able contends that your work should deal only with the matters set out in the statement of facts at paragraphs 13a and 13B on pages 4 and 5. This is the triangular-shaped piece of land, and my Lord has the plan, ABP1, that we looked at a moment ago. You can see the triangular piece of land.

72. We accept that it is land which is in the freehold of the petitioner and is land that we wish to take. We accept that that is properly the subject of these proceedings. The scope of your inquiry I will come to in a moment, but that is properly the subject of it. Similarly, B is the strip of land over which ABP has the benefit of a right of way for providing access to the triangular land. You can see that as well. That is also properly the subject of these proceedings.

73. However, C relates to the foreshore and the bed, and is outlined with this dotted line. That is not owned by ABP in its capacity as port operator. It is not owned by the petitioner, but by the Crown Estate, which has agreed that Able can acquire that land and has no issue with it. ABP as a conservancy authority has a leasehold over that land, but it does not petition before you. There is no dispute about that.

74. Area C should not be the subject of these proceedings, even on the understanding that we look at the compulsorily required land. It is not part of that land. ABP says it has

riparian rights over that land and has sought to show that with these dots. It says that it has riparian rights and we do not accept that.

75. We do not agree that it has those rights, but the point is that even if it did have them, those rights arise from the triangular land—I refer to paragraph 13a. They are not freestanding rights, so when the triangular land is acquired, the riparian rights, if there are any, would be extinguished.

76. So there is no separate right arising on that land that gives a basis for the consideration of the acquisition of that land. That is to do with the conservancy authority. It did not petition and certainly the Crown Estate is not objecting. I therefore urge that the work does not include the acquisition of that land. It has been agreed, rightly, that the point about the Killingholme branch line is not to be pursued.

77. I would also say that the issues relating to the protected provisions are not within the scope of the Act. That is not to do with the acquisition of land. What I say should be the proper scope of the work of this Committee in respect of paragraphs 13a and 13b, if the Committee is with me, is this: I accept that the Committee should consider the need for us to take that land, but it is to facilitate the delivery of the Able Marine Energy Park.

78. I urge the Committee to bear in mind on behalf of Able that it has been through the 2008 procedure and has proved its case to a panel of inspectors for the Secretary of State. A judgment has been made by those experts and the Secretary of State that the scheme should go ahead. So the public interest in the scheme has been established, I would say. I believe that I have asked for the Secretary of State's decision letter to be handed over. I believe that you may have it. If you do not, you will in a minute.

79. I do not want to trouble the Committee with too much. This is the decision letter of the Secretary of State. First, there is the report of the examining authority. The Secretary of State considers it and reaches a decision.

80. I draw the Committee's attention to paragraph 17, and this is why I make this point on behalf of Able. This is the assessment by the panel and then the Secretary of State as to whether there are imperative reasons of overriding public interest for Able's scheme. Perhaps I could ask the Committee to read just that paragraph. Would it be helpful for *Hansard* to read it out?

81. **The Chairman:** If it helps to make your case, because it will be on the record.

82. **Saira Kabir Sheikh:** Indeed. I draw the Committee's attention to paragraph 17, which was part of the consideration for the Secretary of State, and relates to whether or not there is an imperative reason of overriding public interest for Able's project. This was in the context of a very stiff test to do with the habitats directive and whether or not certain protected land could be taken.

83. The conclusions are important. The letter states: "The Secretary of State agrees with the panel, for the reasons given in the report at paragraphs 10.33 to 10.45, that the evidence provided by the applicant in its environmental statement and sHRA fully demonstrates that they are IROPI"—imperative reasons of overriding interest—"in allowing the AMEP development to proceed". The AMEP is of course the Able Marine Energy Park.

84. "Specifically, he accepts that the applicant"—Able—"has made a compelling case in the overriding public interest in decarbonising the means of energy production, securing energy supplies from indigenous sources, manufacturing large-scale offshore generators, increasing the UK's manufacturing base and regenerating the Humber sub-region, which together outweigh the loss of 45 hectares a Natura 2000 site.

85. He is satisfied that the AMEP development will make a significant contribution to meeting those imperative needs in the long term, and will provide benefits for society as a whole. In this context, he agrees with the panel that the AMEP site provides a unique

opportunity to support the offshore renewable energy industry while making a major contribution to employment and to the economy”.

86. In the light of those findings, I urge the Committee to consider the question of the need for ABP's land against those findings, not to revisit whether there is a need for Able's project. That, I submit, has been fully, carefully and comprehensively looked at, and should not properly form the work of this Committee.

87. What would be appropriate is for this Committee to consider whether ABP's land is needed to deliver that project. That is what I ask the Committee to focus on, and I would say that that is the proper question—is it actually needed to deliver our project?—not to then look at what my learned friend was suggesting, which was whether or not ABP might have some other ideas for the site.

88. It might have many ideas for the site but everything cannot happen at once; judgments have to be made and, in this particular case, Able has put forward its project comprehensively, had it examined, and the Secretary of State and the panel have decided that there is an overwhelming public interest in the scheme.

89. That being so, it would not be appropriate to look at whether there should be a jetty, which as yet is fairly amorphous. The panel of inspectors did look at the proposals for a jetty and whether it should override these interests and decided no. That is what the scope of the proceedings should be. There is another reason for that, which is at paragraph 8 of my outline submissions, on page 3.

90. I would say that that approach would be a proportionate response to these provisions. My learned friend Mr McCracken quite rightly says that he is not looking to go as wide as the Rookery proceedings. That principle is right, but what this Committee should be doing is looking proportionately at what should be done in relation to these provisions,

given that ABP has a right to this procedure but also knowing that the Growth and Infrastructure Act has taken away this right.

91. This would be a proportionate approach and enable the Committee to do meaningful work in relation to whether ABP's land is needed for our project, but would not undermine the purposes of the Act, which were to prevent the slowing down of the delivery of nationally significant projects through the SPP process.

92. I am well placed to talk about that because I know that the previous proceedings did slow down the delivery of a national infrastructure project, because that inevitably happens if you reopen all the matters that have been considered by the panel. However, that would be a proportionate response to the petitions and be fair to both parties.

93. Able obviously feels that it has made its case, that it understands that this process has to continue, but that it ought to be limited just to the need for the land for its projects. I submit at paragraph 9 that only 13a and 13b should be looked at because nothing else relates to the need to facilitate the Able Marine Energy Park. Issues of funding should not be for this Committee

94. . Again, that was looked at in the wider context of whether the project should be delivered and against the relevant tests. The Secretary of State looked at issues of funding, and I have made the point that 13c, which is the foreshore, should not be looked at, or the protective provisions.

95. At paragraph 11, I set out the points about the Committee and the Secretary of State already looking at the public interest and quoted from the relevant section, paragraph 17.

96. On paragraph 12 of my outline submissions, I just want again to point out—I do not know how familiar the Committee is with the 2008 Act procedure—that there is a huge amount of frontloading in the process, so there is incredibly wide consultation with not just

the local community but with local planning authorities, all interested parties and statutory bodies.

97. A vast amount of documentation was put before the panel, and everybody had the opportunity to comment on that. There were a number of hearings also, including in relation to compulsory acquisition, which led eventually to the recommendation. So it is not something that just happens; there is a full process.

98. If the petitioner is unhappy with any part of the proceedings, then of course they are still able to bring statutory review proceedings in court to argue those points. That is why in my submission I do say that the correct, proportionate and proper response, having regard to what has happened since Covanta, would be to look at just the need for those two pieces of land in order to facilitate Able's scheme.

99. Unless there is anything else at this stage, that is what I would urge on the Committee.

100. **The Chairman:** Thank you very much indeed. I have no questions for you.

101. **Lord Armstrong of Ilminster:** Would you like to distinguish between what the applicant thinks the scope should be and what the petitioner thinks it should be?

102. **Saira Kabir Sheikh:** Yes. The petitioner believes that the scope, should deal first with the three pieces of land at paragraph 13 of the statement of fact.

103. The difference between us is that we do not believe the foreshore should be included. In so far as the pieces of land are concerned there is no dispute between us that the scope should be the triangular piece of land and the right of way that leads to that piece of land.

104. **Lord Armstrong of Ilminster:** Thank you.

105. **Saira Kabir Sheikh:** Does your Lordship wish me to go further regarding how much of the issues should be looked at in that context?

106. **Lord Armstrong of Ilminster:** I am not sure whether this is the appropriate time to do so.

107. **Saira Kabir Sheikh:** The point I would make is that the key distinction is that Able considers the only area of need that should be looked at is the need for the land to facilitate development. Development and its overwhelming public interest should be taken as given.

108. **Lord Armstrong of Ilminster:** Does the exclusion of 13C mean that you think that the construction of the quay is outside the scope? There is a difference of opinion about the length of the ABP deepwater jetty. Is that part of our scope or do you consider that to be outside?

109. **Saira Kabir Sheikh:** I consider that to be outside the scope. If we all agree that the purpose of the proceedings is to look at land that has been acquired from ABP, this is not land that ABP owns in its capacity as petitioner. It is the conservancy authority that has a leasehold interest and it is not petitioning before you.

110. **Lord Armstrong of Ilminster:** I wonder if Mr McCracken wishes to comment on that.

111. **The Chairman:** Would you like to make a reply?

112. **Robert McCracken:** I will deal, if I may, with various points made by Ms Sheikh, including the point made in response to Lord Armstrong of Ilminster. We are broadly in agreement about the approach that should be taken.

113. The first point of difference, which Ms Sheikh highlighted in response to Lord Armstrong of Ilminster's question, was the position now taken by Ms Sheikh's clients that ABP has no right in the foreshore land. That is a new point which has been taken, I think, since only yesterday. At all stages, we have made it clear that we assert riparian rights in that foreshore land.

114. The Planning Act 2008, following the Interpretation Act 1978 and Lord Brougham's Act of 1850, defines land so as to include right over land. Our riparian rights in that plot of foreshore land are, for the purposes of the Planning Act 2008, land.

115. We do not accept the premise of Ms Sheikh's argument in relation to the foreshore land. If this point that was taken, as we understand it, for the first time yesterday, is pursued at a hearing, it is a matter on which no doubt legal submissions will need to be made and upon which the Committee, advised by counsel and others, will have to come to a view.

116. It plainly is not something on which the Committee could come to a view today and is not something that we could make the submissions that we would need to in relation to a new point such as that.

117. In a sense, that deals with the principal point of difference. We submit that we do have land for the purposes of the Planning Act 2008 that is going to be acquired because we have rights over that land.

118. In any event, common sense suggests that if one is looking at the acquisition of a triangle of land, which is proposed in part for surface water and in part for overflow storage, in reality that will raise the question of the length of the quay. The length of the quay and the amount of land you have behind it are closely interrelated.

119. The reality is that, even if the Committee were to accept the erroneous submissions of Able, it should not in practice make any difference to the substantive scope of the issues.

120. Without making any debating points about the suggestion implicit in part of what Ms Sheikh says as regards this Committee being fundamentally redundant—at paragraph 8 she asserts in writing that this Committee will not serve any useful purpose—there is a real point of substantive disagreement in respect of which it makes a lot of sense that

parliamentarians, such as this Committee with its broad experience, should be able to address: that is, whether or not it would be in the national interest to have both the Immingham western deepwater jetty and the marine energy park project go ahead.

121. That is the nub of the disagreement that we invite this Committee to resolve. Not surprisingly, Ms Sheikh refers to what was said in the Secretary of State's decision letter.

122. Of course, the essence of this procedure is that Parliament in the 2008 Act recognised that, in relation to what we might term the competing national interests of statutory undertakers, it would be appropriate for compulsory acquisition to be examined by a body such as this, with its broad experience.

123. It is also worth pointing out that the examination that took place, as we point out in paragraph 27 of our petition, was one that provided rather limited opportunities for us to put our case in relation to compulsory acquisition, and we received a letter on 4 October 2012 that set out a limit of 15 minutes for cross-examination of Able's evidence.

124. The Committee might feel that that was likely to be a rather inadequate period of time for examination of something as important as the effect of the AMEP proposal on Associated British Ports' property interests.

125. I turn to the additional points made that we should not be able to deal with matters such as, for example, the protective provisions.

126. Looking at the part of the petition that deals with protective provisions, on pages 10 and 11, at paragraphs 38 and so on, one can see by looking at paragraph 40 that the three protective provisions that we are looking for there are ones that relate to ABP's real property—that is, concerns about siltation that would impede “access to or berthing at any harbour work belonging to or occupied by” ABP.

127. One would have thought that that is the very sort of interest that Section 128 of the 2008 Act was concerned with. It then says that erosion means, “bed or banks of any

structure ... owned or occupied by AB Ports". Again, I would have thought that that was the sort of interest that Section 128 was directed towards.

128. Paragraph 115 deals with existing rights to pass along. Rights of way are a classic instance of property rights. It is manifest that you cannot really enjoy your property if you cannot gain access to it. So it is in a sense a little surprising and perhaps disappointing that there is an objection to us even being allowed to raise those points.

129. We recognise that the Committee will have to form a view on these matters, and the view that it comes to may not be one that we like. But at least we ought to have the opportunity to make our points about all those aspects.

130. **The Chairman:** Thank you, Mr McCracken.

131. **Robert McCracken:** Unless I can be of further assistance to the Committee, that is what I would like to say in reply.

132. **The Chairman:** Thank you both very much indeed. I think the Committee will wish to consider the points that you have put to it. Would you be kind enough to wait, and we will consider in private and see what conclusion we come to?

Committee adjourned for private session from 11.04 am to 11.58 am.

133. **The Chairman:** We have taken perhaps a little longer than you might have expected in considering this matter, and we take note of the decision of both of you that you would prefer a narrow scope.

134. However, what has occurred is something that we were perhaps not prepared for, and that is the question of riparian rights. I think it was your point, Mr McCracken, that it gives right of land over the foreshore and the bed of the Humber estuary.

135. In order to make a judgment on whether it should be the narrow or broader scope, we would be most grateful if you could return on Monday at four o'clock to address that point, in order for the Committee to come to some conclusion.

136. I think you understand that it is a relatively new point in the procedure, and we would like to deal with it at this point if we can. Is that acceptable to you?

137. **Robert McCracken:** Yes.

138. **Saira Kabir Sheikh:** Yes.

139. **The Chairman:** Thank you very much. I think that that is how we are going to proceed. Do you have any questions at this particular moment?

140. **Robert McCracken:** No.

141. **Saira Kabir Sheikh:** Has the Committee set aside a particular time limit for those submissions? Although I can make myself available on 7 July, I will not be able to stay very late into the evening.

142. **The Chairman:** I am sure we would like it to be addressed very quickly, and then we would be able to consider the position. What would your time estimate be?

143. **Saira Kabir Sheikh:** I do not expect that it will be more than 20 minutes or 30 minutes. One would imagine that there is some work to be done to establish the point, but it ought to be capable of delivered fairly quickly.

144. **The Chairman:** Would that be the same for you?

145. **Robert McCracken:** I anticipate my submission as being fairly short, but 20 minutes for a lawyer is a rather ambitious time limit. I am more inclined to say that we should add a little bit over.

146. **The Chairman:** If that fits in with your timescale, let us say four o'clock on Monday afternoon.

Public session adjourned at 12.02 pm

MINUTES OF EVIDENCE

taken before

The Joint Committee

on the

Able Marine Energy Park Development
Consent Order 2014

Monday 7 July 2014

in Committee Room 4

Present:

Viscount Ullswater (Chair)
Lord Armstrong of Ilminster
Paul Blomfield MP
Dr Matthew Offord MP
Lord Plant of Highfield
Craig Whittaker MP

Saira Kabir Sheikh QC appeared as *Counsel on behalf of Able Humber Ports Ltd, the applicant for the order*

Robert McCracken QC appeared as *Counsel on behalf of Associated British Ports, the petitioner*

Ordered at 4.09 pm: That the Parties be called in.

1. **THE CHAIR (VISCOUNT ULLSWATER):** Good afternoon, everyone. I would like to call the Committee to order and note that we are now in a public session. As previously, phones and fire drill: I would like to remind everyone to switch off their mobile phones or at least to set them to vibrate only. Any other electronic equipment should be used sparingly, and if you need to make or take a phone call, please leave the committee room to do so.

2. As I mentioned last Monday, bells are not used on the parliamentary estate. When there is a fire evacuation, a two-toned siren, followed by a series of taped messages, is broadcast. If evacuation is necessary, please follow the instructions of the door keeper. Anyone not in the committee room itself should find the nearest security officer. Most of you are familiar with the Palace and will know that the bells are used for Divisions, but we are not expecting either House to divide this afternoon. Hansard is taking a verbatim record, so I would ask everyone to speak up to assist them to do so. Also the public session is being audio-visually webcast.

3. Today's meeting of the Committee is a continuation of the preliminary hearing, at which both of the parties have been invited to make focused legal representations on the scope of the Committee's work. During this session, the party's counsel will be addressing the issue of the petitioner's riparian rights in relation to one of the parcels of land being compulsory purchased. As Paul Blomfield will be leaving at 5 pm, we hope that both counsel will try to keep their submissions as short as possible. I am very grateful for your co-operation on that, if we can achieve it. Mr McCracken, would you like to continue?

4. **ROBERT McCRACKEN:** My Lord Chairman, members of the Committee, conscious of the time constraints I prepared and circulated this morning a skeleton

argument, which was exchanged with Ms Sheikh. I have also, since receiving Ms Sheikh's skeleton argument, prepared a brief speaking note in reply to Able's skeleton, and that is now being circulated. We have 50 minutes, effectively, and I propose to take about 15 minutes in opening and then reserve five minutes for reply after Ms Sheikh's 20 minutes.

5. What I propose to do, therefore, is simply to highlight some of the key points that I have made in writing.

6. The first is at paragraph three of the skeleton, and that is that the Committee—could those behind me give Ms Sheikh a copy of the speaking note and reply?—may and should receive any material that is relevant to the effect of the project on Associated British Ports' statutory undertaking arising from the taking away of its property.

7. I set out in paragraph four in italics the formulation of the scope of the hearing that I suggested on Thursday of last week.

8. Paragraph 5, the Immingham Western Deepwater Jetty Project, is a classic use by ABP for its statutory purposes of land with a location on the banks of a navigable estuary for its statutory purposes.

9. The DCO empowers Able to acquire the SPP plots of land compulsorily. It does not require them so to do. It might require all or none or any one individual or combination of the plots. The applicability of the SPP provisions to any individual plot cannot be considered on the basis that any other one would necessarily also be required.

10. The Planning Act's foundational provision is Section 128. The section applies to land that has been acquired by statutory undertakers for the purposes of their undertaking. The Chair of the examining panel and the Secretary of State decided that the land in respect of which the petition, including both the triangle and foreshore land, has been lodged is land that falls under this description, and certificates under Section 127 were issued.

11. One has to consider the meaning of land under the Planning Act, and the riparian rights attached to the triangle land extend over the foreshore. These rights stem from its position on the banks of the Humber and are explained at paragraph 17 below. They are enjoyed by ABP and constitute land for the purposes of the Planning Act 2008.

12. I set out the definition of land in the speaking note in reply to Able's skeleton, and I invite the Committee to note that the definition of land for the purpose of Section 128 of the Planning Act 2008 includes any right over land, and land includes land covered with water. Thus, the term "land" in the Planning Act 2008 includes the rights that AB Ports has over the foreshore land stemming from its ownership of the triangle land. The DCO would authorise Able to take away these rights from AB Ports.

13. Our submission, paragraph 9 of the main skeleton, is that consideration of the triangle site must include the area of the foreshore land over which there are rights of marine access. The position of in this case the Crown Estate, which owns the freehold, and the conservancy authority, which enjoys leasehold interest in the foreshore, is irrelevant. The point is that AB Ports has riparian rights over the foreshore land, which constitutes, for the purposes of the Planning Act, land that is being taken away from us.

14. The interests in the foreshore land that the DCO authorises to be acquired include the riparian rights of ABP; and the book of reference, one notes, defines land to be acquired of the foreshore land as all interests excluding freehold interest. Then they set out a description of the foreshore land.

15. The dispute, paragraph 10, is about whether in respect of the foreshore land any land of ABP that falls within the terms of the Act is being acquired. If it is not being acquired, that precludes the Committee from considering the effect of the construction of the disputed 279 metres of the AMEP quay on the IWDJ project.

16. Our answer to the dispute, in a nutshell, is that land within the meaning of that term as defined in the Planning Act 2008, i.e. rights over land, is taken away from ABP in respect of the foreshore land. Even if that were not the case, the purpose of the Act would be frustrated if, in relation to the triangle land, the Committee declined to consider the legitimate interest of ABP in promoting IWDJ.

17. One needs, therefore, to think about what the purpose of Section 128 is. The procedure is designed to give to statutory undertakers, who are providers of important public services, when their rights are to be taken away, the protection of a proper consideration of their interests by a group of parliamentarians with your collective experience and appreciation of the nation's long-term interest.

18. The effect on ABP of the construction of the AMEP quay by Able is within the scope of an examination of the DCO, whether one is considering the acquisition of the triangle land or the foreshore land.

19. Consideration of the length of the quay is within both the letter and the spirit and intendment of the Planning Act 2008. The consideration must inevitably involve a balancing exercise in which the Committee weighs the benefits to the public of the disputed 279 metres of the AMEP quay against the benefits to the public of the IWDJ.

20. On paragraph 14, it would make no more sense to exclude from the scope of the Committee's consideration the area of foreshore over which the triangle land has marine rights of access, plot 09001, than to exclude consideration of the land access, in respect of which there is no dispute about scope.

21. The suggestion by Ms Sheikh that the Committee should confine itself to consideration of the need for ABPs land in a vacuum, without reference to ABP's IWDJ project, would not be consistent with the purpose of the SPP process, whereby special protection is given to statutory undertakers, a limited group of landowners, because of the

public value of their activities. Were such an approach to be adopted, the SPP process would be rendered pointless.

22. Now, the Committee adjourned on Thursday last week because Ms Sheikh had raised an issue as to whether or not ABP had any riparian rights. I turn to that.

23. ABP as port operator is the freehold owner of the triangle land, and there are four plots there; Able does not challenge that. That triangle of land adjoins the foreshore. ABP referred at the standing hearing before the Chairman to its riparian rights over the foreshore. Able did not, at that time, challenge the possession of such rights. It does, however, do so now.

24. On paragraph 17, the common law rights of riparian owners—that is, those who own land on the banks of a river—include the right to gain access to the river from any part of their land and the right to moor vessels along or near to, if deeper water is needed, the frontage for the purpose of loading and unloading. These rights apply to tidal rivers as well as to non-tidal rivers. They do not depend on the ownership of the bed of the river.

25. I cite there four cases, and I will ask that they all be distributed as a bundle now. It is manifest that there will not be time in my 15 minutes to go through any of those in any detail.

26. The only point that I need make is that first of all in paragraph 18 I have incorrectly referred the Committee to paragraph 58 of the first case—that is the Moore case—and in my skeleton, paragraph 58 should be scrubbed out and paragraph 66 should be put there in its place. So the Moore case is paragraph 66, not paragraph 58.

27. I will draw attention to just one or two features of these cases. It is perhaps by happy chance that one of them involves the Ullswater Steam Navigation Company, and one notes that Mr Justice Blackburn, in that case, accepted that everyone whose land abuts the

edge of the lake had a right to come down to the water for the purposes of exercising navigation rights.

28. Mr Justice Blackburn went on to say that access from a landowner whose land abuts the shore can be made not only directly from his land but could be by boat or, if the water was very shallow, he could wade or, if his vessel lay conveniently near, he could place a plank across from it to the water. In other words, the law, as usual, with characteristic common sense, recognises that very often to gain access from your land that abuts the public highway of the water, you are entitled—and this is a private property right—to use practical methods for loading and unloading.

29. In a case involving the Duke of Buccleuch and Queensberry, paragraph 20, Mr Justice Hannen, I highlight, said that the right of access was along the whole frontage of a riparian owner's land, and Baron Martin noted that it was not necessary to own the soil of a bed of a river.

30. One has, as a riparian, the easement right or privilege, by whatever name it may be called, of the flow of the water up to the garden wall. Over the page, if the owner of the soil of the bed of the river or anyone else constructs an embankment and roadway, and effectively shuts out the riparian owner's premises from the river, he would have maintained an action against him for depriving him of his riparian right. That is, of course, precisely what the DCO would enable Able to do in relation to the triangle land.

31. The next case is *William Lyon and the Wardens of the Fishmongers Company*. This was a decision of the Upper House, advised by judges, with some very distinguished judges, Lords of Appeal, sitting.

32. Lord Cairns observed that it is now settled that the right to the enjoyment of a natural stream of water, *ex jure naturae*, belongs to the proprietary of the adjoining lands as a natural incident to the right to the soil itself—that is, the soil in the adjoining land—and

that he is entitled to the benefit of it, as he is to all other natural advantages belonging to the land of which he is the owner.

33. Then Lord Selborne pointed out that “with respect to the ownership of the bed of the river, this cannot be the natural foundation of riparian rights properly so called because the word ‘riparian’ is relative to the bank and not the bed of the stream”.

34. He went on to say, “It is, of course, necessary for the existence of a riparian right that the land should be in contact with the flow of the stream, but lateral contact is as good, *jure naturae*, as vertical”.

35. Then he goes on to say, “It is true that bank of a tidal river, of which the foreshore is left bare at low water, is not always in contact with the flow of the stream, but it is in such contact for a great part of every day in the ordinary regular course of nature, which is amply sufficient foundation for natural riparian right”.

36. The position in relation to the triangle land is that at every high tide, even at neaps, the triangle land is in contact with the water, at least during the predicted tides for 2014. If the Committee wishes to have that information in a sworn witness statement, then I am happy to undertake to have that supplied to the Committee.

37. So, our conclusions are that ABP has riparian rights to the foreshore land. It has a natural easement stemming from its ownership of the triangle land, and this constitutes land within the definition of that term in the Planning Act.

38. The DCO would take these rights away from ABP. The IWDJ is a classic example of the use by ABP of land in its ownership, with the location on the banks of a navigable estuary for its statutory objectives, and the effect on ABP of the construction of the disputed 279 metres of AMEP quay by Able is therefore within the scope of an examination of the DCO on our petition.

39. I have taken 15 minutes and I reserve five minutes for a reply to Ms Sheikh.

40. **THE CHAIR:** Thank you very much, Mr McCracken, for being so concise. I will just ask the Committee whether they have any particular questions they want to put to Mr McCracken. Right, Ms Sheikh, what would you like to tell us?

41. **SAIRA KABIR SHEIKH:** Thank you, my Lord Chairman. I would just like to go back to the reason why we are here, which is, as I understand it, to understand whether there are any rights in the foreshore land that should trigger SPP.

42. That was the purpose of looking at the riparian rights, because the parties had agreed that there was to be a narrow interpretation of Section 128 of the 2008 Act. Once we agree that, then the 2008 Act quite clearly says that the land needs to have been acquired for the purposes of the statutory undertaker's undertaking. Then the DCO should be authorising compulsory acquisition in that land.

43. The first point is that there is no dispute between anybody that the foreshore land has not been acquired by the petitioner for the purposes of its undertakings. It does not own it. It has not acquired it, so it does not even meet the first part of 128.

44. The petitioner raised last time that they had riparian rights as a way to show there was some relevant ownership right in the foreshore. That is really what we are looking at: is there a relevant ownership right that Able is acquiring? That is the point. I have set out in the outlined submissions why there is no relevant right.

45. The first point is what I have just covered in paragraphs 1 to 5—that the petitioner has not acquired that foreshore land, so we do not get into a trigger for SPP in relation to Section 128.

46. Then, looking at the question of whether there are some rights over the foreshore that are being acquired, in any event I have gone on at paragraph 6 onwards to look at the question of riparian rights.

47. What is quite important is that the Humber is a tidal river. The fact that it is a tidal river means that there is not the usual rule for a non-tidal river that there is ownership up to the centre of the river, including half of the foreshore. So there cannot be any ownership in the bed or the foreshore. That has to be owned by the Crown. It is owned by the Crown, and no one disputes that. There is a lease to the conservancy authority; that is not your petitioner and, again, there is no dispute about that. There is a distinction here that the foreshore, in this case, is not owned and cannot be owned by the petitioner.

48. Going on to the next step, the petitioner says, “Well, we have some riparian rights over that land”. First of all, there are no riparian rights over the foreshore. Any right that there is would be to use the water. That is not the right in the foreshore. That is quite important. There is no ownership in that land.

49. Insofar as the riparian right is concerned, if it exists—and I will come to that at the moment—as I say, it is the right to use the water. I have set out a case at paragraph 10, which is *Embrey v Owen*, which makes the point that there is no right or ownership in the flowing water itself. There is a right to access the water, but you cannot have property in the water. If you cannot have property in the water, again there is no ownership right in the water or the foreshore. I keep going back to ownership, because that is what triggers SPP in this case.

50. Going then to paragraph 11, there is an analysis of that case, which is the right to use the water and the right of ownership in the water being distinguished. I make the point again. This is the point that Mr McCracken seeks to rely on. He says, “Well, I have an easement over the foreshore”.

51. No, with respect, you do not have an easement over the water, because an easement is something that you can grant. That is the type of right that is contemplated in the 2008 Act when it is rights over land or land as well. It is a right that you can acquire,

you can grant or you can transfer. That is not the sort of right that we are looking at here, if there is a riparian right.

52. This is a common law right that arises from ownership purely of the bank or the land that is adjacent to the foreshore. There is no freestanding right in the foreshore or over the water that can be acquired by Able, so Able cannot come along and say, as you can do with many other easements, “I am going to acquire a right of way over that land and then extinguish it”. You cannot do that here. All that Able can do is acquire the triangle land and any riparian rights are attached to that land. They are inherited by that land only.

53. It is important, because otherwise it would be possible to circumvent the agreement that the parties have that a narrow application of Section 128 of the 2008 Act should be applied, because you are then able in a sense through the backdoor to have the foreshore the subject of special parliamentary procedure when there are no relevant ownership rights that Able is taking.

54. The rights that Able is taking are the leasehold rights of the conservancy authority. Those are the rights that are being acquired. There is no riparian right in the foreshore that is being acquired in relation to the foreshore land. It is to do with the triangular land. That is why I urge on the Committee to look at the triangular land and whether that is needed for Able’s project or not. That, in my submission to the Committee, is sufficient, and it enables a proportionate level of work to be done that is fair to both the parties.

55. Of course, the examining authority and the Secretary of State have not looked at the foreshore already in the context of the petitioner’s land. The examining authority and Secretary of State have not said, “You are taking some land off the petitioner in the foreshore”. They have looked at the land that has been taken from the conservancy agency and the agreement of the Crown. The Crown has, of course, agreed that the leasehold interests can be acquired. That is the proper way, in my submission, to look at it, not to be

trying to get in through some riparian rights that do not actually relate to the foreshore or the land in the foreshore, which cannot be owned by ABP.

56. Another reason why that must, I submit, be right is because the way the petitioner puts it is, “Well, you should be able to look at the proposal of the petitioner to develop a jetty—the IWD jetty”. Any riparian rights that there are would not enable that jetty to be developed, and I am sure Mr McCracken is not suggesting that. Riparian rights, if there are any, can be accessed only for potentially mooring and so forth. They certainly would not allow a jetty to be built.

57. That is why, again looking at it from a common-sense perspective, this is using a very small, potential common law right over some other land to enable the opening up of the entire issue of the foreshore.

58. The danger of that for Able is that of course that then widens the meaning of Section 128 far beyond the agreement of a narrow construction, because the suggestion then seems to be, “Well, we can look at the foreshore and whether or not you need the foreshore land”.

59. Of course, the foreshore land has already been found by the examining authority and the Secretary of State to be required for Able’s project. Unless the land has ownership rights belonging to ABP that we are taking, I submit that it would not be appropriate to widen the scope. The riparian owner, if they are a riparian owner, has rights only in the bank; it has nothing to do with the foreshore.

60. I have set out again in the skeleton some details of that.

61. In paragraphs 12 and 13 again of the skeleton, I am just drawing together the threads there of the argument before, which is that a riparian owner, when he sells an estate including land on the banks of an actual stream, does not need to make any express

provision as to the grant or reservation of riparian rights, because they simply go with the neighbouring land.

62. That is distinct from the types of rights that Mr McCracken is referring to, which would be acquired separately—rights over land such as easements, rights of way, rights to lay pipes and so forth. They are not in that territory at all. Paragraphs 12 and 13 just make the point that to the extent that there are any riparian rights, they are part of the inheritance of the land abutting the water course, and that would be the triangular land and not the foreshore.

63. Consequently, Section 128 of the Planning Act 2008 does not apply to the foreshore. No land or rights in the foreshore were acquired by ABP for its undertaking, and no land or rights in the foreshore have been acquired from ABP by the order. Therefore, I say that the acquisition of the foreshore simply does not trigger the SPP on a narrow interpretation of the scope of Section 128 of the Planning Act 2008.

64. My learned friend did say again, “What would be the point of SPP?”. There is a considerable amount of work, I would submit, for the Committee, because you would need to be satisfied that the two plots of land that we do not dispute, which is the public right of way and the triangular land, are genuinely needed for the project. So there is a considerable amount of work.

65. Of course, I did say last time and I will say again in response to what Mr McCracken says when he asks what the point of SPP is that of course we know that Parliament has said now that there is no point of SPP for projects under the 2008 Act. There is no point, is the short answer. We are caught by it, of course, because it was extant at the relevant time. So we understand and accept that, but it is not helpful to say that it is pointless because unfortunately, rightly or wrongly, that is the decision of Parliament: that it is pointless. So

we do not think it is proportionate or right to try to extend SPP when we have and know that background.

66. I have then gone on to look at whether or not ABP has any riparian rights in any event.

67. I have made two points: one is that the land must be in actual contact with the watercourse in any event, and that the land must be in contact with the flow of the watercourse, at least in times of ordinary high tide, and I have set out the case. I do not believe that to be in dispute.

68. There is a second principle, which is that land that is separated from a watercourse by a strip of land in separate ownership will not be held to abut the watercourse for these purposes.

69. I did put in a plan of a public footpath. I do not know whether that has reached the Committee. If, my Lord Chairman, you and other members have had a chance to look at it, there is a footpath 50 that does run along the relevant bank. That is a public highway, maintainable at public expense. The rights and ownership in that land vest in the highway authority, so it is a separate ownership. I say that means that there is now a separation between the bank and the foreshore in any event.

70. My learned friend said just before we sat down that he was going to refer you to some other case in that context. I do not know whether it is in this bundle, and I do not know what it is he is going to say, so I just reserve the right to come back on that case if he does refer to it.

71. What I have established from looking at that case is that it seems to deal with a non-tidal river. That would be different, because it would not matter if there was a public footpath separating the bank from the foreshore because you would own part of the foreshore in a non-tidal river. Here, it does matter because you cannot own the foreshore

because it vests in the Crown because it is tidal. So there is a distinction in the case that I believe he may refer to. I just make that point.

72. Dealing then with the foreshore, paragraph 16 onwards of my skeleton, I have gone through the relevant plot that would need to be adjacent to the foreshore. That is plot 03023, which is at paragraph 17, and that is the plot through which this footpath runs: the public right of way.

73. The remaining paragraphs explain how this piece of land and its ownership was in dispute. The examining authority had raised the question of the ownership of this plot. I just in passing make the point that it was said that Able had raised this for the first time last Thursday or the night before last Thursday.

74. That is not correct. The issue of ownership of that land has been a live issue for some time. Indeed, the petitioner obviously realised that, because 44 years after they had obtained the other land, they decided to apply for possessory title of the land. So they do not have a clear freehold ownership of that land.

75. They have made an application for possessory title, but that is subject to someone popping up in the next 12 years claiming ownership of that land. So there is certainly uncertainty in that context as well. I submit that it is for the petitioner to demonstrate that they own it, and in this context there are question marks over it, quite apart from the highway that runs through it and the other points that I have already raised.

76. In paragraph 21, I make the point that it has been a live issue.

77. Paragraph 23 refers to the footpath, and I have referred to the case of Rowley Bros & Oxley, which makes the point that where there is a separation in ownership, riparian rights are precluded in any event. That point is made good by the fact that the land is vested in the highway authority. It is owned by the highway authority.

78. There are also flood defences, which the Environment Agency maintains. There is quite a lot between the foreshore and any contact with Able's use.

79. Those are the points that I wanted to make. I will very briefly summarise the key point, and this is that when we are looking at the rights and the work of the Committee, if the Committee were to look far more widely, that would, in my submission, be going outside the narrow interpretation that we have looked at. It would open up the principle of Able's scheme and entirely bring into play all matters that, I submit, have properly been dealt with already.

80. I do accept that the work of the Committee can focus on whether the two pieces of land that are owned are needed for the project. I submit that that would be fair to Able as well, particularly given that it has been through a very long process already and Parliament has seen fit to render this process obsolete.

81. Unless there is anything else I can assist with, those are my submissions.

82. **THE CHAIR:** Thank you very much, Ms Sheikh. Are there any questions that the members of the Committee would like to put to Ms Sheikh? Mr McCracken, I think you wanted a few minutes to come back.

83. **ROBERT McCracken:** I did. I indicated on Thursday that I might be a little bit more than 20 minutes and I have only taken 15 minutes so far, so I hope the Committee will allow me to make some brief points in reply.

84. The first point is that the Growth and Infrastructure Act is not retrospective, so it is irrelevant to the scope of this hearing.

85. The second point is that we have adopted a very restrained approach in our invitation to the Committee. We have adopted a very focused approach as to the scope of the Committee.

86. The third point, as we set out in our speaking note in reply to Able's skeleton, is that land for the purpose of Section 128 of the Planning Act has an extended definition, so it includes the rights that AB Ports has over the foreshore land stemming from its ownership of the triangle land.

87. The DCO would authorise Able to take away these rights from AB Ports, and indeed the DCO, at Article 32, provides for the extinction of any rights over land that has been acquired.

88. While we accept that we would need further consents to actually construct the IWDJ, we are really in exactly the same position as a land owner who seeks to resist a compulsory acquisition of his land on the basis that he wants to carry out a development for which he will need planning permission. It would be an extraordinary state of affairs if the Committee were to say, "We cannot consider the IWDJ project because you would need some harbour authorisation". It would be as if one were to say to somebody whose land were being taken, "The fact that you need planning permission means that we are going to ignore what you would do with the land if it were not compulsorily acquired from you".

89. The point that is made in paragraphs 15 and 23 about the public highway goes nowhere, because AB Ports' land—the land that it owns—abuts the estuary. No other land intervenes. Insofar as the highway authority owns any part of the highway, the most it would be would be the thin surface sliver; the land underneath would remain in the ownership of AB Port.

90. Ms Sheikh says that ABP does not own the flood defence works. ABP does own the structured flood defence works, and again I am very happy to undertake to supply a sworn witness statement if the Committee is in any doubt about that point. It was an entirely new point that was raised this afternoon, but we are entirely happy to produce a witness statement to that effect if there is any doubt about it.

91. The authorities that we have cited indicate that what we have is something that can be described as an easement. One sees at paragraph 20 the quotation from the Buccleuch case and that Baron Martin characterised what a riparian owner has as being an easement.

92. As for the Privy Council case of *Tetreault v Montreal Harbour Commissioners*, I did explain to Ms Sheikh at the time that I gave her my copy of that decision the proposition for which I relied on that is set out in there. It is simply that the existence of a highway over land that abuts a watercourse on to which riparian rights are claimed is not a barrier to the existence of those riparian rights.

93. The suggested distinction that Ms Sheikh sought to draw—that the *Tetreault* case did not involve tidal waters—would, even if it were a sound distinction as a matter of fact, be quite irrelevant, because as is abundantly clear from the authorities that I cited, in particular the authorities in the House of Lords, there is no distinction, when it comes to riparian rights, between riparian rights over a tidal river, in respect of which the Crown owns the bed of the tidal river, and any other water in respect of which there are public rights of navigation.

94. Ultimately, the question that the Committee has to decide is whether it would like to resolve the substantive dispute, which is wherein lies the greater public interest: the construction of the extra 279 metres of the AMEP quay or the ability to construct the IWDJ.

95. We ask for very little from the Committee but we do ask for that. That, in my respectful submission, is the very question that Parliament intended Committees of this sort to be determining when it enacted the Planning Act 2008 in its original form.

96. **THE CHAIR:** Thank you, Mr McCracken. Are there any questions now for Mr McCracken from the Committee? No. Thank you both. Thank you, Mr McCracken and Ms Sheikh, very much indeed for your submissions to us this afternoon. We will now go into

private session, and if you care to wait, I just hope that a decision can be reached today. Thank you very much.

At 4.47 pm Counsel and Parties are directed to withdraw and at 5.18 pm are again called in.

97. **THE CHAIR:** I call the Committee to order and announce, of course, that we are now back in public session. The Committee's decision is that we should be able to hear evidence on all and only matters raised in the petition for amendment and the petition of general objection, excepting the provisions relating to the railway, which the petitioner has indicated they are no longer pursuing.

98. If I may refer to the agenda, the sitting pattern has been formulated and will be given out—I think you are going to distribute it almost immediately—which has been resolved more or less with all members of the Committee and the parties, and the hearings now will begin at 10 o'clock on Wednesday 15 October.

99. I would like to thank the parties very much, indeed, for their assistance today, perhaps especially to Ms Sheikh for staying for the announcement of our decision. It was very important. Thank you both very much indeed. The Committee now stands adjourned.

The Committee adjourned at 4.49 pm
until Wednesday 15 October at 10.00 am.

MINUTES OF ORAL EVIDENCE

taken before

**JOINT COMMITTEE ON THE ABLE MARINE ENERGY PARK
DEVELOPMENT CONSENT ORDER 2014**

Wednesday 15 October 2014

In Committee Room 4

PRESENT:

Viscount Ullswater (In the Chair)
Lord Armstrong of Ilminster
Mr Paul Blomfield
Dr Matthew Offord
Lord Plant of Highfield
Mr Craig Whittaker

IN ATTENDANCE

Mr Andrew Newcombe QC, Association of British Ports
Mr Simon Bird QC, Able Humber Ports Limited

Witnesses:

Mr James Cooper, Associated British Ports

IN PUBLIC SESSION

(UNCORRECTED)

INDEX

Subject	Page
Chairman's opening	3
Mr Bird's remarks	4
Mr Newcombe's remarks	12
Mr Cooper, examined by Mr Newcombe	24
Mr Cooper, examined by Mr Bird	77

(At 10.09)

1. CHAIRMAN: In calling the Committee to order, I should remark that we are now in public session. Hansard is taking a verbatim record, and the proceedings are being webcast, therefore I would ask everyone to speak up to assist both Hansard and those who may be watching this fascinating performance on a webcast, should be able to hear what's going on.

2. I'm just going to explain to the parties and the audience what is happening today. It is the first substantive hearing on the petitions against the Able Marine Energy Park Consent Order, 2014. At the preliminary hearing in July, the Committee decided to interpret its remit in the wider sense, and the Committee will therefore hear the case for the petitions referred to it in full. Two petitions have been referred to the Committee, both from the same petitioner, Associated British Ports, and the onus is on the petitioner to prove the case for their petitions. Once the case for the petitions has been made, the Committee will decide whether or not there is a case to be answered. If there is a case, Able Humber Ports, the applicant, will be invited to do so.

3. Proceedings will start with a short presentation of a factual statement agreed by the petitioner and Able Humber Ports. Afterwards the Committee will hear the case for the petitioners. I need to make some housekeeping announcements about fire alarms and mobile phones. First, I would like to explain the division bells and the fire alarm system to you. If you hear a loud ringing bell during proceedings, do not worry, this is not a fire alarm; the bell indicates that a division is taking place either in the Lords or in the Commons. If the division is in the Lords, the Committee will adjourn for as long as it takes for Members to get down to the lobby, vote and return, which we will do with all due speed. It is quite possible that we will have a division this afternoon or on Monday afternoon. In the case of fire, bells are not used on Parliamentary Estate. Instead, a two-tone siren followed by a series of taped messages is broadcast. If evacuation is necessary, please follow the instructions of the door keeper. Anyone not in the Committee room itself should find the nearest security officer. Secondly, I would like to remind everyone to switch off their mobile phones, or at least set them to vibrate only. If you need to make or take a phone call, please leave the Committee room to do so. That ends the housekeeping.

4. I should mention that Members of the Committee have declared their interests at the first meeting of the Committee in July, and there is no need to revisit that at the moment. Perhaps I should ask the parties to introduce themselves very briefly, and then we will get into the meat of the business. Thank you.

5. MR BIRD: My name is Simon Bird, Queen's Counsel. I am appearing with Ms Isabella Tafur. We are instructed on behalf of Able Humber Ports Ltd by Bircham Dyson Bell.

6. CHAIRMAN: Thank you, Mr Bird.

7. MR NEWCOMBE: My Lord, I am Andrew Newcombe, also of Queen's Counsel. I am instructed on behalf of Associated British Ports, your petitioner on the two petitions, and as of tomorrow I shall be appearing with my presently errant junior, Mr Mark Westmoreland-Smith.

8. CHAIRMAN: Thank you very much indeed. I would now like to invite Mr Bird, counsel on behalf of Able Humber Ports to present the factual statement which has been agreed between the petitioner and the applicant for the order.

9. MR BIRD: My Lord, might I indicate for the record that Able Humber Ports Limited here appear as delegate for the Secretary of State for Transport in accordance with the provisions of Standing Order 243. If I could then introduce the agreed statement of fact. Can I just enquire through you, My Lord Chairman, so that I can get a sense of how detailed I need to be, whether your Committee has had a chance to glance through it?

10. CHAIRMAN: I think that you're right in saying that, because I believe that this is a statement of fact that has been before the committee on a previous occasion. Therefore we have had a chance to look at it, but as this is the first opportunity of the Committee to have this put before it in a public session, I think it would be sensible to go through it.

11. MR BIRD: That's what I intended to do. I will briefly summarise the main

points. My Lord, the Committee is of course hearing petitions made by Associated British Ports in its capacity as operator of the Port of Immingham in relation to an order. And, My Lord, as far as the order is concerned, you have seen these rather frightening piles of documents before you. There are three larger volumes, one to three, which are what the parties are referring to as their core reference exhibits. So those are the main exhibits, which include at tab 2 of the first volume of that, the Development Consent Order, to which these proceedings relate, so that is just for the record.

12. In terms of the decisions of the Secretary of State and the Panel finding recommendations, they also appear in that same volume of exhibits, and they appear as documents 3 and 4, just again for the record. Within that context, if I could then turn to the agreed statement of fact. It's in a number of parts; it starts on page 1 with the definitions. My Lord, if I could just pick out a few of those definitions. You will see that AMEP is defined, and that means the Able Marine Energy Park. That is the development for which consent was granted by the Development Consent Order that has been made by the Secretary of State. The development itself is more fully described in paragraph 8 of the agreed statement, if I could just turn over the page to page 3. If I could just read that: "The AMEP Project authorised by the order involves the construction of a quay and land reclamation works and embarkation and disembarkation is restricted to items associated with offshore renewable energy infrastructure and any cargo that is incidental or ancillary to such items. It also provides for the development of onshore land behind the quay for the manufacture and assembly of such components. Because the Humber Estuary is protected by European legislation as a Natura 2000 site, the order also includes provision for the development of compensatory habitat on the opposite side of the Humber to replace the inter-tidal and sub-tidal land that will be lost from the Natura 2000 site." That is a brief description of the development subject to the Development Consent Order.

13. If I could then turn back to the definitions. Going down from AMEP you will come to NSIP, and that means a Nationally Significant Infrastructure Project, and refers to projects for the provision of infrastructure within certain defined categories. AMEP is one of those projects because it has a capacity in terms of cargo ship capacity greater than 5 million tonnes per annum, which is one of the thresholds for nationally important infrastructure projects. It's a harbour that will accommodate therefore that quantum.

Moving down the definitions you will see there is reference to SPP land, one up from the bottom. That is identified as the plots, and those plots are shown on the first plan, which is attached to the agreed statement of facts, ABP 1. If you have it at A4 size, it is quite small. I understand you may not have that attached to the agreed statement. It should be attached to the agreed statement, but there's an alternative. The smaller white bundles on the tops of the piles there; if I could just invite the Committee to open those. You'll see it's the first exhibit in the smaller white bundle, and I will explain the bundles in due course, is the plan that should have been attached to the agreed statement that is before the Committee.

14. CHAIRMAN: Is that ABP 1?

15. MR BIRD: That is ABP 1, and it's the land areas, the subject of ABP's petition for amendment and location of the proposed Immingham Western Deepwater Jetty, and you can see the various plot numbers in those boxes. I am afraid they're all small at A4 size, but those plots cross-refer to the SPP land as defined. That is the land, or those parcels of land; the land that is claimed by AB that they have the land and rights in that land, associated rights in that land, and it's in relation to those rights to which these objections are founded.

16. If I could then turn back to the agreed statement. The parties are set out and described briefly in paragraphs 4 and 5 of the agreed statement, and you will hear more about them in due course. Paragraph 6 refers to an application for a harbour revision order made by Associated British Ports to the Marine Management Organisation in relation to what is, and will I think become generally known through these proceedings as "The Triangle Land" within its ownership, that's within ABP's ownership, and the application seeks authority. So that's the application for the harbour revision order seeks authority for the construction of what is known as the Immingham Western Deepwater Jetty, for use as a liquid bulks handling terminal. And again, of that you will hear more.

17. Paragraph 7 sets out the history of Associated British Ports' land ownership in the SPP land. Paragraph 8 I have addressed. Then going over the page to page 4, the examination of the draft order through the provisions and procedures under the 2008

Planning Act are there set out in 9 and 10. So the process involves consideration by a Panel who make findings and recommendations to the Secretary of State. As you will see in paragraph 10, the Secretary of State made the decision to grant consent on 18 December 2013. The order was made on 13 January 2014, and lay before Parliament on 10 February 2014.

18. Paragraphs 11 and 12 deal with special Parliamentary procedure. As far as paragraph 11 is concerned, that sets out why we are all here: “Whilst the requirement is subject to a Development Consent Order to a special Parliamentary procedure in relation to the acquisition of land of statutory undertakers by the likes of Able Humber Ports has now been repealed, the timing of the application for the Development Consent Order was such that the transitional provisions apply, and therefore this Development Consent Order must be the subject of a special Parliamentary procedure.”

19. Paragraphs 12 and 13 deal with the petitions and set out the substance of those petitions. Again, you will see reference to the triangular shaped piece of land in 13 (a). Paragraph 14 sets out the substance of the objections made to the making of the order by ABP, in summary.

20. Paragraphs 15 and 16 deal with the issue of what’s known as the Killingholme branch line, that’s the railway issue, if I can call it that. It has been confirmed, as you will see from paragraph 16, that those concerns of Associated British Ports are not pursued. Paragraph 17 refers to the preliminary hearing, which you have referred to, My Lord Chairman. We can take that as read.

21. So I can turn to the petitioner’s grounds for objection, which are identified at paragraph 18. Those set out the substance of the grounds for objection made by Associated British Ports, and they are that the acquisition would frustrate ABP’s proposals, which are subject to the necessary approvals to construct the Immingham Western Deepwater Jetty as a liquid bulks import terminal on the SPP land, and at the same time remove from ABP its ability to relocate the Immingham Gas Terminal and existing liquid bulk facility at the Port of Immingham to Immingham Western Deepwater Jetty, thereby freeing land within the already congested waterfront with the extension of the Humber International Terminal as an additional dry belt product,

principally biomass for energy generation import facility, and there's reference there to the petition numbers.

22. My Lord, it may help just to set those objections in context. If you could take up the first of the larger volumes of reference documents, and go within—it's volume 1, it should say on the front. Within that there are number of tabs, it is tab 5, if I could invite you, My Lord Chairman and the rest of the Committee, to go to tab 5. It may very well be that the Committee might want to extract these two aerial photographs from the bundles just to have for reference purposes because you'll find they are very useful in terms of identifying various locations, sites and facilities to which reference will be made. My Lord, it matters not, I think, for present purposes which of the two aerials are looked at, at this stage. One has rather more detail about ownership, but if I could look at the first time just to introduce various locations.

23. Moving from south to north, you will see in orange the Port of Immingham identified. And you will see in the white boxes, which are within the Humber itself, various arrows pointing to facilities within the Port of Immingham. The first is Eastgate potential development area, and that's marked in orange. Then you'll see just above that the Immingham Oil Terminal. Then the Immingham Western Jetty and the Immingham Eastern Jetty. The Immingham Outer Harbour is then next, and adjacent to that is the Immingham Bulk Terminal, and HIT 1 and 2. And then to the north of that, the Immingham Gas Jetty, and then the South Killingholme Jetty, which is connected to land owned by the Ministry of Defence, and is under the control of the Oil Pipelines Agency.

24. Then in a mauve or slightly purple colour is the AMEP Scheme, and superimposed on the AMEP Scheme is a yellow triangle, which is the triangle land, which is the principal substance of the objections made by Associated British Ports. And then to the north of that what's called the Sea Road Terminal, again, just beyond the AMEP site.

25. My Lord, could I ask, we have blown up versions of these photographs, which are behind Members of the Joint Committee, which might assist the progress at various stages of the presentation by the parties. I understand there is some difficulty in terms

of getting camera angles to show them properly if they're produced during the sessions themselves, but it's been indicated that it would help to make reference to them. We can make them available, as it were, outside the session, so that people can look at them, but it might very well assist the smooth running of the Joint Committee if they are available, and I think Mr Newcombe agrees with me on that. So if we could have your permission to use them.

26. CHAIRMAN: You certainly do.

27. MR BIRD: I'm grateful. My Lord, I can then turn away from the grounds of objection to the Development Consent Order itself, which is dealt with at paragraph 20 of the agreed statement of facts. As I've said, the Development Consent Order itself is document 2 in that first large bundle of core exhibits. I won't ask the Committee to take it out at this stage; I'll summarise the key provisions of the order. Article 5 of the order, which for the record is at page 9, grants consent for the authorised development, so that is what grants consent for the AMEP Project. The authorised development itself is set out at Schedule 1 to the order, and that is set out in the agreed statement of facts at paragraph 20. Schedule 1 to the Development Consent Order appears at page 32 of the order, for the record.

28. In terms of the articles of the Development Consent Order, they're set out in paragraph 21 onwards. At paragraph 24, articles 30 to 43 concern the compulsory acquisition of land and rights inland, interference with existing rights and the temporary use of land. And the articles provide for the payment of compensation to those whose rights or interests are adversely affected. The rules applies are those that apply to all compulsory acquisition in England and Wales. So that deals with the issue of the compulsory purchase provisions within the Development Consent Order.

29. Paragraph 26 of the agreed statement of facts deals with the issue of requirements, and the authorised development has to be carried out in accordance with the requirements, which are set out in schedule 11 of the order, and schedule 11 is at pages 81 to 93 of the Development Consent Order. And requirements are equivalent to planning conditions attached to a planning permission, and effectively regulate how the development itself must be carried out, how it's to be regulated when it is being carried

out, and matters such as that. They are akin, as I say, to the conditions attached to the grant of a planning permission. We will during the course of these proceedings need to have regard to some of those conditions, but I don't think at this stage I need to take you further into the detail of them.

30. My Lord, that is the agreed statement of facts as it stands. There's one update that I need to touch upon, and one change of circumstance since it was drawn up, and that is what Associated British Ports refer to as their compromise proposal. My Lords, if I could take you back to that smaller white file, and what should be the very last exhibit in that smaller white file is called ABP 18. And ABP 18 is a letter from Winkworth Sherwood to Bircham Dyson Bell, which attaches proposed amendments to the order that would give effect to what ABP describe as the compromise. That compromise is on the second page of that letter in terms of the compromise amendments, but I think what is most useful to the Committee at this stage is to go to the plan attached to that letter, which is headed "AMEP Indicative Master Plan with ABP's triangle overlay". It's ABP 5 if you need to look at it in the A3.

31. MR NEWCOMBE: Forgive my interrupting, My Lord, it's simply an A3 version of the same plan, which is marginally more legible. I apologise to Mr Bird.

32. MR BIRD: That's helpful. So if we go to ABP 5 it's going to be clearer to look at that plan; that's very helpful. And effectively, if you compare it with ABP 1, which we referred to a little earlier on, it shows a reduction in the extent of land that ABP are seeking to have excluded from the Development Consent Order, such that it would reduce the extent of the quay, which would be lost, but would retain the triangle within the ownership of ABP. As I understand it, this is proposed as an alternative amendment, I suppose, to a substitute amendment to that set out in the petition. But I can indicate that as far as Able Humber Ports are concerned, that compromise is not acceptable to them in that it would be likely to frustrate the development as a whole. And again, you will hear more as to why that would be the case in due course.

33. In terms of the petition of general objection, just in terms of clarity, as I understand the position of Associated British Ports, they rely upon the petition of general objection only if it were to prove not possible to accommodate either of their

suggested amendments under the petitions for amendment.

34. MR NEWCOMBE: Correct.

35. MR BIRD: I'm obliged. My Lord, that is the agreed statement of facts updated. Would it help if I just further introduced the documentation that you have, just so it's clear what you've got?

36. CHAIRMAN: I think that would be helpful, Mr Bird. Yes, thank you.

37. MR BIRD: Good, let's start with the worst first, which is the big bundles, if I could just identify those. There are three of those; I suspect there'll be some content of that that we'll refer to more than others. They contain, as I've said, what we call the core reference exhibits, so they're agreed with Associated British Ports to be the core reference exhibits. They have within them, in volume 1, the petitions, the Development Consent Order, the Secretary of State's decision on the Development Consent Order, the Panel findings in relation to the Development Consent Order, plans showing the jetty's and port facilities, which you have seen and extracted. There is a plan showing the triangle land location at tab 6, and there are then various triangle land aerial images at 7, and also at 8, a plan showing the deep water channel and proposed channel dredging. So that's volume 1.

38. In volume 2, there are extracts from the environmental statement that was submitted to the Marine Management Organisation to accompany the application for the harbour revision order made by Associated British Ports for authorisation to construct the Immingham West Deepwater Jetty. So that's the only content of volume 2...

39. And then there is volume 3, which includes within it Associated British Ports' Port of Immingham Master Plan, which they adopted in September 2012... There are extracts from the environmental statement which accompanied the AMEP Development Consent Order application, and then there is a non-technical summary of the environmental statement, which accompanied ABP's proposals relating to Green Port, Hull. So that's the content of the third volume of those core reference exhibits. So that's the worst first in terms of size.

40. Then there are two smaller bundles; one we've already referred to. That's the smaller white bundle, and that contains ABP's exhibits. And then there is a smaller blue bundle, which contains Able's exhibits. And that, as far as the parties are concerned, is at present the document that you should have. So My Lord, unless I can assist you or your Committee further, that's all I intended to say at this stage.

41. CHAIRMAN: Thank you, Mr Bird, very much for your presentation. I'm grateful to both sides obviously for putting this factual statement before us. I think it's of benefit to the Committee to have an agreed statement. I need to ask my Members of my Committee whether they have any questions at this moment to ask Mr Bird. And now I think we ought to move to the case for the petitioner, the Associated British Ports. If I could invite Mr Newcombe to begin the petitioner's evidence-in-chief on both the petitions.

42. MR NEWCOMBE: My Lord, I am very grateful. Mr Bird, in introducing what can only be described as the origami to the Committee, has apologised for it. Much as I'd like to leave all the brickbats to be directed at him, I have to share that. The brickbats are jointly; we decided to put these materials before the Committee. We've tried to keep it to the minimum, but there is an irreducible minimum. So far as what Mr Bird has already said, he's put it in his customary admirably fair and impartial fashion. I am content to adopt that entirely, and the only differences between us, self-evidently, are that so far as the DCO is concerned, the Development Consent Order, he says aye, and I say nay. Insofar as the compromise is concerned, I say aye, and he says nay. But otherwise, what Mr Bird said helps me and shortens what I need to say in opening. Indeed, I suspect I probably owe him a proportion of my fee for the day.

43. So far as the function of my opening is concerned, I intend to use it, with the Committee's leave, as an opportunity to erect what I describe, I hope not inelegantly, as a series of pigeonholes so that we understand the structure of the case advanced by Associated British Ports, and what we submit are the appropriate tests or considerations for the purposes of this special Parliamentary procedure.

44. I shall inevitably be referring to some documents, but I think I can limit it, with

one exception, to the ABP sequence, which is the slim white file to which Mr Bird has already taken the Committee. I will also take the opportunity to make three brief excursions into the Panel Report, but in order to save people having to have it out, I will simply read the relevant extract so it's on the record and people understand the point which I then proceed to make. To put the matter in context, if I could invite the Committee first to ABP 2, which is a plan of the Humber Estuary? I apprehend that the Committee will already be familiar with the geography in this part of the country, but this may assist as a helpful aide memoire of the relationship between ABP's ports on the Humber, which the Committee will see marked in slate grey. And of particular importance for present issues, the Immingham Port on the south bank immediately to the south-east of the proposed Able and Marine Energy Park, and the Port of Hull on the north bank, a little further upstream, which includes Green Port Hull, which the Committee will see indicated by a tab at the western end of the main bulk of the Port of Hull.

45. Mr Bird has already introduced AVP 1 to the Committee, which sets out the plots of land that are relevant for present purposes. And should the Committee require further detail by way of reference on this, paragraph 6 of both the general petition and the amendment petition explain what is what in relation to these various plots. And in essence, the difference between the amendment petition as lodged and what we will no doubt come to call the compromise, as indeed Mr Bird has already identified, is that the Able Scheme, if built out, and if the triangle and plot O9001, i.e. the inter-tidal and sub-tidal, which extends in the rectangle out into the Humber, if that were acquired and Able built out in full, one can see that the proposed Immingham Deepwater Jetty, which is indicated rather faintly within that rectangle, would be unbuildable. For a more detailed look at that, if I can invite the Committee to move forward to ABP 5. One can see the materiality of that conflict that would arise if the—forgive me, I'm less than familiar with the Farrow and Ball colour car—but it's a sort of beige. The full Able proposal of course includes the stippled pink or red.

46. The amendment petition would have demonstrably a more severe effect upon the Able proposal, and the compromise, to which I will turn in a moment, clearly has a lesser effect and allows a quay length of the order of 1,000 metres, in fact about 995 metres, simply the straight line, and a materially reduced Immingham Western

Deepwater Jetty. When I say a key length of the order of 995, we need to bear in mind that that's simply the measurement parallel to the ebb and flow of the tide, i.e. along the main face of the jetty. And the Committee will note that there are what I refer to as right-angle berths in both the full Able scheme, and then moved further to the north-west in what we suggest is the compromise Able proposal. So the facilities of those berths need to be considered in any overall consideration of quay length.

47. The proposal for the Immingham Western Deepwater Jetty in full, as Mr Bird has already identified, i.e. "the full monty", continues to be the subject of an application for a harbour revision order, which is the mechanism for authorising such proposals under the 1964 Harbours Act. For obvious reasons there is at present no application for the compromise scheme because that is a matter that is still, to put it mildly, in issue. The reason underlying ABP's approach to that is, having regard to its statutory duty under Section 9 of the 1981 Transport Act, which quite apart from its individual duty to its shareholders as a commercial undertaking, also requires it to have regard to the expediency of facilities and the like, and also having regard to the national interest as a statutory undertaker. That compromise was started to be worked up, and ABP took encouragement from the Chairman of the Joint Chairman Committee, which took place in April, which is essentially a Committee which considered whether or not the petitions were fit to be heard, i.e. antedates us. I'm sure the Committee appreciate the later consideration before Members of this Committee. And Lord Sewell, at the end expressly enjoined the parties effectively to achieve agreement insofar as they could. And ABP has taken that to be an invitation to proceed with the compromise and to do what it can.

48. As recorded at the moment, there is no agreement on that, but the bare bones of it, the vital statistics are, as I've already identified, it would leave Able with a quay length of 995 which, as will be explained by the witnesses I intend to call, we submit is enough, indeed more than enough to handle volume of trade that Able has environmentally assessed. And indeed ABP goes on in other evidence to identify that in any event, in the latest state of the market, that trade is materially overstated.

49. I don't want to anticipate the evidence to any great extent, not least because as a mere advocate I shall make a nonsense of it, but it is important to recognise that things

have moved on even since the Panel proceedings some two years ago. The Committee will have noticed, for instance, that the mechanisms for funding offshore wind have materially changed and become less favourable by various announcements. And perhaps not entirely unconnected with that, a number of schemes have fallen by the wayside, including most recently, again the Committee will probably have noticed the press release on Friday of last week, the Galloper Scheme, which was a significant proposal off the Suffolk coast, just north of the Thames Estuary.

50. There is therefore, in ABP's submission, a very real question as to whether or not Able actually requires even as much as 995, but we don't put that matter in issue because it is inherent in the compromised proposal that ABP would be "content" with that as a compromise. And clearly, if ABP is right in those submissions, and the Committee is persuaded by the evidence of those who know what they're talking about as opposed to barristers, then logically there will also be—or could be no diminution in the employment generated because the same trade would be being carried on *ex hypothesi* more efficiently, albeit on less land.

51. So far as other matters are concerned, I just need to deal with the amendment petition and the general petition. Mr Bird has sketched that, and I agree entirely with his formulation. The evidence which ABP will be calling will be directed primarily to the compromise proposal, for obvious reasons. However, if ABP's case is made out under any of the three tests or material considerations, which I'm going to go in a minute onto consider, then logically the case would be made out for the full amendment petition, i.e. the more severe reduction of Able's powers of compulsory acquisition. We're not seeking to amend the petition; indeed, under the rules we can't do that. We simply encourage the Committee, if that were their conclusion, to go with the compromise, but I merely make the point that the evidence would justify the full amendment were the Committee so minded. That is entirely a matter for the Committee in consideration.

52. And as Mr Bird has identified, the sole reason for submitting the general petition is because that accords with the guidance published by the House of Lords on petitioning, to the effect that in circumstances where the petitioner does not wish a special Parliamentary procedure order to proceed if it's not amended, then the convention is that one submits a general petition as a safety net or a failsafe, and that is

the sole relevance of the general petition. It is not, as with the position in the amendment petition, as lodged. Neither of those is ABP's preferred option.

53. Now, forgive me, I'm now going to take the liberty to remind the Committee that it has power to report the order either without amendment or with such amendment that as the Committee considers expedient, to give effect either in whole or in part to any petition, and with such consequential amendments, if any, as they think proper. And in the case of a general petition, may report the order with amendments, notwithstanding that the petition is one of general objection. But if in their opinion the order ought not to take effect, they shall report that the order be not approved. I apologise for that, but it is important, in my submission, to start from the point of departure, even if we have an argument thereafter.

54. So far as the approach to this; again, at the risk of being impertinent, the Committee is here, in my submission, concerned with the facts and merits of the two conflicting cases. And therefore, to that extent is essentially, albeit on a limited battlefield, going over matters that the Panel has already considered. It therefore follows that of necessity there will have to be references to the Panel consideration in this, and in the nicest possible sense, for reasons which the Committee will perhaps understand, ABP will on occasion be critical of the Panel reasoning. I put it in that way because I know that the Panel Chairman, Mr Upton, is present today. I have appeared before Mr Upton, albeit I didn't appear on this particular order of the DCO's process, and I want to make it clear that in being critical, we're being critical of the report, and none of this is personalised in any form. And it's also right that I formally pay tribute to the huge job, which under the relevant Act, Panels have to do, because unlike planning inspectors and judges, they are sitting in an inquisitorial role rather than adversarial, therefore they effectively have to take on much of the role of cross-examination. And whilst I've apologised already, along with Mr Bird, for the quantum of origami with which we have saddled this Joint Committee, the amount of paperwork that any DCO process generates would probably go a fair way to filling this room. It is significant.

55. I come now to what we submit are the three tests, or three material considerations, which ought, in our submission, to inform the Committee's consideration. And they are derived, I deliberately use that verb, derived from the 2008 Act, from Sections 122

and 127. And they are: first, whether the disputed plots are indeed required. Second, whether there is a compelling case in the public interest for their acquisition. And third, whether those plots can be taken without serious detriment to the carrying on of ABP's Immingham undertaking. And I deliberately put it in that simple fashion because the framework for the Committee's consideration in the coming days is simply to be fixed within those three broad pigeonholes. There are indeed many subdivisions no doubt capable, but the overall question is simply put. I accept entirely, much more difficult to answer, but the framework is tolerably clear.

56. I turn now to the first point, as to whether or not the disputed plots are indeed required. And that test that I've indicated does derive from the 2008 Act. It's also of course reflected as a matter of constitutional policy in terms of any compulsory acquisition of land, and echoed further in article 1 of the first protocol of the European Convention on Human Rights. Now here, as I've indicated, the quantum of business relied upon by Able to demonstrate the need for its marine energy park is first of all, in all the circumstances, including the post-examination changes to which I've already referred, materially exaggerated. And second, even at that exaggerated level can be achieved on a reduced area of quay frontage within the compromised proposal.

57. In such circumstances, were the Committee with ABP on that, the disputed plots cannot be required in any necessary sense. It's stressed that this conclusion is wholly independent of any conclusion regarding whether or not, for instance, the Immingham Western Deepwater Jetty is concerned, it's simply that Able has failed at the first hurdle. Now I promised, dare I say threatened, to refer to a couple of examples from the Panel Report. And it is important to recognise that this question of how large the Able facility should be was expressly not considered by the Panel; expressly not considered by the Panel. And I will read this out for the transcript writer and give the reference for those who wish to have it. It's paragraphs 18.154 and 155 in tab 4 of the reference material, headed "Scale of Development". And it says: "The Panel has considered the possible question of whether the scale of the development has been justified. If, for example, the manufacturing area could be significantly smaller, then it might be capable of being developed on the east of the railway, possibly obviating any compulsory acquisition of assets or rights from Network Rail. And if the quay could also be smaller, then the triangle site owned by ABP might be excluded, thus removing the conflict relating to the

proposed Western Deepwater Jetty.” And if the Committee will bear with me: “The Panel has come to the view, however, that it can only deal with the application before it in its totality. It is not for the Panel to consider amendments to the scheme or a recalculation of the requirements based on the applicant’s assumptions or any other assumptions.”

58. I don’t need to read the remainder of the paragraph unless Mr Bird particularly wishes me to at this stage, but the position is this. If one takes a very simple example of a piece of infrastructure, which is needed to produce 100 widgets per year. If somebody comes forward and says, “I can produce 100 widgets on 10 hectares of land,” and another person comes forward and says, “I can do it on 5 hectares of land,” and a decision maker concludes that it can be done on 5, then clearly that is the scheme to go with. Bearing in mind that we are here considering the question of compulsory acquisition, i.e. using the full force of the law of the realm to expropriate an owner, it is clearly relevant to consider the alternative solution, which is inherent on the smaller scheme.

59. Now I won’t anticipate precisely how ABP reaches its conclusion that the totality of the AMEP Scheme is not required and that the market has degenerated in any event, but that gives, I hope, a sufficient flavour of what ABP says under this particular head.

60. I now move to the second of the tests that I suggested were relevant, and that is: is there a compelling case in the public interest for their acquisition? Well, if the Committee were to accept that the land is not required, then it would follow, as night follows day, that the compulsory acquisition would also not be in the public interest. But even if the Committee were not persuaded of that, and they thought, well, it’s possible Able might need a bit more land, then the significance of the public interest requirement necessarily dictates a balancing exercise. And that balancing exercise needs to have regard to the proposed IWDJ, Immingham Western Deepwater Jetty—forgive me, I’m already lapsing into acronym. And that Western Deepwater Jetty, my witnesses will tell the Committee, is needed, and there are no alternatives for it. And the root to its being needed can be considered under two heads.

61. Firstly, it’s needed independently insofar as there is a requirement for what I

referred to in the jargon as liquid bulks, i.e. essentially petroleum products and the like. And secondly, is further underpinned by the fact that within the existing Port of Immingham, i.e. not springing from the triangle land but within the existing Port of Immingham, slightly to the south-east, there is inevitably a requirement to reconfigure, and that springs from what are called dry bulks, which for present purposes mean coal and biomass. There is then a third limb to this, because even were one to assume that no requirement for the Immingham Western Deepwater Jetty, and no requirement for any jiggling of dry bulks were yet evidenced, it is still important to recognise that general ports such as Immingham, which aren't constrained to any particular trade, need what I refer to inelegantly, but I hope helpfully, as elbow room.

62. Elbow room has relevance in two respects. Mr Cooper, the Chief Executive of ABP, who will be my first witness, will give this to you much more accurately and much more elegantly, but my summation is this. First, ports are reactive, and they need to be able to deal with and meet customer demand when it arises. Examples spring to mind of, for instance, were countries to the east of here to turn off all the gas taps and other difficulties in the energy market to eventuate, which could happen overnight. A perhaps more cataclysmic matter might be war, and one thinks of the events of 1982 with the little local difficulty in the South Atlantic, and a significant number of the UK's strategic ports being required to clear cargo to deal with what were referred to as staff ships taken up from trade at a moment's notice. That elbow room requirement can crystallise at any time, but it is not a future and contingent requirement; it is a present and actual requirement, not least because customers both potential and present, when looking at a port want to be assured that insofar as their business grows, they're at a port which can accommodate, as and when it crystallises, their own requirements. Thus, a port where people say, "Well, Immingham used to be a lovely port, but it's got no elbow room," are not just going to be ports that are static, but ports that are in decline because customers are going to be going elsewhere.

63. For all those reasons we submit that that, even if we fail on the required element, and the Committee is satisfied that there is some element of requirement in Able's proposed compulsory acquisition, nonetheless there must still be this balance in the public interest. And to use jargon that has become common within my team, we have been in the habit of referring to the compromises being the best fit in the national

interest.

64. The third and final test is can the disputed plots be purchased and not replace d without detriment to ABP's Immingham undertaking? I don't need to labour this point because the arguments flow from the points I've already made about the need for the Immingham Western Deepwater Jetty, whether or not underpinned by a jiggling of dry bulks, and underpinned also by the elbow room point. And it is important to note that this test is a discrete one under the 2008 Act, because unless Able can show that there will not be serious detriment to ABP's Immingham undertaking, that is sufficient in itself without any other consideration to execute or to warrant the execution of the compulsory acquisition powers which Able seeks over ABP's land.

65. My Lord, those are the three elements, and my pigeonholes. There is one sub-pigeonhole, which is not part of the primary tests, and only arises if and insofar as the Committee considers that some form of amendment is appropriate, i.e. it wouldn't arise were the general petition to be the course followed by the Committee, nor would it be the course obviously if the Committee was unpersuaded by ABP's arguments. That is the question of whether or not the compromise scheme, or by parity of reasoning, any variation of it required further environmental assessment. Now apprehending that that would be a downstream question, which clearly doesn't affect the primary question of whether amendments should be made, but accepting that that might be a downstream question, ABP has examined it much in the way that the Secretary of State would examine a project with a view to providing what is called a screening opinion with a new application, or looking at whether a changed application already the subject of an application before him and with an environmental statement required further environmental information.

66. They have looked at the various heads where changes might be relevant and material. The only two which appear potentially relevant—I stress the adverb “potentially relevant”—are coastal processes, i.e. the way in which the effect of piling and pouring concrete on the inter-tidal and the sub-tidal disturbs the sedimentation process, erosion and all of that within the Humber. And we will call an expert who has advised ABP that that would not provide, in my non-technical term, that will not make any material difference for present purposes. And second, because of course our

European sites within the Humber, which carry with them special considerations under the Habitats Regulations, we will be calling an ecologist and ornithologist—that's one person not two—to explain why in his view that also does not make a material difference. But ABP does that in order to be helpful, and it is not central to its case because even if the advice ABP has received is wrong, i.e. and the Committee consider that there is some material requirement for further environmental information, that is simply inherent in the whole process of the DCO, including the SPP, and does not alter, as I say, the primary conclusion, which on my hypothesis will have arisen in relation to the question of amendment.

67. My Lord, forgive me, I've been longer than I would have wished, but that concludes my opening submissions, unless they prompted any further questions from the Committee.

68. CHAIRMAN: Thank you very much, Mr Newcombe. Are there any questions that the Committee would like to ask?

69. MR WHITTAKER: Thank you for your opening statements; and I'm suppose I'm going to put it in a simple fashion too. Why do ABP want to move the gas terminal what appears to be about 625 metres further north? And I understand it's to extend the international terminals, but it also appears that on the south side or the east side, you have a site down there that appears to be suitable from the match you've provided, called the Eastgate potential development area. Would that not be a better option rather than trying to—what appears to be to thwart—sorry, no, that's the wrong terminology. By doing or putting it where they want to do it would without question hinder the Able Marine development site.

70. MR NEWCOMBE: Sir, I understand the question. The direct answer is no, but with your leave, what I would suggest is the better approach is rather than mock me doing my poor bumbling best to explain it, you get it authoritatively from Mr Cooper, who's heard your question. I will take him to that in-chief, and somebody will remember to remind me if I forget, and he will give you the authoritative position straight from the Chief Executive of ABP. But the default position, ABP's position is no.

Able L2 19/10/2014 19:26
Formatted: Highlight

71. LORD PLANT: And a different question. When we last met we had a presentation from counsel for both parties on the issue of riparian rights, which suddenly seem to have loomed very large in the sense that we met towards the end of a week; this issue of those rights were always on the instigation of counsel, not from the Committee, and over the weekend the two QCs were asked to produce some sort of statement about their respective views of these rights. Now so far as I can tell in what's been said so far, neither of you referred to those rights, and yet, as I say, at our last meeting they were the sole topic of conversation really. And I just wonder where this issue is going to come up if it's going to come up.

72. MR NEWCOMBE: My Lord, the easiest way to answer your question is if I could invite you to look at ABP1, which is the A3 exhibit which Mr Bird and I each took you. The triangle land has tended, in both Able's parlance and ABP's parlance to be used as a proxy for the totality of ABP's land interest. The question of riparian rights arises in relation to the dotted rectangle, or pretty close to a rectangle, to which I referred the Committee at opening. That land is unsurprisingly, as is much of the inter-tidal and sub-tidal, part of the Crown Estate. ABP has a lease of it, and you will have heard, indeed from my memory, the point was raised at the hearing to which you refer, that that however is held in the interest of the ABP Harbour Master, who is called essentially the Humber Harbour Master because he controls wet traffic lights or the wet movements. He has got his finger on the traffic lights for all of the Humber, all of the ports whether or not they're ABP. He does not object to that because, as has been made clear to the Panel and to the Committee, so far as his statutory remit is concerned, although he understands ABP as a commercial concern and an undertaker of Immingham have concerns, within his specific statutory duties he is not saying that there is anything that is unsafe, or bits of metal floating up and down the river. So he does not object to it.

73. ABP, in its capacity as ABP Immingham, owns the land, and the details of that are set out in the petition, paragraph 6, to which I referred. The point about riparian rights is that those who are bankers in the river, rather than the deplored sense, have rights of access both to non-tidal, and specifically here to inter-tidal areas. Were ABP to proceed with this, it would probably be the case, though I will be corrected on this, that they

Able L2 19/10/2014 19:26
Formatted: Highlight

would need to acquire the necessary interest from the Crown Estate independent of the lease. But it matters not what the answer to that question is.

74. The short point, and forgive the long preamble, is therefore that the triangle land and the land onshore, which ABP owns or in which it has an interest, enjoys these riparian rights. That is why they fall within the purview of this Committee's consideration. I hope that answers the question.

75. CHAIRMAN: I think that has answered the Committee's question, thank you very much indeed. I'm just wondering whether this is a suitable moment. Mr Newcombe, I think you understand that we have a mid-morning break, and before you call your first witness it may be a sensible moment to break now rather than to start with your first witness, because I'm sure both you and the Committee would like to hear that without a break. So perhaps we should break now for 20 minutes. Thank you very much.

Sitting suspended at 11.17

On resuming at 11.38

76. CHAIRMAN: Well, again, I'd like to call the Committee to order. Before I ask Mr Newcombe to introduce his first witness, I wonder if he could be kind enough to clarify something for me and maybe other members of the Committee about the plan ABP 5, if I could refer him to it. Could you confirm that ABP intend to retain the triangle line which is hatched on the inset and the pink spotted area, is that to be built as a quay for ABP, because I wasn't quite clear on the compromise from the original plan which was put forward in the amended petition, which I think was just going to be a finger jetty out to that, because it may answer a little bit of Lord Plant's question, because the Able land will go to the shore side of the triangle land, is that now correct? So it won't have access to the harbour at that point, on the triangle land? Do I make myself clear?

77. MR NEWCOMBE: You do. Two questions, my Lord, firstly, the pink dotted, speckled, spotted area, will not be built out. In other words, the solid part of the AMEP proposal will be confined to the north west of that red line, through that area or round a

finger of jetty which goes out the actual point of mooring for the vessel for the – compromise Immingham Western Deepwater Jetty.

78. CHAIRMAN: Thank you.

79. MR NEWCOMBE: And ABP would retain the triangle land, it is essentially hinterland behind that finger jetty. When I say finger jetty, I'm not using a technical term, I'm just using my own –

80. CHAIRMAN: That clears up something important for me, thank you very much.

81. LORD ARMSTRONG: So that the triangle which is on land, is essential to the development of the Deepwater Jetty?

82. MR NEWCOMBE: My Lord yes, yes, because in addition to simply having the access to the water, one needs some form of dry land from which to thrust it out and on which to have the necessary ancillary elements which go with any particular jetty proposal.

83. LORD ARMSTRONG: Thank you.

84. CHAIRMAN: Thank you, Mr Newcombe, for helping us with that. Now if you would be kind enough to introduce your witness and perhaps provide the Committee with his full name and title for the record. And I perhaps should mention that counsel for Able Humber Ports will have a right to cross-examine any witness before they are discharged. And of course members may ask questions at any time, although again, it may be helpful if they kept their questions until the end of the presentation, or the end of the examination, cross-examination, of individual witnesses, unless there is a need for clarification on a particular point. So, Mr Newcombe, would you like to call your first witness.

85. MR NEWCOMBE: My Lord, I'm grateful, thank you very much. On the last point, my Lord, the way in which I propose to take Mr Cooper who sits there, through his evidence is under a series of headings dealing with topics, and hopefully

substantially following the framework I sought to set out in opening. The only reason for mentioning that is because so far as Mr Cooper and I are concerned, forgive me, Mr Cooper, speaking for you, it may well be that Committee members feel that the question, when it's clear in their mind and we're dealing with that topic, is the most convenient time and it's a matter entirely for the Committee and individual members but it won't discombobulate us at all and it may help speed proceedings in due course, but I simply mention that in order to be helpful.

86. CHAIRMAN: Thank you very much.

87. MR NEWCOMBE: Mr Cooper. Would you state your full name please?

88. MR COOPER: My name is James Cooper.

89. MR NEWCOMBE: Ignore me, which is easy to do; concentrate on the Committee please.

90. MR COOPER: My name is James Cooper.

91. MR NEWCOMBE: And what position do you hold within ABP?

92. MR COOPER: I am the Chief Executive of Associated British Ports.

93. MR NEWCOMBE: Any other relevant post which you hold at present, by way of background?

94. MR COOPER: By way of background, I have a full time at Associated British Ports, so I don't do anything other than be Chief Executive of Associated British Ports, but I have been on the board of Kelda Group which owns Yorkshire Water. I was a reasonably senior banker for a time at Hambros and BNP Paribas. I was chief executive of a company called Red Funnel Group for anyone who's ever been to the Isle of Wight and taken the correct route, Southampton to Cowes and I was indeed on the board, as a non-executive director of something called Zephyr Wind, which was for a time the largest wind generating company in the UK and, I know time has moved on, but at one

Able L2 19/10/2014 19:31

Formatted: Highlight

Able L2 19/10/2014 19:31

Formatted: Highlight

Able L2 19/10/2014 19:31

Formatted: Highlight

Able L2 19/10/2014 19:31

Formatted: Highlight

stage, had the largest offshore wind development in the UK at North Hoyle. I'm also a member of the Offshore Wind Industry Council which is a joint government and industry body set up and designed to promote the offshore wind industry in the UK.

Able L2 19/10/2014 19:31
Formatted: Highlight

95. MR NEWCOMBE: Right. One of the most important jobs of the first witness is to confirm that counsel didn't make too big a nonsense of it in opening the case. Firstly, can you confirm please that, subject only to the way in which I described the general petition, ABP does not oppose the principle of what is here proposed?

96. MR COOPER: It does not.

97. MR NEWCOMBE: Thank you. So far as the compromise is concerned, would you please summarise in your own words what it is you think the compromise, by compromising both the IWDJ and the AMEP proposal, will achieve. Just summarise that for us. We'll return to it in due course in more detail.

98. MR COOPER: Our firm view is that Able can achieve all that it seeks to achieve and ABP can achieve most of what it seeks to achieve through entering into the compromise. I don't know if you want more than that, but in essence, Able can and is able to pursue its stated objectives through less quay, broadly the same amount of land and we are able to pursue substantially the majority of what we're seeking to achieve through Immingham Western Deepwater Jetty on the same basis.

99. MR NEWCOMBE: I indicated again in opening that part of ABP's case necessarily requires it to be hopefully, courteously, and with restraint, critical of the panel's consideration of this matter. Bearing that in mind, and assuming that I've understood the correct approach, is there anything else you wish to say on that at this stage?

100. MR COOPER: I think that it is a pity that we did not spend a bit more time examining the need for AMEP at the panel. I think it's a pity that we concluded inaccurately that there were alternative locations for IWDJ. I think it is regrettable that the conclusions were reached by the panel that were reached in respect of the CPO of our triangle of land. It has to be said, that I think if different conclusions had been

Able L2 20/10/2014 07:39
Formatted: Highlight

Able L2 20/10/2014 07:39
Formatted: Highlight

reached, we wouldn't be sitting here today.

101. MR NEWCOMBE: Remember to keep your voice up please. Right. Now, I want to take you through a series of points, where you briefly summarise in headline form, the evidence to which we shall be returning a little later in your evidence in chief in slightly more detail. Firstly would you have please, ABP 10 open in front of you? What is it that ABP 10 seeks to summarise? Don't bother going through all the figures but just give us a flavour of it please.

102. MR COOPER: So, ABP 10 sets out the position as petitioned, which is the strict legal position that we would like our land and associated waterfront riparian rights to be respected and the consequences of the petition in terms of the impact on both us and Able. The second column – that's the 'As petitioned column' – the second column, as later proposed, sets out the position which we have offered to Able, the compromise, if you like which reduces the impact on AMEP. We would say in terms of actual output from AMEP has no impact whatsoever and sets out the impact on IWDJ in terms of reduced quay front and slightly reduced capacity.

103. MR NEWCOMBE: Next point, summarise please for the Committee why it is that ABP now considers that Able does not need the triangle land, and by that, I mean the totality of the land.

104. MR COOPER: It's our view that AMEP – Able, sorry, has never needed the triangle land and associated river access in order to achieve the objectives that were set out at the time of the application. And we will seek to demonstrate that by efficient, or even not very efficient use of berth facilities, that what they said that they wanted to achieve, could be achieved on substantially less. Secondly, we will demonstrate that the market that existed at the time of the AMEP application has diminished, and therefore whatever market AMEP were aiming for in 2011, is a lesser market today. A lesser market suggests less demand for port space. Thirdly, the proposed use to which the triangle is being put is, in our opinion, trivial to the project and could easily be accommodated elsewhere without taking our land.

105. MR NEWCOMBE: Flip the coin please; why does ABP need the triangle land

Able L2 20/10/2014 07:40
Formatted: Highlight

Able L2 20/10/2014 07:43
Formatted: Highlight

and all the associated rights and interests?

106. MR COOPER: We need the triangle land because we have a **current proposal**, the Immingham Western Deepwater Jetty, a project designed to handle **imported refined liquid energy products**. There is a secondary purpose, which is that we need the option to be able to expand our dry bulk energy – **coal and biomass, for short** – facilities on the Humber by extending the Humber International Terminals. That would require the relocation of the gas jetty; I'll come back to where that might go. Thirdly, Immingham is the country's largest port by tonnage. It is the jewel in ABP's crown, it is a huge driver of economic activity in this country and we – the private sector is often accused of taking a short term view, we hold land for the future development of our ports, all over Britain and that land, we hold for the long term in order to enable – **counsel will use the word 'elbow room', I think** – in order to enable us and our customers to grow.

Able L2 20/10/2014 07:43

Formatted: Highlight

Able L2 20/10/2014 07:44

Formatted: Highlight

Able L2 20/10/2014 07:44

Formatted: Highlight

Able L2 20/10/2014 07:46

Formatted: Highlight

Able L2 20/10/2014 07:46

Comment [1]: Obvious previously discussed

107. MR NEWCOMBE: Just in order to anticipate more detailed evidence which you will give in due course and when you provide an answer to Mr **Whittaker's** question, which we've noted and we'll return to, open if you would, please ABP 3 which is the plan of the Port of Immingham and its surrounding area. We can see for example, the Immingham Gas Jetty, at what is the most upstream element of the main part of the Port of Immingham, do you see that?

Able L2 19/10/2014 19:27

Formatted: Highlight

108. MR COOPER: Yes.

109. MR NEWCOMBE: Now, I don't invite you to go through all the other facilities which are labelled by small boxes, but are there any, in relation both to bulk and existing handling of liquid bulks to which you wish to refer at this stage, in order to put a framework on the detailed evidence we're going to get?

110. MR COOPER: I'm actually am happy to take us on a quick canter down, if that would be of –

111. MR NEWCOMBE: A slower canter if you prefer. It is our interest in your answers, not my questions.

112. MR COOPER: So below the gas jetty we have the Humber International Terminals. These two terminals in aggregate, I think 520 metres in length, which handle coal and, increasingly, biomass for energy generation. They are also capable of handling a range of other dry bulk products; they can handle agricultural products, such as animal feed, fertiliser, they can handle salt, road salt, we have a large stock of road salt at Immingham at the moment.

113. Next door to that as you come down is the Immingham Bulk Terminal; that is a dedicated bulk terminal used by Tata Steel for handling coal and iron ore. Slip in behind that and you have the Immingham Outer Harbour which is used for ro-ro facilities, roll-on roll-off facilities by a company called DFDS and which we have current plans to expand.

114. The western and eastern jetties are part of the oldest part of the Port of Immingham, which has recently celebrated its centenary, they were effectively leading jetties for vessels coming into the locked part of the port. I believe that historically, there used to be railway lines running out on those and you could take a cruise ship, or a passenger from the Port of Immingham, not a current activity we undertake. They are now used to handle relatively modest sized, by modern standards, bulk liquid cargoes. Then you have a gap until you get to the Immingham oil terminal which is one of the largest facilities for handling crude oil and refined products in the UK. So that, if you like, is an outline. In the hatched or shaded area, the grey area, you've got the inner dock as it's called, which handles a whole range of what we call break bulks and so on and so forth, typically, smaller sized ships.

115. MR NEWCOMBE: Thank you. Now we've already dealt with the question of a compromise and the public interest and the like, and unless there's anything further you wish to add under your first heading of introductory points, I am now going to proceed and ask you to put ABP in context for these purposes.

116. MR COOPER: Okay. So, Associated British Ports, ABP for short is created by Parliament in 1983 as a successor to the British Transport Docks Board, it was an early privatisation of the then Conservative government and was floated on the London Stock Exchange and became a plc. ABP owns and operates 21 ports around the United

Able L2 20/10/2014 07:47
Formatted: Highlight

Kingdom, actually around Great Britain, sorry we do not have anything in Northern Ireland, and we embrace facilities in our statutory harbour areas which between them, handle something just shy of about one quarter of the UK's sea borne cargo. Sea borne cargo, represents in volume terms, about 95% of UK's trade, through the blessing, from our perspective, of us being an island. The remainder that doesn't come by ship, comes through things like Eurotunnel. And a limited amount comes through by air which is typically high in value but low in volume.

Able L2 20/10/2014 07:48
Formatted: Highlight

117. Some of our ports are large and economically nationally significant, like Southampton and Immingham. Some are rather small, like Silloth, and there's a prize for anyone – I'm guessing there might be some people who know where Silloth is, and Teignmouth, where I'm expecting more people to know where it is, but Teignmouth is a mere seven acres of estate, Silloth not very much larger. But actually, they're all significant in their own regions and localities. Silloth, we can thank because it gives us Carr's water biscuits, Teignmouth is a key part of South Devon's agricultural industry, handling animal feed, fertiliser and also supporting the clay industry down there. We estimate that something in the order of 26,000 people are employed on our port estates nationwide and a recent independent study pointed to some 84,000 jobs that depend directly, or indirectly, on what we do as a port company.

Able L2 20/10/2014 07:49
Formatted: Highlight

Able L2 20/10/2014 07:50
Formatted: Highlight

118. In the Humber, we have four ports. I think there is an exhibit which shows three of them.

119. MR NEWCOMBE: ABP 2

120. MR COOPER: Which counsel has referred to before, so bottom right is the port of Grimsby, a major centre for offshore operations and maintenance in a revitalised old fish dock that had fallen on hard times. Also a major centre for car handling, it is a substantial facility, mostly dedicated, but not exclusively to the import of Volkswagen Group cars.

121. Coming up the coast, you come to Immingham, as I've already described, the country's largest port. About, this year, 54 million tonnes of cargo, I think 2013 was 54 million tonnes of cargo; the overwhelming majority of it in volume terms being in dry

Able L2 20/10/2014 07:50
Formatted: Highlight

bulk energy products and liquid bulk energy products. On the other side of the river, the Port of Hull and there are two grey bits to that. A general cargo port with ro-ro customer in P&O Ferries and also the location of one of our biggest land holdings for future development, which is marked as the Paull land bank. At the western end, you can see the Alexandra Dock now earmarked for Siemens, and Green Port Hull, and the bit in the middle is a general cargo facility, handling coal, timber, paper in large quantities, bulk liquids and the previously referred to ro-ro. It also has a container terminal. The small grey area is the oldest part of the port of Hull that is still in operational use, it's the *Alex and Wright dock* and it is relatively likely used for ship repair and another function, I can't now remember.

Able L2 20/10/2014 07:51
Formatted: Highlight

122. Up the river, further west, you would come to Goole, which is the country's most inland port. Goole is not capable of talking large ships but it serves a particular useful function for a range of our customers, not least because of its prime location on the junction of the A1 and the M62 which gives it a fantastic access to a northern hinterland.

123. We invest quite a lot in infrastructure, and we are kind of beholden to do so. Our statutes require us to invest in port facilities, where is it expedient for us to do so, and we have fulfilled our obligation in spades over recent decades. The reason we've done that is partly because of the changing patterns of trade; Immingham was created to export coal, that is a market which no longer exists in substantial measure in Britain. A lot of our ports were built for that original purpose. And in the place of a declining export of coal, we now have relatively new cargo technology, such as ro-ro and container handling, so we have invested in facilities for handling ro-ro and container handling. Now we have offshore wind and we're investing in facilities for offshore wind at Hull.

Able L2 20/10/2014 07:52
Formatted: Highlight

124. We have, since 2000, invested some 850 million in port infrastructure. We've just completed, or we are just about to complete a £130 million investment in supporting the expansion of deep sea container facilities in Southampton. The reason for that, and this is actually the most common driver investment, is so that we can accommodate the largest container vessels afloat in Southampton, which is one of the country's more important deep sea container ports. A growing vessel fleet size, is a major driver of port investment.

Able L2 20/10/2014 07:52
Formatted: Highlight

Able L2 20/10/2014 07:53
Formatted: Highlight

Able L2 20/10/2014 07:53
Formatted: Highlight

125. And so it has been on the Humber. Those facilities which I took you through on the river at Immingham in ABP 3, are all effectively the product of ever larger vessels demanding ever larger facilities. And that, more than anything else has been, in my view, the driver of port investment. It's not just us, London Gateway is also driven by the fact that vessel sizes are getting larger. On the Humber, we have plans for further significant investment, we are close to commissioning the first part of Immingham Renewable Fuels Terminal which we are building for Drax, in order to enable them to be serviced by the biomass that is going into their converted boilers at the Drax power station. It's not separately marked on here because it is effectively the conversion, sir, of HIT 1 on the ABP 3.

126. MR NEWCOMBE: Forgive me for interrupting, in order to see HIT 1, we need to go to ABP 5. Forgive me, I've got the wrong one. I mean ABP 3.

127. MR COOPER: ABP 3, yes. So ABP 3 has got HIT 1, and that is effectively being converted to biomass and if we had an aerial view of it, what you would see now is four substantial silos that will handle this biomass for Drax.

128. MR NEWCOMBE: Just pause it there Mr Cooper, if you would please. In opening, I referred to ports being reactive to customers, other people talk about the UK ports industry being market led. What actually is the significance behind those somewhat glib phrases?

129. MR COOPER: Well, let's deal with the market led bit first. So, the underlying policy principle that has existed in the UK for a number of decades is that ports should be commercially financed. Regardless of their ownership structure, and there are various ownership structures in the UK ports industry, some of them quasi public in nature, some of them actually public in nature; the principle is that they should be operated on a commercial and commercially financed basis. And ABP is a keen supporter of that principle. The second point about being customer led, is that in mature economies, the basis on which one embarks on an investment, necessarily in my view, depends on there being a market, and I have to say, ideally a customer for the facility that you proposed to build – I hope it doesn't take too much to understand that I would

Able L2 20/10/2014 07:54
Formatted: Highlight

Able L2 20/10/2014 07:55
Formatted: Highlight

Able L2 20/10/2014 07:55
Formatted: Highlight

Able L2 20/10/2014 07:56
Formatted: Highlight

Able L2 20/10/2014 07:56
Formatted: Highlight

be in some trouble with my shareholders if I recommended building facilities for which there was no market or no customer. So, in essence, market led means led by changing, shifting patterns of trade or ship size, customer led, the specific customer responding to that change themselves. I make this point on a regular basis, we do not make steel, we do not make cars, we actually provide facilities for other people to handle the products that they have made or they are making. We are a provider of facilities, we are an enabler for other people to do what they need to do.

Able L2 20/10/2014 07:57
Formatted: Highlight

130. MR NEWCOMBE: Now the next point which I'd like you to deal with please, Mr Cooper, is anything further you wish to say, not about present and past investment, but continuing investment and how Immingham, in particular, and the Humber generally.

131. MR COOPER: So, I started by referring to IRFT, Immingham Renewable Fuels Terminal. I will try and avoid acronyms. That is a response to a change in Government policy, first, and then a response to a customers' response to that policy, so it is built for Drax, to enable them to have sufficient wood pellet to feed the three of the six burners that they have said they're going to convert to biomass.

Able L2 20/10/2014 08:00
Formatted: Highlight

132. We have begun work on the second phase of IRFT, I'm not at liberty to tell you, unfortunately, much as I would like to, which customer that is for, but that is also for an existing customer of the Port of Immingham. And that would be a doubling of the existing Immingham Renewable Fuel Terminal, so that it will be able to handle something in the order of six million tonnes of biomass per year. The interesting thing for me is that we've also invested in other facilities which are perhaps less relevant to this Committee, such as the fertiliser terminal, we are currently contemplating, as I say, expanding the ro-ro facilities in response to customer demand, and on the other side of the river at Hull, the Immingham Renewable Fuel Terminal will cost us about £130 million to build. On the other side of the river, we will be spending another £136 million on developing Green Port Hull for Siemens; to enable them to have a –

Able L2 20/10/2014 08:00
Formatted: Highlight

Able L2 20/10/2014 08:01
Formatted: Highlight

Able L2 20/10/2014 08:02
Formatted: Highlight

133. MR NEWCOMBE: Go back to ABP 2 if you would please. And just draw the Committee's attention please to both to the Siemens Green Port Hull proposal and also the Paull land bank at the end.

134. MR COOPER: So on that north bank, where most of the Port of Hull is in grey, at the far western end, you see the Siemens/Green Port Hull development with the dotted line; that is substantially all of Alex Dock. I do actually have with me, if it would be of any help, a visualisation of that, if the Committee would like to have it, I'm sorry it's not included in this document but if you would like have it, you are more than welcome to it. That is where Siemens, with, I think about 134 acres, are proposing to build their assembly plant. Down at the other end of the estate is the Paull land bank. This is land that we've held since 1920, I believe. Against a future port development need, and thanks to the foresight of our forebears, it's been farmed for the last 90 years plus; it is in fact, farmed today. But is about to be opened up for development. As a result of the Siemens investment at the other end, it will, in the first instance, hold Siemens proposed wind turbine blade plant which they are proposing to build, down that end of the estate, and we are working with Siemens and our partners in local authorities and so on and so forth, to ensure that land is opened up to support the supply chain around the Siemens development at the western end of the Port of Hull. Together, those two for us, I said £136 million for Green Port Hull, it will be about another 21 million to open up the Paul estate and who knows what we'll have to invest after that. So, in total about £160 million, for us.

135. MR NEWCOMBE: And it's probably already sufficiently clear from what you've said, but just for the avoidance of doubt, confirm precisely what it is Green Port Hull is being brought forward to do.

136. MR COOPER: Green Port Hull is being brought forward to provide an offshore wind manufacturing facility. Specifically for Siemens, but we are of the view that with our neighbouring facilities and Siemens, that there will be scope for other cargos to be handled, offshore wind industry manufacturing related cargos to be handled through that facility, and indeed through the neighbouring facility which is called King George Dock, which any cargo which is made at the Paull land bank will have to pass on its way to the Alexandra Dock where Green Port Hull is located. So this is a major opportunity for the Port of Hull, it's very significant for the region and for the City of Hull and I can say that work in earnest started on it on Monday.

137. MR NEWCOMBE: I am now going to take you to your third heading, 'The

Able L2 20/10/2014 08:03

Comment [2]: Get a copy

Able L2 20/10/2014 08:02

Formatted: Highlight

Able L2 20/10/2014 08:03

Formatted: Highlight

Able L2 20/10/2014 08:05

Comment [3]: Planning status

Able L2 20/10/2014 08:05

Formatted: Highlight

Able L2 20/10/2014 08:06

Formatted: Highlight

Able L2 20/10/2014 08:06

Formatted: Highlight

Able L2 20/10/2014 08:06

Formatted: Highlight

Able L2 20/10/2014 08:07

Formatted: Highlight

Able L2 20/10/2014 08:08

Comment [4]: Check planning for other cargies

Able L2 20/10/2014 08:07

Formatted: Highlight

Able L2 20/10/2014 08:08

Formatted: Highlight

triangle of landing context', unless you've got anything else to add on the context of ABP?

138. MR COOPER: No. I'm happy to go to the triangle land.

139. MR NEWCOMBE: We can take this quite briskly. As a matter of record, the triangle land is included in the area identified in the present statutory development plan for port related development.

140. MR COOPER: It is.

141. MR NEWCOMBE: I deliberately lead on that because it's a matter of record. We've already dealt with it to an extent, but please just now amplify in relation to the triangle and associated land in particular, the significance of this element of land being available to ABP in order that Immingham can continue to operate as a dynamic port.

142. MR COOPER: So the triangle of land and its associated access to water is the last undeveloped piece of real estate within the Port of Immingham; the waterfront I'm talking about, is the last undeveloped piece of real estate within the Port of Immingham, as it stands today. And for a port that is the nation's largest port, and has consistently grown, it therefore is a fundamental interest to ABP. As I alluded to earlier, we hold land around the country for the future development of our ports. We've got 800 acres in Southampton for the future development of the Port of Southampton. The Paull estate I referred to earlier is about 640 acres, I believe. The holding of land by us as a statutory authority is essential to our business. We have to have land in order to allow for future growth of the business. The fact that we've owned it for a number of years – we've owned it for a lot less than we've owned other parcels of land, and I should say that under our current shareholding and my chief executorship, any temptation that we might have, not that I'm suggesting that the triangle would be appropriate for this, but any temptation we might have to dispose of waterfront real estate with deep water access which this has, for any other purpose than for port development, it would not get through our Board. One of the first things our shareholders did when they bought the business in 2006 was stop the disposal of parts of the estate and that remains the policy today.

Able L2 20/10/2014 08:09
Formatted: Highlight

Able L2 20/10/2014 08:10
Formatted: Highlight

Able L2 20/10/2014 08:10
Formatted: Highlight

Able L2 20/10/2014 08:10
Formatted: Highlight

Able L2 20/10/2014 08:11
Comment [5]: Wht havy thye got planning

Able L2 20/10/2014 08:12
Formatted: Highlight

Able L2 20/10/2014 08:12
Formatted: Highlight

143. MR NEWCOMBE: Your fourth heading is Able's case for compulsory acquisition and your comments, in your capacity as Chief Executive of ABP on that case. First of all please, would you summarise your views as to whether or not Able has ever actually needed the triangle land.

144. MR COOPER: For the assessed volume that they say they wish to handle, then the answer is a clear no. Let's just go back to some fundamentals. So, the issue that drives the demand for quay, is one, the underlying volume in the market that might give rise to cargo over a quay side, and secondly, and certainly importantly in this instance, the efficiency with which you use berths. And we are unable, and our experts are unable to fathom, how this proposal has been, dare I say, it is very inefficient compared to other similar proposals. Others more expert than me will take you through the detail but at a comparable European facility, for every 100 metres of quay, of berth length, you would expect to be able to handle 100 turbines per year. Now the assessed volume is 400 turbines per year. I know that there are 200 nacelles as well, and a number of 500s cropped up in various places. But in essence, that's what was assessed, and on the basis of what is achieved elsewhere, the quay length required is – let's be generous, let's call it 500 metres. Actually, let's be generous, because I'm happy to acknowledge that across the water at Green Port Hull, we won't be operating at a potential efficiency of 100 turbines per 100 metres; Green Port Hull is assessed for 300 turbines a year, but has the capacity to handle 500 a year. On 640 metres of berth.

145. MR NEWCOMBE: Just pause there, it's important that people know where they can find these figures and where they can put them in context. If I can invite the Committee to ABP 11, we can there see a comparative analysis of quay length required per wind turbine and the third of the identified facilities is Green Port Hull, do you see that, Mr Cooper?

146. MR COOPER: Yes, I do.

147. MR NEWCOMBE: There's the quay length given as a round 600 metres, the next column is the – not the capacity, which you gave as 500, but the expected load out, and then the linear meterage per WTG, Wind Turbine Generator. And there are various

Able L2 20/10/2014 08:14
Formatted: Highlight

Able L2 20/10/2014 08:15
Formatted: Highlight

Able L2 20/10/2014 11:38
Formatted: Highlight

Able L2 20/10/2014 08:15
Comment [6]: So GPH should be doing 600 turbines per year

Able L2 20/10/2014 08:16
Formatted: Highlight

Able L2 20/10/2014 08:17
Comment [7]: 1 m per OWT would be 640 owt per year

Able L2 20/10/2014 08:18
Formatted: Highlight

others. I want to come back to that in a moment. And I want to take you on to the next exhibit which has the results – which has figures in it and I want to explore this with you to the extent that you can assist the Committee and, my Lord, as you will have anticipated, there will be an expert witness to speak to this in due course, the detail of it, that will be Mr Galbraith and he will be the third witness. Now, if we look at the scenarios down there, firstly look at one to three, which have a white background, and ignore the sensitivity analyses of the others which are shaded grey.

148. MR COOPER: So the first white, I think it's on the basis of the original AMEP proposal which was 400 wind turbines, plus 200 nacelles and the expert advice is that that would give rise to a berth occupancy of 20%. Quay utilisation is I think a reference to the land that lies behind the berth and it is the nature of many port operations that the quay utilisation is higher than the berth utilisation. The reason for that is that in offshore wind, but in other cargos, you effectively pre-load in order to make efficient use of the berth frontage, so certainly do in offshore wind but you also do in other products such as containers is one of the more obvious ones. So quay utilisation would be higher in Southampton at the container terminal than berth utilisation. But those numbers for berth occupancy are low by usual port quay performance indicator metrics. We would normally expect to see berth utilisation for an efficiently run facility at somewhere in the order of 65-75%. Much above that you start to impair your profitability because you end up moving more stuff and incurring more costs moving it around. And we have had that in ABP recently, in Immingham; I'll happily come back to that later, and its effects, but somewhere in the range of 65-75% is what you would expect to see in terms of berth occupancy.

149. MR NEWCOMBE: Alright. Now Mr Cooper, pause for a moment and – you've summarised helpfully a lot of critical material there, and I deliberately want to unpack that slightly more slowly, using this first line as an example. Now, firstly, under the scenario AMEP has proposed, do you see the plus 100% imports?

150. MR COOPER: Yeah.

151. MR NEWCOMBE: As I understand it, that is because this is assumed in favour of Able that 100% of the imports, raw materials and other matter comes in over the quay

Able L2 20/10/2014 08:19

Formatted: Highlight

Able L2 20/10/2014 08:19

Formatted: Highlight

Able L2 20/10/2014 08:20

Formatted: Highlight

Able L2 20/10/2014 08:21

Comment [8]: we are gettinh 76% on ASP project cargo

Able L2 20/10/2014 08:20

Formatted: Highlight

i.e. wet imports with no road imports. And therefore, the berth occupancy is, to that extent, not inflated, but at the maximum?

152. MR COOPER: Correct.

153. MR NEWCOMBE: Right. Secondly, this table is looking at – in the lines we’re presently looking at – is looking at it from the assumption that this does in fact arise – i.e. that there is indeed a market for 400 wind turbines, plus 200 nacelles, etc, per year. Now, I want you to go back. You touched on key utilisation and you touched on berth occupancy. Would you please explain to the Committee in slightly more detail what you mean by quay utilisation expressed as a percentage, and what you mean by berth occupancy, expressed as a percentage?

154. MR COOPER: So, quay utilisation is a reference to the quay front plus the associated land that lies behind it – for the holding of cargo prior to, or after. Prior to loading, or if you’re discharging immediately after you’ve discharged. I hope that it is reasonably clear that you need to have a holding of land from which to load on to a ship, or a holding of land from which you need to discharge off the ship; first point of rest as it’s commonly called. And that utilisation rate, as I said, is general higher than berth occupancy. Berth occupancy is simply a reference to the amount of time that a ship is occupying the space on a berth.

Able L2 20/10/2014 08:23
Formatted: Highlight

Able L2 20/10/2014 08:23
Formatted: Highlight

155. MR NEWCOMBE: Alright. Next question please. Even on the assumption we’ve identified, namely that there is a market for the quantum of turbines, which Able has a set – these come from the relevant section of the environmental state in Section Four, where they define, in my inelegant terminology, Leviathan’s vital statistics, and the rest of the ES then assesses that. With a new build facility, Mr Cooper, what is the logic of pouring concrete to the extent that it only gives you a 45% quay utilisation as an example? What is the commercial rationale behind that?

156. MR COOPER: I have to say, I don’t know. It is beyond my comprehension. I think that I am unable to explain.

157. MR NEWCOMBE: Thank you. We also need to note, in fairness to Able, that

were they – if we look at the second line – were they constrained in the way sought in the petition and ignoring the compromise, then for the first and only time, the quay utilisation raises it into the bracket which you’ve indicated. Do you see that?

158. MR COOPER: Yes.

159. MR NEWCOMBE: And then we see, even with the compromise, they slightly increased figures – 24, 54 etc. Do you see that?

160. MR COOPER: Yes.

161. MR NEWCOMBE: And we also need to draw the Committee’s attention to the fact that the reason for splitting this in two, the construction import berth on the left and the specialist dock on the other. Specialist dock refers to the area of, what I call, the right angle berthing, which is dealing with foundations. That Able has assessed it, again, within the Section Four of the Environment Statement, as 50 foundations per annum. Do you recall that?

162. MR COOPER: Yes.

163. MR NEWCOMBE: Alright. Look now please at the grey area, where we see various different scenarios with progressively decreasing numbers of wind turbines. Do you see that?

164. MR COOPER: Yes

165. MR NEWCOMBE: Now we will look at why that’s been done in a moment, and the source of those figures. But before we do that, is there anything else you want to say within your area of expertise to draw out of ABP 12?

166. MR COOPER: No, I’m happy to move on.

167. MR NEWCOMBE: Alright. And by way of footnote, I identified that ABP 12 is directly relevant in relation to the extract of the Panel Report, which I’ve read out,

where the Panel very fairly confirmed they hadn't considered the sizing – I put it in headline for them – of this facility. Just before we go on to the economic predictions, which will be dealt with by my third witness, Mr Slark, come back, if you would, please, to ABP 11. We've identified that ABP has its own experience of this sort of facility with Green Port Hull. Looking first of all at Green Port Hull, with a quay length of the order of 600, an expected laid out of 300 – has to be up to 500. If ABP can do that quantum of – deal with that quantum of turbines with that quay length, are you able to identify any justification for Able alleging a requirement for virtually double that?

168. MR COOPER: Not on the face of it. No.

169. MR NEWCOMBE: There are other comparators there. Look at Esbjerg Siemens and Esbjerg Vestas. Are there any points you wish to make at this stage in relation to those two by way of comparators, or can we now pass on?

170. MR COOPER: I would simply say that, aside from this being the evidence of our experts, I'm afraid being in the ports business, we do do our own research, and I am able to confirm that, broadly, those numbers are of 100 turbines per 100 metres are what's achieved as Esbjerg.

171. MR NEWCOMBE: Right. Now so far as the prediction of market is concerned, would you go on please to ABP 13? Again, I'm going to leave it to Mr Slark to explain the detail of this and the derivation of the figures. For the purposes of your evidence, it will assist the Committee and also you in giving evidence if we just identify the bare bones of what is being done here. If we look at table 1, do you see UK, Belgium and Netherlands Policy for Offshore Wind Deployment to 2020?

172. MR COOPER: Yes

173. MR NEWCOMBE: And then Mr Slark has identified, having regard to the relevant legislation and guidance and latest market changes, policy ambition and the funnel ambition expressed in the somewhat unhelpful term of gigawatts.

174. MR COOPER: Yes

Able L2 20/10/2014 08:26

Formatted: Highlight

Able L2 20/10/2014 08:26

Comment [9]: do the clca on esjberg quays

Able L2 20/10/2014 08:26

Formatted: Highlight

175. MR NEWCOMBE: He then does the capacity for the operational and the residual capacity, and predicts from that an annual billed rate for both the areas.

176. MR COOPER: Yes.

177. MR NEWCOMBE: And those areas clearly have regard to the likely shipping range over which AMEP or indeed Green Port Hull may be interested.

178. MR COOPER: Correct.

179. MR NEWCOMBE: We have a similar table post 2020, table two. Do you see that?

180. MR COOPER: Yes

181. MR NEWCOMBE: And we then see in both tables 3 and 4 expected annual rates for offshore wind 2020 and post 2020, again, just so we understand what's being done there, do you see the figure from residual capacity of 5 for the UK national market is picked up in table 3 from the third line of table 1.

182. MR COOPER: Yes.

183. MR NEWCOMBE: And it goes on with an annual billed rate up from the last line of table 1. It then makes an assumption as to the anticipated turbine size at 6 megawatts, having regard to the state of turbine development and commercial considerations at that stage, and comes up with a deployment rate. Do you see that?

184. MR COOPER: Yes.

185. MR NEWCOMBE: In other words tables 3 and 4 translate gigawatts into numbers of *whizzers*. We then go over the page, you can see a high case on annual build out, pre and post 2020 ignoring funding constraint in the period 2020, and assuming all UK deployment in this period as built within the range of the Humber for

table 6. Do you see that?

186. MR COOPER: Yes

187. MR NEWCOMBE: If you would prefer to leave the question to Mr Slark in due course, by all means do so. But what do you understand? What is your understanding of the funding mechanism for wind turbines, particularly offshore and whether or not, without government intervention, there would, or would not be a commercial market?

188. MR COOPER: For the time being, and for the foreseeable future, there is no question that government support is needed for the offshore wind industry, which is effective through contracts for differences.

189. MR NEWCOMBE: And finally we can see figures 1 and 2, where we note an interestingly presented figure, which produces figures. Just taking figure 1 as an example, which deals with Able's ES case, with cross reference, we see from net 4 to the section of the Environmental Statement, which I referred. Then when it turns the contestable market from Humber, prior to policy funding constraints, then that same market after funding constraints, and then the residual AMEP market, accounting for Siemens's Green Port Hull. Do you see that?

190. MR COOPER: Yes

191. MR NEWCOMBE: Good. Alright, you can put those to one side, please. In those circumstances, you started with a summary, and I'm going to invite you to finish with a summary, draw the strands together please, and explain to the Committee why you have reached the view that Able has never needed the triangle land.

192. MR COOPER: So, the original case was 400 turbines, which, in an efficiently run port, should be capable of being handled on somewhere in the order of 400/500 metres of berth front, not 1.279 kilometres.

193. MR NEWCOMBE: 1,000 metres, I think.

Able L2 20/10/2014 08:28
Formatted: Highlight

194. MR COOPER: 1.279 kilometres, 1,279 metres. We have made assumptions about the market that can be reached from the Humber, both for Green Port Hull and for AMEP. That's based on sailing ranges within 24 hours, and it's clear that one could have a debate about that, but the further the range goes out, the more contestable the market becomes, because you slot into the range of competing European facilities. So, we have assumed a high percentage in a relatively narrow range, rather than a lower percentage in a broader range. We have acknowledged that funding constraints have appeared since AMEP was originally proposed and that a number of development proposals have either fallen by the wayside, or been stayed, or been reduced in scale. Then we have acknowledged that there will be competition to AMEP, not actually just from Green Port Hull, but from a range of East Coast facilities offering to accommodate part of the offshore wind manufacturing supply chain. As a consequence, it is our view that 400 turbines a year is not realistic in the current and foreseeable environment. A number substantially less than that is realistic, making the case for a 1,279 metre quay even less sustainable than it was before.

195. MR NEWCOMBE: Now it may well be that you dealt with most of this in the answer you've given, but I want you now to concentrate expressly please on the period of, give or take, two years since the panel process was completed, and summarise please, in so far as you want to make additional comments, or emphasise points you've already made, of how the – I hesitate to use the word viability – I'll adopt your sustainability – as a commercial proposition of the Able proposal, has altered, for the better or for the worse, in the intervening two years.

196. MR COOPER: Well, in our terms, I'm not sure that the original AMEP proposal as set out, given the assessed volumes, was commercially sustainable. I accept that that's not a judgement that my board was asked to make. But what was not commercially sustainable has become, if it's possible, even less commercially sustainable in the intervening two years. It's the only conclusion that can be drawn from this analysis.

197. MR NEWCOMBE: Is it possible to draw any conclusions, or downwind thoughts, in terms of the fundability of Able if the position you've described is indeed the case?

198. MR COOPER: I think it's instructive that we are spending £136 million on the Siemens fill up, which will be capable of handling 300 turbines per annum. The oft quoted number for AMEP is £450 million, though I think that during the course of the panel, it was unclear whether in fact a higher number should be assigned to AMEP. I think Able, at one stage, described the cost of the whole of it – AMEP and its logistics parked at £800 million for which they then asked that an allowance – sorry, £790 million it was corrected to – I beg your pardon. They then asked for an allowance of £80 million to be applied to the logistics part. If that's the right number, then it's not £450. It's £710 million. Either way, on a per turbine, per year basis, AMEP is somewhere between 2.6 and 4 times as expensive as Green Port Hull. Now, it's been my privilege, if that's quite the right word, to sit on the offshore wind industry council, where Mr Fallon, in a previous role, made it abundantly clear, and repeatedly clear that the only way that the offshore wind industry was going to achieve critical mass in the UK was by cutting its costs. It was the regular repeated mantra in those meetings. And I know, because I have been directly on the receiving end of blandishments from the Department for Transport, the Treasury, DEC – even the Green Port Hull development has posed challenges to the costing of the growth of the offshore wind industry in this country. I've lost count of the number of times I was told that it was too expensive. I'm at a loss to understand how – if GPH is too expensive – and it is proceeding by the way; Green Port Hull is expensive – how AMEP isn't just prohibitively expensive.

199. MR NEWCOMBE: Thank you. Right. Unless there's anything you wish to add on that, I want to now move on to a more discreet, but still important point. ABP has described, during the panel process, the use of the triangle land proposed by Able as being trivial or words to that effect. Would you explain to me, please, but more importantly, to the Committee, what ABP means in that headline?

200. MR COOPER: Well, it's partly in Able's own words, Able intend to use the triangle as quotes 'Overspill low level storage'. Able's land holding on the south bank is very significant. This is only five and a bit hectares, 13 acres; something like that. And I should point out that for a conventional port operator the issue is not so much the volume of land. It is the waterfront, because we're in the business of moving cargo over quays, and efficiently through the associated land. I accept that offshore wind

Able L2 20/10/2014 08:30

Formatted: Highlight

Able L2 20/10/2014 08:30

Formatted: Highlight

Able L2 20/10/2014 08:31

Formatted: Highlight

Able L2 20/10/2014 08:31

Formatted: Highlight

Able L2 20/10/2014 08:31

Formatted: Highlight

Able L2 20/10/2014 08:32

Formatted: Highlight

manufacturing developments are almost the reverse of that. They are land hungry, and they are low berth utilisation businesses. So, we aim for high berth utilisation and modest land, as opposed to high land, most berth utilisation. But anyway, the use for which this land – this 13 acres – is going to be put is overspill, low level storage, and the siting of a pumping station for which their consultants – JBA – has tapped 12 in one of the common documents. I can't remember which one it is.

201. MR NEWCOMBE: Leave that. We'll go to it if we need it.

202. MR COOPER: But in which they acknowledge that there are least two other locations for the pumping station, and it appears that the reason for choosing the one they have chosen, which is our land, is because of cost. In so far as I'm aware, and I'm not a lawyer, cost is not solid grounds for compulsory purchase of someone else's real estate. So, I say it's trivial because I can't see anything in there that can't be either housed somewhere else on the extensive state owned by Able, or in fact, can their own consultants move somewhere else.

203. MR NEWCOMBE: Right, that part of what has been the heading – I'll remind the Committee – our fourth heading, forgive me – which is Able's case for compulsory acquisition, and what you've been saying there has just dealt with what I identified as the first test for material consideration, i.e whether the land was required. I now want to move to the second test, which is the question of a compelling case in the public interest. In the first instance Mr Cooper, would you please summarise your view of whether or not a compelling case in the public interest can here be demonstrated?

204. MR COOPER: I'm not a lawyer, so I'm...

205. MR NEWCOMBE: No. More usefully, Mr Cooper, you know what you're talking about.

206. MR OFFORD: Thank you, Mr Newcombe.

207. CHAIRMAN: Thank you.

Able L2 20/10/2014 08:33
Formatted: Highlight

208. MR COOPER: Are we okay? Sorry, can you repeat the question, please?

209. MR NEWCOMBE: Yes, of course. We've come to the second limb of your fourth heading – Able's case for compulsory acquisition. What you just said goes to the question of whether or not the land can be shown to be required. I now want you to turn, please, to the question of whether there's a compelling case in the public interest to support and justify compulsory acquisition. In the first instance, please, would you give the Committee a summary of your view on that, and I make no apology for asking you to do that. You actually work in the port industry. You understand these things.

210. MR COOPER: Okay, so I'm slightly hesitant, because I'm not sure that I'm the best judge of what is and what is not in the public interest. However, it sounds to me as if it's got legal overtones, which I'm at ill place to understand. However, the case for taking the land is, in our view, wholly unproven. Against that has to be balanced the possibility that a statutory undertaking, which has the largest port in the country under its wings, has consistently invested in the growth of that port over decades, should be deprived of the opportunity for further investment, which I would argue would be in the public interest. I think the ability of our ports to expand to meet customer and trade demand is in the public interest, and arguably nowhere more so than the country's largest port. The port of Immingham.

211. MR NEWCOMBE: I'm pausing so you can look through your notes, Mr Cooper. But if you've finished your summary, then I'll proceed to the next question.

212. MR COOPER: I have.

213. MR NEWCOMBE: Don't worry. If you need to consult, take your time, because as I said before, it's your answers and your view which are important, not my questions.

214. MR COOPER: I'm content to proceed.

215. MR NEWCOMBE: Thank you very much. Just by way of an aside, would you go please to ABP 16. I'm just going to pause. Actually, to assist everybody would you please read the fourth paragraph of this letter, which pans from, as we see, the planning

inspectorate in relation to the DCO process.

216. MR COOPER: The full paragraph reads, 'The panel will allow questions to be asked by those affected parties, with a specific interest in a plot of land, and where appropriate, by the applicant. A maximum of 15 minutes will be allowed for the affected party – for each affected party for this purpose.

217. MR NEWCOMBE: Now accepting, as I've already identified that the panel process is an inquisitorial one, and thus the panel, in the first instance, are the ones who are expected to ask questions. Please put this as neutrally as you can; was 15 minutes enough?

218. MR COOPER: No.

219. MR NEWCOMBE: Thank you. Alright, come back to the question of the compelling case. You've already set out your views in relation to the quay utilisation/berth utilisation, and we've also looked briefly, anticipating the evidence of Mr Slark to the commercial questions of whether or not the stated level of turbine handling will actually occur in any event.

220. MR COOPER: Yes

221. MR NEWCOMBE: Having regard to that on the one hand and what you're coming to say about the Immingham Western Deep Water Jetty and Port of Immingham in due course, if and in so far as there is a conflict between the two proper owners, how do you invite the Committee to draw the case in the public interest?

222. MR COOPER: Well, we hold the view that if we can enable AMEP to proceed, service – pick a number – its assessed volume, half its assessed volume in the light of market changes, and we can enable the Port of Immingham to fulfil its responsibilities, then those two taken together are in the public interest. If we can find a structure that enables AMEP to proceed to its full operational capability. Its full length, but its full operational capability, while enabling us to continue to execute our functions, then I think we will have achieved the best outcome in the public interest. That's what the

Able L2 20/10/2014 08:35
Formatted: Highlight

compromise seeks to achieve.

223. MR NEWCOMBE: Right, Mr Cooper. Thank you for that. I'm now moving to the fifth heading. That can be identified as ABP's need for the triangle land, and I am going to take it in four parts. It may help if I indicate what those are so that we, again, continue this process of erecting pigeon holes. Firstly, I want to look at the need and position in terms of liquid bulks. Secondly, I want to look at the position in terms of dry bulks. I then want to look at the what if, in terms of elbow room, and I also want to come to the question of viable alternatives to this, at which stage we will also pick up the question posed to me in the first instance by Mr Whittaker. That's the way we're going to proceed. So, we're starting with liquid bulks. And for these purposes, we also have, helpfully provided by Able, a report from IHS, which we have at Able tab 12. Now, I'm sure the Committee are materially more literate than I in this area of expertise. But in the first instance please, could you treat us to Janet and John do liquid bulks in ports in the UK, so we understand where we're coming from?

224. MR COOPER: I will try. So, this is another changing market in UK trade. For about a decade, the UK has moved from being a net exporter of crude, to being a net importer of crude as the North Sea production declines. That has clearly driven demand for a different range of facilities, or in practice, improved the use of utilisation of existing facilities. There's a second macro driver of change, which has a number of facets to it. UK and European refining is becoming increasingly uncompetitive in a global refining market. The UK is a net importer of diesel and aviation fuel – major components, and a net exporter of actual gasoline, as the Americans prefer to call it. We export to the United States in reasonable quantities. The United States is going through a major change in its energy markets, driven by Shell Oil, as well as Shell Gas, and is producing more of its own gasoline petroleum. That is putting financial strain on European and UK refiners who rely on that export income stream to sustain their activities. Since we are a country that increasingly uses diesel cars, then there is no home market for that. Now, that's the background against which, and it's been in the press, a number of our refiners have found themselves under some financial strain of late, such as the Murco facility in Milford Haven, or the Grangemouth facility and Coryton in the Thames has already gone. It's also the background which a number of our customers recognise in deciding their own plans for what they want in terms of

facilities going forward.

225. MR NEWCOMBE: Thank you. Now, I want to come to the Humber in particular at the moment, and get more specific, but before I do that I want to take you to one part of the IHS report, which we have at tab 13. In that, would you go, please, to page 6? The pagination is top left in the header. I'm just going to read out a short portion from paragraph Roman 3.4; 'However over this timeframe, the UK demand mix has changed substantially. Gasoline and fuel demand have been in structural decline, whereas demand for middle distillates – growths indicate these are diesel, gas, oil and jet kerosene – has been increasing rapidly. Although gas oil demand has declined, this has been more than offset by the strong growth in diesel demand by economic growth and by dieselisation of the private automobile fleet, which has in turn resulted in a declining gasoline demand. Jet demand also increased steadily with the rise of budget airlines, hence increased passenger air traffic. But demand fell after the global financial crisis, and has yet to recover to pre financial crisis levels in the years since. Fuel oil demand has fallen rapidly, with reduction in use of fuel oil in power stations and in industry, driven by both high prices, relative to natural gas, and environmental legislation, forcing emissions reductions. Do you see that?

226. MR COOPER: Yes

227. MR NEWCOMBE: To what extent is there even a cigarette paper between you and IHS in general terms?

228. MR COOPER: There isn't one.

229. MR NEWCOMBE: Alright. Come now to the Humber please. What are the particular aspects of the Humber, in general, and Immingham in particular, which are relevant to the requirement for – or lack of requirements for – handling facilities for liquid bulks?

230. MR COOPER: Well, I think the first thing to say is that Immingham has a long heritage of handling energy related products; and bulk liquids amongst them. We are well positioned and versed in the skills necessary to handle those products. We have a

Able L2 20/10/2014 08:37
Formatted: Highlight

number of customers who handle those products today who have an aspiration to grow their business on The Humber. The Humber sits at one end of what is often not fully appreciated – effectively one of the great conurbations in the UK, which is a mass of population and industry that lies between Liverpool and Hull. Actually, that’s why it succeeds as a port. It’s because of that access to industry. The specifics of the site that we are talking about is that it is immediately adjacent to deep water and vessels are getting larger. They are outgrowing some of the other facilities that we have. The site is adjacent to pipeline and storage capacity. It is adjacent to rail capacity. It is, in our view, ideally located for the purpose of **handling imported refined product**. I intimated earlier, when we talked about customer led business, that, to an extent, I’m not sure ABP’s views on the market are enough on their own. What matters is what our customers think, and they are keen, eager, that we should have the facility to develop Immingham Western Deep Water Jetty. Are we allowed to turn to ABP 14?

Able L2 20/10/2014 08:38
Formatted: Highlight

231. MR NEWCOMBE: You’re allowed to do whatever you like so far as I’m concerned. However, the Committee might have something to say. I think you want to go to ABP 14, don’t you?

232. MR COOPER: I would like to, if that’s possible.

233. MR NEWCOMBE: Introduce those letters then please.

234. MR COOPER: So, the first is from Calor. Calor are a current user of the Immingham gas jetty. The letter kind of speaks for itself. ‘As a major importer of bulk liquid commodities, its part in the development of additional liquid bulk deep water marine facilities on The Humber is essential. The port of Immingham, and specifically the Immingham Western Deep Water Jetty, with its enhanced vessel capability, is ideally located to meet the need, given its deep sea access. And then Calor go on to tell us, quite rightly, how important an operation they are in the market. The next page is from United Molasses. United Molasses is formally part of Tate & Lyle, owned by an entrepreneurial family in Northern Ireland. I have a great admiration for what they seek to do. **They are currently a customer of ours in Hull, where they have a limited tank farm within the existing dock complex there, so they have to go in and out through a loch. They’re ambitious in terms of their growth, and they want to have access to a**

Able L2 20/10/2014 08:47
Formatted: Highlight

riverfront facility to enable them to grow their business, which will involve using larger facilities. So they too have written to us, urging us to work with them to develop the commercial opportunity that IWDJ will create, to use their words. My Lord, I wonder if I might introduce another letter if possible?

235. MR NEWCOMBE: By all means ask, Mr Cooper, but before you do that, I want Mr Bird to have the opportunity of seeing it.

236. MR COOPER: Oh, fine.

237. MR NEWCOMBE: I want you to say nothing about it, until he's had an opportunity to look at it. Could you give me the date on the letter?

238. MR COOPER: 14 October.

239. MR NEWCOMBE: Yes, it came in yesterday.

240. CHAIRMAN: This is not in the bundle.

241. MR NEWCOMBE: My Lord, no, which is why I'm holding it, if you'll forgive me. Mr Cooper has jumped the gun. In the first instance, and as a matter of courtesy, I'd like Mr Bird to have an opportunity to look at it. So, we will ignore that for present purposes. I will return to it if and in so far as necessary. It's important Mr Bird has a fair chance to look at it. Would you now go please, Mr Cooper, to ABP 3?

242. MR COOPER: Yes.

243. MR NEWCOMBE: We can see again. We immediately identify we're familiar with this now. You've got the AMEP proposal and the port at Immingham. Do you see between the two, in what appears to be a field growing blue stars, there's a larger red star? Go south and east of it from there, and we see footprints dotted in brown, coloured in orange, which look like the ground plan of places of early Christian worship. What are they?

244. MR COOPER: They are the storage caverns.

245. MR NEWCOMBE: What is their significance for present purposes?

246. MR COOPER: They are the place where a certain product, particularly those handled by Calor, if I'm allowed to mention them in due course, would be stored.

247. MR NEWCOMBE: Thank you. You also mentioned pipelines. Just tell the Committee what the government pipeline of storage system network is.

248. MR COOPER: The Government Pipeline Storage System is the government's owned pipeline network, which has certain port falls. Immingham's one of the locations where it reaches the waterfront. It serves – it was originally established for largely military purposes, but it serves a more diverse range of locations. In particular, airports, in terms of delivering aviation fuel and a range of other products. It is being privatised.

249. MR NEWCOMBE: Were the Immingham Deep Water Jetty to receive, either in the full form presently sought under the Harbour Revision Order, or under the compromise, which we've been looking at this morning, would ABP, or the users of this terminal under ABP's port control, be able to use the Government pipeline as presently is, or would there be a necessity for some works to enable all the trades to use it?

250. MR COOPER: No, we believe there'd be some necessity for works for a trade. There is a need for investment in the pipeline system in any event, which I'm sure is featuring large in the privatisation process.

251. MR NEWCOMBE: Alright. There is already an application for the full IWDJ, and indeed has been for some period before the Marine Management Organisation. If ABP were to be given the go ahead, i.e. relieved of the concern about conflict with AMEP, what is the view of the ABP board at present as to whether and when it would proceed with the IWDJ?

252. MR COOPER: the view of the ABP board at present is that – in broad terms, this

facility would cost us about £40 million to build. Without wishing to sound blasé, £40 million for ABP is – it's not the largest investment that we would be obliged to make, and I have referred to much larger ones that we have been making in recent months, and continue to make. So the position of the ABP board is that, given the market dynamics and given the customer interest, that following consent, we would be proceeding with speed to build the facility.

Able L2 20/10/2014 08:52
Formatted: Highlight

Able L2 20/10/2014 08:52
Formatted: Highlight

253. MR NEWCOMBE: Further disparate point please, there's the EU sulphur emissions control area, and the drive towards sulphur fuels for shipping. Tell us about that please, and indicate, what, if any, relevance it has for the matters before this Committee.

254. MR COOPER: A piece of European legislation will come into force on the 1st of January 2015. It is a measure to de-sulphur the fuel that is burned in ships. The principal routes – it applies to vessels entering what is known as the SECA Sulphur Emissions Control Area – SECA for short. Sorry about the acronym. And there are certain exemptions to it in European waters, slightly to our chagrin, for instance, the Mediterranean gets exempted and so does the Irish Sea. But plum in the middle of it is the English Channel, and the North Sea, and the Baltic, and so shipping lines plying their trade in those areas are, from next year, obliged to de-sulphur the fuel that they are using. There is something called 0.1% marine gas oil, which is compliant. It is in relatively short supply, and it is expensive, or you can put scrubbers on your existing plant, and continue to burn the mucky stuff in the hope that the sulphur is taken out. But there is considerable impetus behind the refuelling of our merchant fleet with LNG – liquefied natural gas, which is low in sulphur. The EU is keen on the introduction of LNG as a marine fuel, and one of our customers has said that they regard the opportunity presented by the use of LNG in the merchant fleet as possibly heralding the biggest change to the powering in vessels since the adoption of fuel oil over coal at the beginning of the 20th Century. That's their assessment. They've also noted that an ideal location to handle LNG on The Humber would be the IWDJ, the Immingham Western Deep Water Jetty for a number of reasons: proximity to deep water. This time it's less important that the ability to move the cargo on to a pipeline system because it's going back out again to ships. But it is also a useful location, potentially, from a safety and operational perspective. So, LNG is something which we, together with this customer

and supported by, we expect, some EU funding, we are going to look at the viability of LNG on this specific location in conjunction with this customer. I should say that Rotterdam already has an LNG facility and there is a long track record of, dare I say, slightly slowly, Immingham doing tomorrow what Rotterdam does today, and I fully expect, as the busiest estuary on the East Coast, that is anywhere has a demand for LNG facilities, then it would be The Humber. So, that's the significance of that.

Able L2 20/10/2014 08:53

Formatted: Highlight

255. MR NEWCOMBE: Thank you very much. Further disparate point, who are the Simon Group?

256. MR COOPER: Simon Group are a customer of ours who operate tank farms in the existing port of Immingham. They too are looking for additional liquid bulk facilities. They are also one of our partners in the LNG project.

Able L2 20/10/2014 08:53

Formatted: Highlight

257. MR NEWCOMBE: In so far as you have been speaking to the Simon Group, has anything come out of those discussions, which is a, relevant for matters under discussion here, and b, not covered by understandable commercial confidentiality? I.e, is there anything about that which you can share with this Committee?

258. MR COOPER: Well, I was quoting from them when I cited them as seeing the prospect of LNG in merchant arenas being the biggest change since the shift from coal to fuel oil. So, that would be massive for that business. I should say also that there are the prospects of using this fuel in commercial vehicles as well in due course. I realise that is further out, but LNG is already being put into fleet in the Baltic and along the North Sea, not in great volume, I fully admit, but these things have to start somewhere. MR NEWCOMBE: I've got two further questions for you on this. The first of which, please go back to ABP 13, just so you have available to you the IHS report prepared for Able UK. Are there any other comments you wish to make at this stage about the work carried out by IHS in terms of the liquid bulks?

Able L2 20/10/2014 08:54

Formatted: Highlight

259. MR COOPER: Well, as I've already said, in certain respects, I can't put a cigarette paper between my view and their view and perspectives. What's a common problem with reports of this nature is that you do a general market assessment which hangs together extremely well, but it fails to ignore the specifics of the Port of

Immingham's business plan, which is, I have to say, more directed by the needs of its customers than by this analysis. And one other thing, which this document fails to do, I think, or I fail to find it doing, is it fails to allow for the possibility that another refinery, or refineries close in the UK. It's our view that that is a very real risk, in which case this country's dependence on imported product will increase, and the imported product – I take their points about London being the centre of the universe and so on and so forth – but the imported product will not ideally come into places adjacent to large populations of sheep, such as Milford Haven. I come from South Wales, so I am not being rude about South Wales in any shape, or form, but it will come into places that are adjacent to centres of population and industry, and the Humber is one of those locations.

Able L2 20/10/2014 08:55
Formatted: Highlight

260. MR NEWCOMBE: Final question under this subheading: summarise relating it specifically to The Humber why it is that ABP says there is a need for the Immingham Western Deep Water Jetty in terms of liquid bulks.

261. MR COOPER: Crudely, to coin a phrase, the market for liquid bulk is changing. It's changing in favour of imported refined product, and more importantly than that, our customers have expressed a need to expand their facilities in the Humber. This goes back to the elbow room point. If you don't have the ability to handle their aspirations – in this case – for moving cargo – either moving more cargo in the case of United Molasses, or moving cargo in larger ships in the case of Calor, you fail in your duty commercially, I think, as a statutory undertaking.

Able L2 20/10/2014 08:57
Formatted: Highlight

Able L2 20/10/2014 08:57
Formatted: Highlight

262. MR NEWCOMBE: Right, we're moving to a new subheading, and that is dry bulks. For these purposes, could you go please, Mr Cooper, and the Committee may find it helpful to have AVP 3 open, which shows, or summarises some of the existing facilities at Port of Immingham. Right, you've already dealt with why ABP considers as an independent liquid bulks requirements for the IWDJ. I now want you to factor into that any additional considerations which flow from any change, or requirement to change in relation to dry bulks.

263. MR COOPER: Okay, so when we look at the future of energy related dry bulks, we are fully cognisant of the likely decline of handling coal as a source of any generation in the UK. Our business plan is fully informed by that fact. As a caveat to

that fact, but that is the underlying trend. I'm going to step back a bit. I'm going to change markets to give you an example. I suspect that many people on the Committee would probably imagine that the market for newsprint is in decline. Why? Because you've got iPads over there, and you can use your iPad to read the newspaper, rather than go out and buy one, and it is true that the demand for newsprint is in decline. Newsprint is habitually, primarily, being imported through the Thames, through facilities like Purfleet and Tilbury. Because it's going to the great printing houses that were in Fleet Street and further east. That volume is in decline. What isn't in decline and is actually growing is the volume of paper that's moving through The Humber. The Humber is bucking that trend. There's a reason why The Humber is bucking that trend. The reason why the Humber bucks that trend is because the publishers of magazines – the publishers of the brochures that will be flooding through your front doors between now and Christmas are located in the M62 corridor. So, as the balance of demand has shifted from the Thames corridor to the M62 corridor, people have said, 'Actually, I'm going to move all my stuff up to The Humber, and serve the south from The Humber, rather than trying to serve the north from the Thames. So actually, our paper business has grown and we expect it to continue to grow even as the overall UK market is in decline. So, our business plan is informed by the imminent unexpected decline of coal, but if there's one port where coal will continue to be imported in quantity, it's Immingham, because Immingham is adjacent to the specific plant that is likely to be burning than most coal for longest, namely Drax, where we have either two, or three burners still burning coal, and Ratcliffe on Soar, and EON facility. Now those are the two most obvious burners of coal, and we expect not to maintain our market share in coal, but to grow our market share albeit in a declining market. Others are considering how they extend the life of coal. One of the great things, or not, depending on your point of view, about UK energy policy is that it changes quite frequently, and one of the consequences of a changes energy policy is that we need to maintain our flexibility to respond to it. So yes, on balance of probability, other people will be shutting down, but the government did, not too long ago cap the carbon floor price. And that sent a number of generators back to their slide rules to assess whether they might not be burning a bit more coal for a bit longer than had previously been thought. And it is without doubt the case that our business plan last year, this year, compared to our business plan five years ago had more coal for longer in it than would have been the case five years ago. On top of that, we have a demand for biomass. Now, at the time of the panel, there was quite a

Able L2 20/10/2014 09:00
Formatted: Highlight

lot of poo-pooing of it and so on and so forth, and 'It's not going to happen' etc etc. I would have to say to you that since the panel took its hearings, I would say that the performance of ABP on delivering on someone else's business plan, not mine as Chief Executive 2012 business plane, has been pretty stellar. Anyway, one of the things that we delivered on is the development, as I previously mentioned, of Immingham Renewal Fuel Tunnel. It's not in the design that was in the masterplan that you've got in front of you. It's looks completely different to that, but the reality of it is that we're building facilities there that are capable of handling north of 6 million tonnes of biomass a year. That is in response to market movements and customer demand. I am aware that there will be an argument that unless you get on with biomass – there is a window for biomass, which is closing. But whether it's Drax, who may convert a fourth burner, or whether it is *EGBRA*, or whether it is Hargreaves, who handle biomass for third parties, or whether it is EDF, all of them have, or way or another, expressed some interest in the biomass market to us. And that interest is current. So, in order to retain the optionality – horrible word – to meet that demand, we need to allow for the possibility that we need to expand HIT – Humber International Terminals. There's a third strand which is carbon capture and storage. I think the Secretary of State said we can't decarbonise on the back of nuclear and offshore wind along. We need carbon capture and storage. Well, there is a project; the White Rose Project, which is based at Drax. Drax is one of the partners to it. I can't remember the names of the others, but the short form of the White Rose Project is – while it relates to a number of relatively small generating units of less than 500 megawatts each, the pipeline that is going to be built out into the North Sea, through which carbon dioxide will be carried and effectively buries, it has a capacity of 17 million tonnes of CO2 – carbon dioxide – a year. That represents a coal burn of 12 to 13 million tonnes of coal per year. So somebody thinks that there's potential for future demand of between 12 and 13 million tonnes of CCS carbon caption storage coal. The hub of that pipeline network is adjacent near to the Drax facility. It is absolutely plum in the hinterland of the Port of Immingham. It won't come on the scene until the early 2020s. I've met their promoters. They are, of course, utterly confident. But even if we're not utterly confident, we have to take the position that we need to preserve the optionality – horrible word again – to increase the size of HIT to meet that market. So, you've got a latent market, which will run through the 2020s in our view. You've got a biomass market, which is capable of expansion, and you've got a CCS market. It doesn't take

Able L2 20/10/2014 09:01

Formatted: Highlight

Able L2 20/10/2014 09:01

Formatted: Highlight

Able L2 20/10/2014 09:01

Formatted: Highlight

Able L2 20/10/2014 09:02

Formatted: Highlight

Able L2 20/10/2014 09:02

Formatted: Highlight

Able L2 20/10/2014 09:03

Formatted: Highlight

very much of that to come together to make HIT 3 necessary.

264. MR NEWCOMBE: Would you take please ABP 15, which is a series of letters and this time, please, simply what is here before the Committee. Just take us briefly through what you consider to be the salient points of these letters from Drax and EGBRA.

265. MR COOPER: Right, so the Drax letter states that it is committed to a biomass strategy. I've had the benefit of going around what they've done at Drax, but also going around their port facilities in the States, and it is a huge commitment that Drax have made to biomass. The government's confirmed the conversion of three of Drax's units, albeit one of them under the renewables obligation, and the demand for biomass that flows from those three alone is something in the order of seven to eight million tonnes per annum. A fourth unit, I should explain this as well, would add another two and a half million tonnes. I should point out that biomass doesn't replace coal tonne for tonne. You need 1.6 tonnes of biomass for every tonne of coal. So, there is an incremental factor that goes into demand for facilities. Drax note their proximity to the facility, and they also note their participation in the White Rose Carbon Capture in their – you can see Alstom and BOC as their partners. EGBRA – neighbours of Drax. They're always friendly, I think it's fair to say, to each other. Long standing customer. It's well known that EGBRA Power is for sale, I think. And I think we are very close, if we haven't already got there, to some form of decision over who will own EGBRA Power. I'm told that the strategy for EGBRA Power envisages that biomass will form a part of its future. In any event, this letter expresses that EGBRA's proximity to Immingham makes it a natural place for a significant proportion of their overall fuel requirements, whether it's coal or biomass. I note, at the time, the panel went to some effort to suggest that stuff might come through Liverpool to EGBRA. It can, but the majority of it will come through The Humber.

266. MR NEWCOMBE: Go, if you would please to ABP 3 now – Plan of Port Immingham and Surrounding Area. If we look there, we can see – at the northern end of the developed port of Hull...

267. MR COOPER: ABP 3 doesn't have Hull in it.

Able L2 20/10/2014 09:04
Formatted: Highlight

Able L2 20/10/2014 09:04
Formatted: Highlight

Able L2 20/10/2014 09:06
Formatted: Highlight

Able L2 20/10/2014 09:07
Comment [10]: 7.5 / 3=2.5

Able L2 20/10/2014 09:06
Formatted: Highlight

Able L2 20/10/2014 09:07
Formatted: Highlight

Able L2 20/10/2014 09:10
Formatted: Highlight

Able L2 20/10/2014 09:13
Formatted: Highlight

268. MR NEWCOMBE: Forgive me. I'm being geographically challenged. Delete Hull from cert Immingham.

269. LORD ARMSTRONG: Here?

270. MR NEWCOMBE: My Lord, ABP 3, and I was being remarkably stupid, even by my standards, in referring to Immingham as Hull. Forgive me. Look at The Humber International Terminal berths 1 and 2, at the northern end of the developed port of Immingham, and just beyond that, the red dotted line around Humber International Terminal berth 3. Now, it's probably implicit in what you've already been saying. But now draw the strands together on what is ABP's proposal in relation to what is referred to as an acronym in terms of HIT 3.

271. MR COOPER: So, in order to preserve the ability to develop HIT 3 for future customer demand, we would have to move the existing yellow oblong within that red dotted area, which is the Immingham Gas Jetty, currently used by Calor and P66, two of our existing customers, and prospectively being used by the refineries more extensively in an agreement we just reached with them. So, that would have to move and this goes back to the ever increasing vessel size. If you wander up the bulk liquid jettys, IOT can take vessels of about 120,000 tonnes in size. The old lead in jettys are restricted to 30,000 tonnes. The gas jetty is 50,000 and Immingham Western Deep Water Jetty would be 80,000, and the customers need the capacity to put bigger ships on the berth. So, gas jetty's natural home would be part of the Immingham Western Deep Water Jetty.

272. MR NEWCOMBE: We'll come back to ABP 3 in a moment, but go now please to Able's document. Their Exhibit 10, which is a report by Tolvik. This, essentially, parallels or partners the Able report produced by IHS dealing with liquid bulks. Again please, Mr Cooper, in overview terms, to what extent do you, ABP, take a materially different approach, or view of the dry bulks market as set out in the Tolvik report?

273. MR COOPER: Again, on a national basis, I'm not sure we do take issue with it. But we're not writing a national business plan. We're writing one for Immingham.

Able L2 20/10/2014 09:24
Formatted: Highlight

Able L2 20/10/2014 09:24
Formatted: Highlight

Able L2 20/10/2014 09:25
Formatted: Highlight

274. MR NEWCOMBE: Alright, go to page 5, if you would, please. Now, helpfully, TOLVIC there produce a plan of Britain and the six counties, and we see there the notation identifying coal fire power stations. Those which are going to be biomass only, closed and operation. Do you see that? Concentrate on the ones which are closed and remove those, and turn your attention to the black ones. What, geographically, do you invite the Committee to conclude from the relationship of those black ones to The Humber and the Port of Immingham?

275. MR COOPER: The Humber, as it has been for some time and will continue to be, is ideally located to service the vast majority of the black dots on that map. It serves them all today.

276. MR NEWCOMBE: Are there any other general comments which you wish to make at this stage to headline any differences which ABP takes between the Tolvik work on the prediction for dry bulks and ABP's position?

277. MR COOPER: Well, we make a couple of general observations. I think that their view of domestic coal production is high by our standards, or our expectations. We think that arguably there will be very little deep mining in the UK after May next year, and relatively little open cast, and such as is produced is expensive to haul to The Humber region, because it's not located very close by. It is worth pointing out that the most efficient way to haul coal is by ship. **Once you start putting it onto railways and trucks, the cost rises.** Bulk products do not bear high land transport costs. The report, I'm afraid, ignores the volumetric difference between coal and biomass, which, as I've said is 1.6 times. It, in our view, underplays the potential for White Rose, Don Valley, and other CCS products, and it ignores the fact that a relatively modest increase in current volumes is all that is required to require HIT 3 to be developed. There are other issues about metallurgical coal and so and so forth, which I won't bore people with. Finally, the conclusion that is ABP retains its current market share is not, in my view, a sensible conclusion, given the proximity of those black dots to The Humber, **our market share of imported coal is likely to rise, and rise significantly.**

278. MR NEWCOMBE: Mr Cooper, I now bring you to the question of alternatives

Able L2 20/10/2014 09:27

Formatted: Highlight

Able L2 20/10/2014 09:27

Comment [11]: all of the coal goes by rail to the power station from Immingham and the main cost is loading & unloading once loaded the extra miles is small in comparison

Able L2 20/10/2014 09:27

Formatted: Highlight

Able L2 20/10/2014 09:28

Formatted: Highlight

and the like to the IWDJ. I have my eye on the clock, and I'm conscious we're approaching the bewitching hour of quarter to. Bearing that in mind, could you do your best please, using ABP 3 to summarise why it is that you say that there is no sensible alternative, or preferable site to the proposed Immingham Western Deep Water Jetty? And in so far as we need to get into the detail of that, we may have to return to that shortly after lunch.

279. MR COOPER: I will try and address Mr Whittaker's question at the same time. If we start at where the gas jetty is today – inside that red dotted box – and move our way down, I hope it's obvious that there's not a lot of space to build another jetty on the basis of the map alone. So the first meaningful gap that we have is between the Immingham Bulk Terminal and the Western Jetty, and the reason we can't build there is that, inside of that, is the Immingham Outer Harbour, which is our deep sea RORO berths currently used by DFDS, which we're in the process of agreeing an expansion plan with DFDS. So, we need to have a gap for the RORO ships to pass between those two jettys. We can't obstruct that passage. The second gap, I hope is clear, between the western and eastern jettys is actually the entrance to Immingham Docks, so we're not going to build across that because there's still an active business in Immingham Docks. The third gap, if you like, lies between the eastern jetty in the Immingham Oil Terminal and the reason for not building there is that the Immingham Oil Terminal and its pipework need a fairly wide berth, if you'll excuse the phrase, because of the nature of the product that's handled there. The distance from the shore to get to deep water is reasonably significant and the dredge requires, and the associated environmental impact is significant. The third point is that I think there's an outfall pipe there that would need to be relocated. The fourth location, which I think is your location, which is downstream of the Immingham Oil Terminal. So, the point about giving it a wide berth still pertains, but I think the biggest difficulty that we have with it is that it's not our repairing rights if you draw a line out from the bank. If you draw a line out from the bank, I think, where it strains in to other people's territory, notably TOTAL, who, at one stage, proposed their own jetty there. So, we're not expecting that they would happily give up on their ability to build their own berth in the future, should they require to do so, or decide to do so. Does that help with your question? The other thing is that the further down we get – the further we are away from the caverns and the pipeline, and the greater the expense that we're going to incur in developing the site.

280. MR NEWCOMBE: Just pause there. Forgive me. It's entirely a matter for you sir, but I'm just pausing delivery in case there are any follow-up questions you wish to ask at this stage.

281. MR WHITTAKER: No, I will wait to the end because I've got a series of questions I would like to ask.

282. MR NEWCOMBE: Okay. Thank you very much indeed. My Lord, I'm looking at the time. I'm about to move to a new topic. I'm not seeking to claim an extra five minutes, but that would be an appropriate moment, and a logical point to stop if that commends itself to the Committee, or I can continue and simply stop mid sentence at quarter to.

283. CHAIRMAN: I think this may be a very suitable time to break off and therefore the Committee stands adjourned until 2:45.

284. MR NEWCOMBE: I'm grateful. Thank you very much.

Sitting suspended at 13.39

On resuming at 14.45—

285. CHAIRMAN: I call the Committee to order and ask Mr Newcombe whether he would like to proceed. Thank you, Mr Newcombe.

286. MR NEWCOMBE: Mr Cooper, firstly, just to remind us, please, where we left off. We had finished liquid bulks, we had finished dry bulks and we had touched on—or I have one more detailed question on alternatives. Before I move on to a further question, is there anything else that you need to ask about either liquid bulks or dry bulks?

287. MR COOPER: I would only like to reiterate that the option to expand it requires, just so everyone is clear, the removal of the Immingham gas jetty, which on ABP3 is that little bit of yellow that stands in the middle of that red dotted box. In today's world,

the place that it goes is Immingham western deepwater jetty. I want to be sure that everyone is clear on that.

288. MR NEWCOMBE: Thank you. The supplementary question that I wish to ask you about alternatives, please, is, would you go in volume 1 of what we call the fat reference documents? My lord and gentlemen, it is not necessary for the Committee to go to this unless they particularly want to. I am going to give the paragraph references and read what appear to me to be the salient points. Mr Bird, in due course will say if he wants me to read some more.

289. That is the Panel Report which is at tab 4. I want you to go in that, please, to page 92. We see there “Marine issues and the implications for other uses of the Humber” and then section 13 of the Panel Report kicks straight off with a reference to ABP's plans for the development of the western deepwater jetty. Do you see that?

290. MR COOPER: Yes.

291. MR NEWCOMBE: It then goes on to refer to three significant issues: first, Port Master Plan, paragraph 13.6; secondly, “the assumptions on which the demand for this development are predicated are subject to challenge”, that is 13.7; and then, thirdly, at 13.8 the Panel notes that “there appear to be a number of alternatives to the WDJ. A new jetty could be constructed between HIT 3 and the South Gillingham oil jetty. South Gillingham oil jetty itself could be used or the east and/or west jetty common user berths, both of which already handle liquid petroleum and chemical traffic or, possibly, the Immingham oil terminal.” Again, do you see that?

292. MR COOPER: Yes.

293. MR NEWCOMBE: The Panel then draws together those strands and, unsurprisingly, ABP in deciding where to locate the western deepwater jetty has considered possible alternatives or potential alternatives. The Panel goes on to say at 13.10, “Thus ABP itself acknowledges that there are possible alternatives readily available for the WDJ.” Do you see that?

294. MR COOPER: Yes.

295. MR NEWCOMBE: Firstly, as at the time that the evidence was being presented to the Panel, had they correctly understood precisely what process ABP had gone through?

296. MR COOPER: It is not evident from that paragraph that they did.

297. MR NEWCOMBE: Tell us what the position was.

298. MR COOPER: The position was that ABP did what it is supposed to do, I think, which is to consider possible alternatives, but found that none were suitable.

299. MR NEWCOMBE: Right. Has that position changed in the intervening two odd years?

300. MR COOPER: No.

301. MR NEWCOMBE: Thank you.

302. CHAIRMAN: Mr Newcombe, Mr Whittaker would like to ask a question on this particular point?

303. MR NEWCOMBE: My lord, of course.

304. MR WHITTAKER: It goes back really to what is being said. Mr Cooper, you have gone to great lengths to talk about and to explain the need to maintain flexibility, because of the changing market and, in fact, Mr Newcombe spoke at length about—"elbow room", I think were his words.

305. MR COOPER: Yes.

306. MR WHITTAKER: I did notice—I think that it was ABP10, under your amendments—that, under your proposals for the deepwater jetty, you have gone against

Able L2 20/10/2014 09:31
Formatted: Highlight

Able L2 20/10/2014 09:31
Formatted: Highlight

your own advice, and that advice of Mr Newcombe, by proposing to reduce the berths down from two to one, you have also talked about a reduction of half a million tonnes per year, and yet in your own submission—and I know that you are about to go on and talk more at length about that—there is a recognition that there are other places that you could consider. I am going to flip the coin for you here. You mentioned that the cost was £40 million for the deepwater jetty, for which, I think, your words were—actually, it is my words, you indicated that it was small change—which I think is a fair assessment of what you said, although you did not exactly say that—to build the new jetty, but you also mentioned Total wanting to build to the south of the site as well; potentially wanting to build a site, I do not think there is any proposal in the pipeline for it. Is it not the case that Able have actually got a site up and running and almost there to the north of you? Is it not a case then that with the £40 million quid, which is small change, and the fact that, actually, you are not really applying your own rules for flexibility, that you would rather take on Able than Total, would that be the case?

Able L2 20/10/2014 09:32
Formatted: Highlight

307. MR COOPER: I do not actually wish to take on anybody. That is the nature of the compromise, to be honest. The answer to the question is that we own this land today, it is ours, and it was held by the port for the future development of the port. It happens to be ideally located for the purpose that we have identified for it. It happens that our customers are asking us to create the capacity that the “elbow room” argument supports. They are outgrowing the existing facilities. That is the nature of port facilities. The most extreme example is in London, which is now a series of office blocks. The consequence of that is that we have new port facilities on the Thames, at places like London Gateway.

308. MR WHITTAKER: But why there?

309. MR COOPER: Because it has access to deepwater, it is proximate to the pipelines, it is proximate to the caverns. P66, who are an important refinery customer of ours, expressly say, “Please move west”.

310. MR WHITTAKER: I am sorry to keep on interjecting, but you are the owner of the land, are you unequivocally saying that there is no other site within that dock, which is Immingham, where you could not have built this jetty? If that is the case, why have

Able L2 20/10/2014 09:33
Formatted: Highlight

you sat on it for 60 years and why all of a sudden after the Able Marine development comes to light, do you submit plans?

311. MR COOPER: The 60 years, I have to say, for us is something of—I don't wish to sound rude and I apologise if it does sound rude—a red herring. We have sat on land in other parts of the country for far longer and we continue to sit on that land. I said earlier that we own 800 acres of land in Hampshire, which is the last available deepwater access land in the south for a major port. One day its time will come. It would be easier for me in some senses—and in a lot of senses locally and politically—to find an alternative use that generated cash today rather than port opportunities tomorrow. We do not own the land at the other end of Immingham. It is not ours to dispose of. We do not have the repairing rights. We do not have the land rights. We have some land back from the water, but we do not own that land. I suppose that we could go and seek compulsorily to purchase it off Total. I suspect that Total will want to retain the option to do their own thing. We had a lively and fractious encounter, as you may be aware, with the refineries over the renewal of their leases. They looked at a number of alternatives for supplying their own facilities before concluding that, actually, hard as it may be, the deal they were being offered by ABP was indeed a good one relative to their alternatives. But who is to say that the next time around they will not choose to preserve their optionality and their ability to make commercial choices that are different? I am sure they will. At the moment, we own the triangle site. It is appropriately located for the purpose for which we have identified. It is excellently located for the purpose for which we identified. I hope that we have evidenced a degree—I would say a lot—of customer interest. We are a customer led business. We recognise the market in which those customers are making their claims to us.

Able L2 20/10/2014 09:35
Formatted: Highlight

Able L2 20/10/2014 09:36
Formatted: Highlight

Able L2 20/10/2014 09:38
Formatted: Highlight

312. MR WHITTAKER: But on the compromise, the issue of flexibility, the other ...

313. MR COOPER: The compromise: in an ideal world I would sit here in front of you and say, “We will have our full repairing rights, please, and we will build a full IWDJ, including a coastal facility that would allow us to serve smaller vessels”, etc, but we have been enjoined to see if we cannot find something which, in our view, gives greater comfort to Able, whilst facilitating what it is that we want to do. Far from putting the jetty at right angles to the shoreline, which is what plan A is, it is what is in

the petition, we say, “Can we swing it away without getting so close to the next jetty where we have a marine problem?” The answer is, “Yes, we can.” What are we giving up? We are giving up the inner berth on it. Is that catastrophic? No, it is not catastrophic; it is pragmatic. It has not worked yet, but that is the thinking.

314. LORD ARMSTRONG: Could I ask, does the compromise proposal and then, of course, the modified compromise, reduce the size of the triangle?

315. MR COOPER: No. This is important. They will speak for themselves, but there is something in the order of 2,000 acres of Able owned land adjacent to the triangle site. The triangle site is less than 2% of the total AMEP landholding. The triangle site is what we need to land the cargo on. Different cargoes have different requirements in terms of land utilisation behind them, but bulk liquids move quite quickly through the holding area—if you like, the storage area—but everything needs a degree of storage, whether it is a warehouse or in open air. The land is necessary for us to build storage tanks for the bulk liquids that will come through there. The compromise—we don't actually believe this is the case, all the jobs which go with AMEP, or virtually all the jobs that go with AMEP, are associated with the manufacturing facilities that go on the land behind the berth. Efficient use of the berth at least getting somewhere comparable with other European standards—or even standards that are achievable across the river—means that all the manufacturing can be built and delivered with a smaller berth. As far as we are concerned the land stays, we can shift our berth away to create more space for AMEP than is in the petition and thereby certainly enable AMEP to deliver on its promise.

316. LORD ARMSTRONG: The reason why I ask that question was because, in ABP10, it is said that the compromise proposal would reduce the reduction, if I may put it that way, in the length of the AMEP quay.

317. MR COOPER: Yes.

318. LORD ARMSTRONG: Presumably, that is along the foreshore side of the triangle and, therefore, I wondered whether your proposal allowed for or assumed a small reduction in the acreage of the triangle.

319. MR COOPER: It does not, but the actual AMEP berth face, if you are on ABP3, sir, you will see that it sticks out into the estuary. AMEP is proposing to build its berth face out in the river, presumably in order to bring it closer to the deepwater, and we are proposing that they surrender a small proportion of that quay side and a small proportion of the berth frontage to enable IWDJ to proceed.

320. LORD ARMSTRONG: I see. We are speaking of a length outside the foreshore, as it were.

321. MR COOPER: Yes.

322. LORD ARMSTRONG: In the sideways.

323. MR COOPER: Out into the river.

324. LORD ARMSTRONG: Thank you.

325. MR NEWCOMBE: Picking up that point—forgive me, my lord, I do not know whether you had finished.

326. LORD ARMSTRONG: I had finished, thank you very much.

327. MR NEWCOMBE: I am grateful. Just look at ABP3, and, if I am banging the nail out of sight, forgive me, but it is important that we understand this. We can see, as I understand it, the existing shoreline and then a distinction for the inter tidal and then the sub tidal. Do you see that?

328. MR COOPER: Yes.

329. MR NEWCOMBE: We can further see that the triangle as drawn on here is on existing terra firma --

330. MR COOPER: Yes.

331. MR NEWCOMBE: -- and the Able quay involves a material amount of reclamation—I am simply putting this neutrally—which extends out. It swallows up the inter tidal and then it continues and takes a material amount of the sub tidal. Do you see that?

332. MR COOPER: Correct, yes.

333. MR NEWCOMBE: I want to spring from one of the questions just asked by Mr Whittaker, if I may. I am going to put it in aggressive terms to you. Suppose that somebody says, “ABP, you said at Panel stage that there was a need for your IWDJ, you have now come up with this compromise. You are the first one to blink. We can, therefore, interpolate from that that the need you say exists for the IWDJ is, actually, not nearly as strong, if indeed it exists at all, as you were making out before.” How do you respond to somebody who hypothetically says that to you?

334. MR COOPER: The need for IWDJ has increased in the last two years not decreased.

Able L2 20/10/2014 09:40
Formatted: Highlight

335. CHAIRMAN: Mr Blomfield.

336. MR BLOMFIELD: If I may follow up on the point about time lines, which I am not clear on and follows on from Mr Whittaker's point. At what point did you publish your proposals for the western deepwater jetty?

337. MR COOPER: Before Able announced their proposals for AMEP is the answer to that question. I am just reading my notes here. The project was made public in the Draft Port of Immingham Master Plan that was published in April 2010. We actually received a pretty detailed comment on that draft from Able dated 22 June, which did not raise any objection to IWDJ, in general.

Able L2 20/10/2014 09:41
Formatted: Highlight

Able L2 20/10/2014 09:41
Formatted: Highlight

Able L2 20/10/2014 09:42

Comment [12]: check what the plan says and check meeting dates with P Jones & Nick Plamer when PMS showd them able plan

338. MR NEWCOMBE: Could you keep your voice up?

Able L2 20/10/2014 09:41
Formatted: Highlight

339. MR COOPER: I am sorry, I am just reading. I do apologise. It did not raise any

objection to IWDJ in general or to ABP's plans for the triangle site, in particular. I actually do not have the time line in front of me and I will have to come back to you on that. I am confident that IWDJ was in the public domain before AMEP was.

340. MR OFFORD: Could I ask a supplementary on that?

341. MR COOPER: Yes.

342. MR OFFORD: I realise that it is difficult to go back in time and to get exact dates, but in your petition you say that notification of and consultation on the project, the IWDJ, began in April 2010 when it was included in the Draft Port of Immingham Master Plan.

343. MR COOPER: Yes.

344. MR OFFORD: Was that in the public domain as a draft document?

345. MR COOPER: Yes, because it is a consultation draft.

346. MR OFFORD: Okay. I think that that answers your question.

347. MR WHITTAKER: Yes.

348. LORD ARMSTRONG: Can I ask another question, if I may? In the compromise mark 2, you are abandoning the inner berth on the IWDJ.

349. MR COOPER: Yes.

350. LORD ARMSTRONG: And that has a consequential reduction in the cargo tonnage.

351. MR COOPER: Yes.

352. LORD ARMSTRONG: How does that help the compromise, because the matter

at issue is really about the triangle, is it not? Does that reduction in the number of berths contribute very much?

353. MR COOPER: The stated purpose for the triangle is, in our opinion, trivial—it is low-level overspill, and we just fail to understand why that cannot be relocated somewhere else—and there is the issue of the pumping station which Able, itself, says it has two alternative locations for. We actually think that, in the context of the AMEP proposal, the triangle is trivial bordering on irrelevant. We think that the purported need for the triangle is to provide the ability to extend the quay, but, as we say, we cannot see a commercial purpose for such a long quay. The reason for taking the coaster berth out is that, in order for the full IWDJ to be built, it would have been necessary to allow vessels carrying probably fairly combustible material between the berth that Able wishes to build and our berth. By abandoning the inner berth, we no longer have to allow for that possibility and that enables more of AMEP to be built or more of the berth to be built.

354. LORD ARMSTRONG: Thank you very much.

355. MR NEWCOMBE: That, helpfully, deals with the matters that I wanted to ask you about alternatives and which came first the Able chicken or the ABP IWDJ. I am now proposing to move to the third, or the final limb, of the detriment case, which is the question of “elbow room”. Just before I do that, Mr Cooper, is there anything else that you wish to mention before the Committee on the matters that we have just been discussing?

356. MR COOPER: I do not think so.

357. MR NEWCOMBE: We come to “elbow room”. It may be that you feel that you have already dealt with that sufficiently. If you have, please say so and I can pass on, but this is your opportunity to amplify or stress any points that you wish to.

358. MR COOPER: The “elbow room” point is an important point. This project, in a sense, is about elbow room, because what we are doing is providing elbow room for our dry energy business. We are providing elbow room to our existing bulk liquid

Able L2 20/10/2014 09:44
Formatted: Highlight

customers. We are enabling them to grow. I cannot stress how important it is. I will give you a live example and I am very conscious that this is in the public domain. We handle in Southampton about 200,000 Jaguars and Land Rovers for export at the moment a year. It is one of our fastest growing businesses. It is, of course, fast growing because Jaguar Land Rover is a huge success story for British manufacturing. There is no doubt, if you look at Southampton, you will conclude that we are becoming increasingly tight for land. A customer like JLR needs to know that we have the capability to expand with them. It is not a matter of them turning around, from our perspective, and saying, "I'll tell you what, why don't you have the first 200,000 and we will send the next 200,000 to a different port." That is not the way that logistics work. They want to put the whole lot through one location. Why? Because that is where the ship is calling. They do not want the ship to call there and there. They want to be able to service the ship that is calling in Southampton. Actually, over 600 ships a year service Jaguar Land Rover through Southampton. It is a major automotive hub. We can handle Jaguar Land Rover's growth, if anyone is watching, but we are having to be creative and we need to reassure them of that fact, otherwise they will look for an alternative. It is not a matter of not getting the 400,000, we will lose the 200,000. That is not good for us. We need elbow room to allow for people to grow. Of course, people contract as well as grow, but, on the whole, in good economic times, which mostly they are, then the business grows.

359. MR NEWCOMBE: Just on that point, again, I do want to give this nail another tap, the "elbow room" point, is it simply a future and contingent need or does it have a present and actual dimension?

360. MR COOPER: It is current. If we cannot demonstrate to the market an ability to handle their future business, they will not bring their current business. If we cannot demonstrate—I am sorry to go back to Southampton again, but it is a good example—to CMA CGM the ability to handle their new and biggest ships in Southampton, actually, now and in the future, they will go today.

361. MR WHITTAKER: I understand the point that you are saying about Southampton, but we are not talking about Southampton.

Able L2 20/10/2014 09:45

Formatted: Highlight

Able L2 20/10/2014 09:45

Formatted: Highlight

Able L2 20/10/2014 09:45

Formatted: Highlight

362. MR COOPER: The point is a general point.

363. MR WHITTAKER: It is a general point, and I understand that, but I still have not understood when you continue to talk about flexibility why would you invest £40 million in something that is incredibly limited at the outset, which is what you are proposing to do? You are limiting it to one berth, there is no room for expansion, you are limiting it by reducing it by half a million tonnes per year, under your own criteria. Why would you limit the scope of your flexibility from the outset if that was the right thing to do?

364. MR COOPER: In order to try to come to a solution. Most of these berths that we have built—this is a Panamax berth, it is a sizeable piece of equipment. It will have the capacity to handle four million tonnes a year. That is about 8% of Immingham's current throughput. It is a meaningful addition to the capability of the port. It is a meaningful addition to the bulk liquid handling capability of the port. It would represent a meaningful addition to the UK's liquid bulk infrastructure.

365. MR WHITTAKER: Could I ask one further question?

366. MR COOPER: Yes, of course.

367. MR WHITTAKER: Are you, therefore, saying that with this limited extra capacity, because you are limiting it, that you are then built out at Immingham; you can go no further?

368. MR COOPER: At some point we will have to find a way to expand beyond our existing boundaries, if the Port of Immingham is to continue to grow. That is not today's problem, but it is a future problem that we have to address.

369. MR WHITTAKER: Why isn't it today's problem?

370. MR COOPER: Because with Immingham western deepwater jetty and the ability that that gives us to grow the dry bulks business, that is two additional berths. That is a big chunk of additional capacity at Immingham.

371. MR WHITTAKER: Thank you.

372. MR NEWCOMBE: Mr Cooper, forgive me, I am just going to speak across you for a moment. Sir, I understand the question and simply for the purpose of emphasis, if I may, I refer back to the way in which I set matters out in opening. If one develops, in my submission, the logic of the point that you were putting to Mr Cooper, then the logic would be that the Committee should reject the compromise and go with the full reduction of the compulsory acquisition powers inherent in the amendment petition, because there would be a better fix with that and a need for that, as Mr Cooper has identified. The compromise has come forward in part because ABP has felt it to be its duty to do so and, secondly, that has been confirmed by Lord Sewel's comments on Day 2 of the original hearing as to whether or not these petitions were fit to come before the Select Committee. Forgive me talking across, but I hope that that helps at this moment.

373. I am now going to go back to Mr Cooper. Mr Cooper, I also just want to look at this for the moment. I come back to my old friend ABP3. Again, I think that this is something close to a Farrow & Ball's salmon pink or whatever, but it is the DCO land which we see identified there for the Able Marine Energy Park. Do you see that?

374. MR COOPER: Yes.

375. MR NEWCOMBE: With the full monty, the triangle land and the Immingham western deepwater jetty—ignore whether this is the compromise or the full scheme at the moment—we can see that that involves a conflict in the triangle land itself, properly so called, and a finger jetty going out to something which only just projects beyond the quay face and, were it built out, would to that extent sterilise that part of AMEP's proposal. Do you see that?

376. MR COOPER: Yes.

377. MR NEWCOMBE: If one then considers the full amendment petition of reduction in compulsory acquisition powers, we know that that reduces the AMEP

ability to build a straight line quay out over the inter tidal and into the sub tidal to about 700 odd metres.

378. MR COOPER: It is 760.

379. MR NEWCOMBE: Thank you. The characteristic of the compromise scheme is that it allows Able to have of the order of 995 metres of straight line quay, bearing in mind that that is not the total area or linear meterage they would have for berthing, because there are also what I have referred to as the right angle berthing facilities.

380. MR COOPER: Yes.

381. MR NEWCOMBE: So there is no dubiety upon it, please draw together the strands—and this will necessarily involve repetition, but please do that, anyway—of ABP's thinking, which has led it to proposing the compromise.

382. MR COOPER: I inherited a situation when I became chief executive in April 2013 of, I think, a fairly bitter dispute between Able and ABP over this particular project. My view was, slightly in contrast with my predecessors, that rather than charging at each other like rams or bulls or whatever, we might see if we could not find a rather more constructive way in which we could achieve both parties' objectives. It seemed to me then, and it seems to me now, having done even more work on it, that there is scope for reducing the scale of AMEP without damaging its commercial aims and objectives and, indeed, the shrinkage in the potential of the offshore wind farm market must to some degree allow for a reduction in the AMEP berth length, you would have thought. I asked people at ABP to think a bit more laterally about what the solution is beyond the legal, which is “We want our land and we want our repairing access rights”, and we made it clear to anyone who listened that I was prepared to take a more broad-brush approach than had been evident heretofore. The position remains that we would be willing to compromise on the basis set out and leave Able with what we regard as significantly more berth than they need in order to fulfil their commercial function and we had hoped that by now we would be at a point where we would be presenting you with a solution rather than still presenting you with a problem. That is not the case. That is to be regretted, but that is, unfortunately, where we are. I am

happy to elucidate more on that, but I think that that is the brief answer.

383. MR NEWCOMBE: All right. Take the Able exhibits, if you would, please, because there has been a mention of Total and we have the advantage of an expression of Total views, albeit of some four years ago. This is the Able bundle, which is the other slim volume, and it is Able's 6B within that bundle. Keep a finger, please, Mr Cooper, in 6B, and just flip back to 6A. Did you ever do the comic book trick as a child, where you flip backwards and forwards from page to page and see the mouse move across?

384. MR COOPER: We are about to do that, I think.

385. MR NEWCOMBE: We are. There appears to be, but tell me whether you agree or disagree, a material similarity even as to the date between the Humber Oil Terminals Trustees Ltd's letter and that for Total.

386. MR COOPER: Yes.

387. MR NEWCOMBE: Just help us with this. What actually was the background against which this letter was lodged or sent?

388. MR COOPER: Again, I think that this came to an end just before I became chief executive and I am kind of pleased that it did. The origins of this are that back in 1970, I think, when ABP was owned by the state, it entered into an agreement with Humber Oil Terminals Trustees Ltd, effectively, a joint venture between Conoco Phillips, as it was at the time, and Total, the operators of the two refineries that lie adjacent to/behind the Port of Immingham, to provide Immingham oil terminal with a berth for bringing feed product, crude, into their refineries and handling refined product out. That was a 40-year lease on an uninflated rent. When the lease came to an end, there was inevitably a protracted discussion about what an appropriate level of rent should be for the lease, but, more important than that, ABP had taken the view that with a change in management—that is us running the facility directly—we could extract more productivity out of the facility. What these letters both refer to is the need for HOTT and indeed Total to have exclusive use of the jetty. What they objected to, therefore, as

was mentioned in our Master Plan, was the fact that we wanted to open up the facility for third-party use. That is the genus, broadly, of these two virtually identical letters. As it happened, peace eventually broke out with HOTT and with Total. The position today is that there is a theoretical ability for us to agree access to the jetty, but it operates at pretty close to capacity today and the scope for further volumes is limited. In addition, neither party shows any willingness to enter into a negotiation with us which would facilitate the opening of that facility.

389. MR NEWCOMBE: The final matter, Mr Cooper, is state as briefly as you wish the conclusions which you invite the Committee to reach in this meeting as regards the justification or absence of justification for Able's acquisition of the land we have been discussing.

390. MR COOPER: I will keep it brief, I think. Our position is very simply stated. They do not need all of it, we do need it and, in my view, there is a solution to the problem. That is the long and the short of it.

391. MR NEWCOMBE: Mr Cooper, thank you very much indeed. Stay there. It is just possible that there may be some questions.

392. LORD ARMSTRONG: The solution is the modified compromise, is that right?

393. MR COOPER: Correct.

394. CHAIRMAN: Mr Bird.

395. MR BIRD: Thank you very much. Mr Cooper, I am right in saying, am I not, that, for the purposes of the assessment of the serious detriment issue that you have been asked about, the relevant statutory undertaker is Associated British Ports; there is no, as it were, separate Associated British Ports Immingham, it is Associated British Ports.

396. MR COOPER: I understand that it is Immingham that is the statutory undertaker.

397. MR BIRD: Well, as far as Associated British Ports are concerned, in your Draft

Harbour Revision Order, the statutory undertaker is identified as Associated British Ports.

398. MR COOPER: If that is the case, that is the case.

399. MR NEWCOMBE: Forgive me, Mr Bird, I do apologise for intervening at this stage, but, if that is the point being made, I will need to make submissions at some stage, because the Port of Immingham, in exactly the same way as virtually every other port, is a separate undertaking operated normally pursuant to private acts of Parliament promoted sometimes as far back as Queen Anne and often in the 19th Century and they are separate undertakings as a matter of law. I hope that that is a helpful intervention. If it is not, then I apologise. If that point is to be progressed, then it will be a point at issue to which Mr Bird and I no doubt will address further submissions.

400. MR BIRD: I think that you may have to address further submissions. As far as Associated British Ports are concerned, as far as the Harbour Revision Order is concerned, we are agreed, are we not, that it is Associated British Ports which is identified as the statutory undertaker in your application?

401. MR COOPER: My understanding is that it is the Port of Immingham that is the statutory undertaker.

402. MR BIRD: Well, let us just agree some facts about Associated British Ports, because it might be relevant to the issue of alternatives as well. You own some 21 ports.

403. MR COOPER: Yes.

404. MR BIRD: You handle how many million tonnes of cargo a year?

405. MR COOPER: That, actually, is a slightly more complex question than you might imagine. Facilities within our port authority areas handle something approximating 120 million tonnes of cargo.

406. MR BIRD: If we take up, in terms of the core documents the third main bundle, I

want to go to the core reference exhibits, number 11, which is the Port of Immingham Master Plan. This is the version that was approved in September 2012. If you go to page 9, please, of that document, paragraph 1.1, certainly as of 2012 ABP had handled nearly 150 million tonnes. You now tell us that in 2014 it is 120 million tonnes, comparable to that, is that right?

407. MR COOPER: Approximately, yes.

408. MR BIRD: And it is fair to say, is it not, that the port's estate extends, if we go on in the Master Plan to page 19, paragraph 3.10, to some 12,000 acres?

409. MR COOPER: Yes, it does.

410. MR BIRD: In terms of employment, you told us today that ABP employs 26,000 people,

411. MR COOPER: No, I did not say that.

412. MR BIRD: I thought that you did say that. My note of what you said is that ABP employs 26,000 people.

413. MR COOPER: Would you like me to help you?

414. MR BIRD: Yes, if I have made an outrageous error.

415. MR COOPER: ABP directly employs about 2,000 people. We operate what might be generally called a landlord port model. That means that the vast majority of the cargo to which I have referred is actually handled by our tenants and not by ABP directly. It is our tenants who employ the overwhelming majority of those 26,000 people. I think that what I said was that 26,000 people are employed on our estate.

416. MR BIRD: Very well, I will take that correction. It is 26,000 people employed on your estate. At Immingham alone, if we go back in the Master Plan to page 9, just above paragraph 1.6 you will note that ABP's land holdings at the port total over 1,300

acres of land and 58 acres of enclosed dock.

417. MR COOPER: Yes.

418. MR BIRD: Good. So within that context, we can agree, can we not, that, as far as the triangle site is concerned, which is I think 13 acres or 5.2 hectares, it represents just 0.1% of ABP's port estate and 1% of its estate at Immingham?

419. MR COOPER: Not all land is equal.

420. MR BIRD: We will come to, as it were, whether there is any speciality about your particular triangle site in due course, but that is right, is it not, as a matter of fact, those figures are correct?

421. MR COOPER: In absolute terms, they are correct.

422. MR BIRD: Good. As far as the development of IWDJ is concerned, as proposed in your Harbour Vision Order, I think that the application documentation identifies that it would employ some 50 people.

423. MR COOPER: Yes.

424. MR BIRD: Good. How many people are presently employed at Immingham?

425. MR COOPER: By us about 900 and by our tenants probably about another 8,000.

426. MR BIRD: Again, that puts, as it were, the IWDJ in its employment context as well, does it not?

427. MR COOPER: Yes.

428. MR BIRD: It is a tiny fraction of the existing employment at Immingham and a tiny fraction of those who can claim the employment benefit of the ABP's wider estate. Yes?

429. MR COOPER: I would not necessarily agree with “tiny fraction”, but it is a relatively modest number compared to the entirety of Immingham.

430. MR BIRD: That is true. It is no part and it has been no part of your evidence that we have listened to today, Mr Cooper, that without the triangle any part of ABP's existing business at Immingham would close.

431. MR COOPER: I think that the point is that, without facilitating people's ability to expand, they may well go somewhere else. That is a risk that port companies like us take if we do not provide enhanced facilities.

432. MR BIRD: Try again, Mr Cooper. As far as your evidence is concerned, it is not your evidence that, if the triangle site is not available, any existing facility or business at the port will close, is it? You cannot say that as of today.

433. MR COOPER: I am sorry, I think that I have made clear that the “elbow room” argument, as it is put by others, is that, if we do not provide facilities for people to grow, they will go.

434. MR BIRD: It is fair to say, is it not, also that in terms of the triangle site you do not identify any existing tenant or occupier who has indicated that, without the triangle being developed in whatever shape or form, they would leave the port, do you?

435. MR COOPER: Did we not identify two existing two customers to you that were interested in the triangle site or am I missing your point?

436. MR BIRD: Yes, you are missing my point. That interest does not indicate, does it, that, if it is not met at the triangle site, as far as your existing occupiers or tenants are concerned, they would leave?

437. MR COOPER: I am not sure that I can take the risk in my position that United Molasses and Calor will not look for alternative facilities if we do not provide them. The facilities that they currently use are not, in their view, capable of servicing their

future needs.

438. MR BIRD: They do not actually identify, do they, their future needs? Nowhere in their letter do they identify what capacity they are looking for, the nature of the facilities that they are looking for or, indeed, that they could not provide for that improved facility elsewhere at the Port of Immingham, do they?

439. MR COOPER: One of them is not at the Port of Immingham today, it is at the Port of Hull in the enclosed dock, and one of the long-term trends that I have identified to you is the movement of business into river berths.

440. MR BIRD: So, as a matter of fact, at least part of the interest that you rely upon is presently met elsewhere and capable of being met elsewhere at an ABP port elsewhere.

441. MR COOPER: It is perfectly true that both of them are existing customers, so I suppose that must be the case, but it does not mean that they do not desire to grow.

442. MR BIRD: They do not have to grow at Immingham and the fact that they cannot grow at Immingham does not mean that they will not benefit ABP, does it?

443. MR COOPER: I have to say that, if they do not grow at Immingham, then we will lose as a result of that.

444. MR BIRD: As far as just "elbow room" is concerned, let us just look at that for a moment. The triangle site has been within ABP's ownership since March 1967, hasn't it?

445. MR COOPER: Yes.

446. MR BIRD: In terms of land allocated for port or dock related uses at Immingham, it was only a small fraction, was it not, of the land set out in development plans put in place by North Lincolnshire Council for those purposes?

447. MR COOPER: Are you referring to the Master Plan?

448. MR BIRD: No. I am referring to planning policy over many years on the south bank of the Humber, which includes the triangle site ...

449. MR COOPER: As future operational land.

450. MR BIRD: Yes.

451. MR COOPER: Yes.

452. MR BIRD: And the Port of Immingham and ABP have had the ability for many years to acquire additional elbow room in order to facilitate the expansion of what you have described as the “jewel in the crown”, had it been felt necessary to do so.

453. MR COOPER: Is that a statement or a question?

454. MR BIRD: It is a question.

455. MR COOPER: The position of ABP is that we will acquire further elbow room as we find it expedient to do so. We have existing land in Immingham and we intend to use that estate intensively. It is not in the financial interests of ABP to acquire land too early.

456. MR BIRD: Forgive me. If we take up the Able exhibits, please, and go to Exhibit 1A, which sets out the Port of Immingham and sets out the position of AMEP on the map, the AMEP development and the land which has been assembled by Able on that Figure 1A is land which has been identified for years as land for port expansion, isn't it?

457. MR COOPER: Yes.

458. MR BIRD: And ABP have done nothing in order to acquire land to provide elbow room or, indeed, for any other purpose in relation to that area of land, has it? Nothing.

459. MR COOPER: Because we have not got to that time or place yet.

460. MR BIRD: Right. You say that you have not got to that time or place yet, which must mean that you have, at least for present purposes, sufficient elbow room, taking the long-term approach which you have identified for the benefit of the Joint Committee in order to meet need.

461. MR COOPER: We will lose that elbow room if we lose the triangle.

462. MR BIRD: Are you telling me that that is the only elbow room available to the port?

463. MR COOPER: This brings us back to the peculiar nature of this piece of land, because, although it may be small in nature, we grade our land internally, so waterfront land, whether near a dock or, indeed, a river or, indeed a deep channel, is more valuable than that which sits further back from those assets. This piece of land, which is capable of taking a Panamax jetty, is a valuable piece of elbow room. It actually facilitates not one development but two. In the context of a business which generally has put a riverside berth out into this river once a decade, something of that order, over recent years, then that represents still in our view and our world a significant room for growth. There will come a time, as I said, when we need to think about how the Port of Immingham expands further.

464. MR BIRD: Tell me, Mr Cooper, does your grading of land with access to deepwater take any account of how that land could actually be used in order to service port-related uses?

465. MR COOPER: Yes.

466. MR BIRD: So there will be underlying your evidence, will there, a detailed assessment of the potential of the triangle land in the real world to provide for liquid bulk storage?

467. MR COOPER: The way this business works is, as I have explained, that we are

customer led.

468. MR BIRD: Sorry, is the answer yes or no and then you can add whatever you like. Is there underlying your assessment of the ability of the triangle land—the grading of that land—to service port requirements, any detailed assessment which identifies the ability in the real world to provide for liquid bulk storage—yes or no?

469. MR COOPER: There is a medium level assessment of that ability.

470. MR BIRD: Does that appear anywhere other than in the Master Plan?

471. MR COOPER: No—sorry, that appears in the work that we do in our business plan which is not a public document.

472. MR BIRD: So there is no published information.

473. MR COOPER: That would be commercially quite sensitive, wouldn't it?

474. MR BIRD: Well, we will see to what extent it is commercially sensitive as we go through. As far as the claim of serious detriment is concerned advanced by ABP, it rests on two bases, does it not? Firstly, the loss of this opportunity to meet customer demand for liquid bulks—yes?

475. MR COOPER: Yes.

476. MR BIRD: And, secondly—and I think that the way in which you put it several times in your evidence today—the loss of the opportunity in the future to extend to create H-I-T 3 or HIT 3.

477. MR COOPER: Yes.

478. MR BIRD: That is, isn't it, the height of your case—yes—on serious detriment?

479. MR COOPER: I would not put it in that language, but those are the two points

that we made, yes.

480. MR BIRD: And the emphasis is on you, as my lord Chairman pointed out to you earlier today, to demonstrate serious detriment.

481. MR COOPER: Yes.

482. MR BIRD: Let us just start with the issue of customer demand, shall we, just to see what would need to be put in place before you could actually meet customer demand for liquid bulk storage on this site. You would need, wouldn't you, the approval of the Harbour Provision Order?

483. MR COOPER: Yes.

484. MR BIRD: And that would be to include, wouldn't it, the acquisition of land and rights?

485. MR COOPER: We have a limited requirement for further land rights, yes.

486. MR BIRD: We will see how limited that is in a moment. You would also require the prior approval from North Lincolnshire Council for the construction of the deepwater jetty itself and associated land site works, wouldn't you?

487. MR COOPER: I am not sure whether that is the case or not.

488. MR BIRD: Certainly, in the Master Plan you have indicated that you would need further consents, but, if you are not sure, I will leave it there. To store liquid bulks, you would certainly need a hazardous substances consent.

489. MR COOPER: Yes.

490. MR BIRD: You would also need licences under the Habitats Regulations.

491. MR COOPER: Yes.

492. MR BIRD: And, unless you could satisfy Natural England that there would be no likely significant adverse effect or no likely significant effect arising from the development of the Immingham deepwater jetty, you would have to go through a process of appropriate assessment, wouldn't you?

493. MR COOPER: We expect that, yes.

494. MR BIRD: You need a marine licence for the dredging.

495. MR COOPER: Yes.

496. MR BIRD: Good. At present the current position is that there is no Harbour Revision Order, is there?

497. MR COOPER: No, we have applied for one.

498. MR BIRD: The application which has been made has received significant objections from a range of statutory bodies.

499. MR COOPER: The usual objections.

500. MR BIRD: Well, significant statutory objections.

501. MR COOPER: Usual objections.

502. MR BIRD: Right. And it is presently stalled.

503. MR COOPER: In the middle of this process.

504. MR BIRD: In terms of the rights and land ownership, can you just agree this much, ABP has no right or rights, does it, over land owned by the Oil Pipelines Agency or MOD, if we go back to that plan at 1A in the Able exhibits?

505. MR COOPER: Yes.

506. MR BIRD: You have no rights to access the OPA land either to provide pipes in order to reach the GPSS pipeline, which is in black on that drawing.

507. MR COOPER: Yes.

508. MR BIRD: You have no right, have you, to interfere with the access to the OPA premises.

509. MR COOPER: And no desire to interfere with it.

510. MR BIRD: We will come to that in a moment. And you have no rights, do you, to interfere with the access to the residential properties, if we go on in the bundle to tab 2, which lie on the southern boundary of the ABP triangle, which are the lighthouse and the lookout.

511. MR COOPER: No, all that has to be negotiated.

512. MR BIRD: As far as Bethany Jayne are concerned, if we just look to the left of that plan at 2, again you have no rights, have you, in relation to the road or indeed any property owned by Bethany Jayne other than, I think, to pass along the road in order to reach the triangle?

513. MR COOPER: That is my understanding.

514. MR BIRD: As far as the OPA land is concerned, that is Crown land, isn't it?

515. MR COOPER: Yes.

516. MR BIRD: So you do not have the ability to use any powers of compulsory purchase in relation to it, do you?

517. MR COOPER: I would not anticipate needing to.

518. MR BIRD: If we go then on to your documents, please, briefly, ABP document 7, which I do not think that we have looked at yet in terms of the context of your evidence, this shows, does it not, in illustrative form an artist's impression of, effectively, what you are proposing in your Harbour Revision Order for the use of the triangle site.

519. MR COOPER: I think that it is the compromise rather than the Harbour Revision Order.

520. MR BIRD: No, the compromise does not affect the use of the triangle.

521. MR COOPER: In respect of the triangle, it is the position of the jetty.

522. MR BIRD: Yes, I am asking about the triangle.

523. MR COOPER: Yes.

524. MR BIRD: Just so that we can be clear as to what is shown, it is not a terribly clear artist's impression, but I think that it will do for present purposes, it shows five oil storage tanks.

525. MR COOPER: It is unlikely to be oil, but yes.

526. MR BIRD: As far as the Harbour Revision Order is concerned, there are up to five tanks proposed.

527. MR COOPER: Bulk liquids, yes.

528. MR BIRD: With a capacity of up to 4 million tonnes per annum.

529. MR COOPER: Yes.

530. MR BIRD: There is a grey line, which we see just north of the OPA facility legend, which is a railway siding.

531. MR COOPER: Yes.

532. MR BIRD: The railway is intended, is it not, to come into the triangle land in order to provide for, effectively, fuels to be exported out by train?

533. MR COOPER: Yes.

534. MR BIRD: But only 10% is expected to be exported out by train in the context of your Harbour Revision Order application, isn't it?

535. MR COOPER: Yes.

536. MR BIRD: There is another 10% which is expected to go out by road.

537. MR COOPER: Yes.

538. MR BIRD: And the remaining 80%, so 3,200 million tonnes on your application ...

539. MR COOPER: 3,200 million tonnes?

540. MR BIRD: Sorry, 3.2 million.

541. MR COOPER: I wish!

542. MR BIRD: Yes. The remaining 3.2 million tonnes are intended to go into the GPSS pipeline system, is that right?

543. MR COOPER: Yes.

544. MR BIRD: A bridge is proposed, as I understand it, over the railway line in order to take tankers over the railway line into the triangle site.

545. MR COOPER: Yes.

546. MR BIRD: Then the tankers have the ability to use the internal circulation on the triangle site. But with the bridge and the railway line, how is access to the OPA site maintained?

547. MR COOPER: We are going to have to negotiate access to the OPA site. Are you asking in respect of what form of transport—by pipe?

548. MR BIRD: No, how is it going to be achieved, in terms of physical access, personnel, equally people accessing the dwellings by the quay side? How are they intended to access their properties? If you have created a bridge over the railway line into the triangle site and a railway siding, which crosses the road, there is no obvious means of accessing the properties.

549. MR COOPER: There will have to be a bridge over the railway line.

550. MR BIRD: Another bridge over the railway line?

551. MR COOPER: A pedestrian or vehicle access.

552. MR BIRD: Has any of that been investigated?

553. MR COOPER: It sounds as though ... I would have to ask colleagues on that.

554. MR BIRD: So you don't know.

555. MR COOPER: No, I am afraid I don't.

556. MR BIRD: Do you know, as a matter of fact, whether that was part of the internal business plan assessment which led you to grade this land as being important to you?

557. MR COOPER: Yes. Maintaining access rights that people have is a current feature of virtually every project that we undertake, that there are issues over access, and

they get resolved during the course of the process. We currently have it with the Immingham Renewable Fuels Terminal and, to my mind, it is part of the normal process of a project development.

558. MR BIRD: It is not part of the normal process to deprive the OPA of their sole means of access to their facility or a normal part of the process to deprive residential properties of their sole means of access, is it?

559. MR COOPER: As part of this process, there will no doubt be an evolution in what it is that needs to be done. There always is.

560. MR BIRD: You say that there always is, but can you demonstrate that that can be, as it were, remedied without losing the storage capacity on the site itself?

561. MR COOPER: I would have to come back to you on that.

562. MR BIRD: So no, you can't.

563. MR COOPER: No. I did not say "no". I am not an expert on this site and I have a raft of people here who could answer your question for you.

564. MR BIRD: As far as Station Road is concerned, which leads down to the triangle site at the moment, again, you have a right to access that, but you do not have a right to maintain or improve, do you?

565. MR COOPER: I have to say that that is a level of detail that, again, as chief executive, I am not entirely familiar with.

566. MR BIRD: Right. As far as that road is concerned, it passes through, as we can see from ABP7, the AMEP scheme, doesn't it?

567. MR COOPER: It does.

568. MR BIRD: Right. I am right in saying, am I not, that as far as the GPSS

(Government Pipeline and Storage System)—that is the Government pipeline—you are not able, are you, to identify whether it has any existing capacity or existing capacity which would be able to accommodate either 4 million tonnes or 3.5 million tonnes per annum in terms of the compromise.

569. MR COOPER: The conversations that we have had with them suggests that there is surplus capacity in the pipeline system. I think that it is generally acknowledged that there is a level of investment required in that business, which is being privatised in order to maximise that potential, but our clear understanding is that there is spare capacity.

570. MR BIRD: What is the spare capacity?

571. MR COOPER: Again, I am not privy to the detail of that number. The conversations we have had with GPSS are necessarily, because they are being privatised, preliminary in nature. There is a desire that they have expressed in principle to provide for an additional source. They are a pipeline company, so, of course, they are interested in an additional source of volume for their pipeline network. We would need to have more detailed conversations with them about how we move the millions of tonnes on. I should say to you that the process of getting to 4 million tonnes is not a time zero process. It is a process that will take a number of years. The initial demand that we have had indicated to us by our customers is probably for about half the capacity that the facility is intended to have and we would expect that to grow over a period of time and we would expect to work with partners to grow that capacity over time.

572. MR BIRD: Let us come back to the GPSS and the existing pipeline. You have no evidence that it could accommodate either 3.2 million tonnes per annum, which would be 80% of 4 million tonnes per annum or 2.8 million tonnes per annum, which would be 80% of the 3.5 million tonnes per annum on the compromise scheme, do you?

573. MR COOPER: I do not have that evidence today, no.

574. MR BIRD: And it is quite important, isn't it, in terms of the usability of the triangle site for bulk storage, that there is some indication of the extent of the ability to rely on the pipeline because, unless you can increase transport out by train or rail, there

would be no other way of exporting it once it has been imported, would there?

575. MR COOPER: I can see where we are sort of heading with this. We have had the conversations, which suggest that there is meaningful spare capacity and the issue of spare capacity is always one that can be worked on in the detail of the proposal. There will be ways of enhancing the capacity of the pipeline system, which are relatively easy to implement.

576. MR BIRD: Well, as far as the existing pipe is concerned, there are not ways to increase the capacity, are there, because it is an existing pipeline which will have a capacity depending on what you are putting through it?

577. MR COOPER: The calibre and the quality of the pumping, for instance, will have an impact on capacity. The investment required that could increase the capacity in other ways is all open to us to discuss with OPA.

578. MR BIRD: They would be open to discuss, but I am testing to what extent you have already discussed.

579. MR COOPER: The discussions with the OPA have been stymied to an extent by their privatisation.

580. MR BIRD: With regard to the meaningful spare capacity, you are not able to tell us how many days per year anybody storing on this site would have access to the pipeline system, are you?

581. MR COOPER: No, I am not able to tell you that.

582. MR BIRD: Without that information, no one is going to be interested in the triangle site, are they, as a commercial operator?

583. MR COOPER: I think that you are misrepresenting the way in which port developments take place. This is an iterative process. We will be working our way through the issues and there will be solutions to them. There always is.

584. MR BIRD: If the solution is a new and additional pipeline, that has significant implications, doesn't it?

585. MR COOPER: We do not expect that it will be. We do understand that there is a need for investment in the pipeline. We make no bones about it, but we do not think there is a need for an additional pipeline.

586. MR BIRD: You say that you do not think there is a need. You cannot demonstrate that there is not, can you?

587. MR COOPER: Proving the negative is tricky, yes.

588. MR BIRD: Well, it is impossible, because you have not done the work.

589. MR COOPER: That is a statement rather than a question, I think.

590. MR BIRD: You have not done the work, have you, in order to demonstrate that? As far as the current use of the pipeline is concerned or customer demand for the pipeline, you have put in various letters; is that the extent of the customer demand which has been identified?

591. MR COOPER: To which letters are you referring?

592. MR BIRD: This is ABP14. I am sorry, I only saw them today for the first time. I apologise, my lord, Chairman. I understand that you may not have these either as yet.

593. MR NEWCOMBE: We will have some copies passed up, my lord. I made sure that Mr Bird had copies of them over the short adjournment and at that stage I indicated to him that I was content for him to consider them overnight, so he had a fair opportunity to look at them and then, if necessary, I would re-call this witness tomorrow to answer any questions, but, if Able is now happy for them to go in, so be it.

594. MR BIRD: We are happy, my lord, for the Committee to see them. There are two

letters that have been referred to already at ABP14.

595. MR NEWCOMBE: You have two and I think there are two more. There is a letter from EDF Energy dated 14 October and then a letter from David Hargreaves Energy and Commodities.

596. MR BIRD: Apologies, I am not entirely sure what you have seen and I have not got and vice-versa.

597. CHAIRMAN: We have only seen those two letters, which were in ABP14, when it was tabled this morning. I have just been handed three letters, one from EDF Energy, one from Phillips 66 and one from Hargreaves Energy and Commodities. Are those the correct letters?

598. MR BIRD: Yes, those are the correct letters. We all have the same thing now. I think that it is right, isn't it, Mr Cooper, that, as far as the EDF letter is concerned and the Hargreaves Energy and Commodities letter, those are concerned more with the biomass and coal ...

599. MR COOPER: They ought to be added to 15 rather than 14.

600. MR BIRD: It is the Phillips 66 letter that is the new letter in terms of ABP14. You rely on the letter from Calor, the letter from United Molasses Group Ltd and the Phillips 66 letter—yes?

601. MR COOPER: In what sense “rely”?

602. MR BIRD: In support of the IWDJ and the demand issue.

603. MR COOPER: In support of the potential demand for IWDJ, we rely on those three letters, yes.

604. MR BIRD: The word that you have added there is quite important, isn't it—it is “potential” demand?

605. MR COOPER: They have indicated to us what their demand for IWDJ might be, we are in the process of—I think that it is important that the Committee understands how these projects emerge over time. This IWDJ is no different to any other of the major projects that ABP has embarked upon. If you take Green Port Hull on the other side of the river, we moved from a concept and an agreement that a location offers a prime location for servicing the facility. There are numerous details that flow from that, rights of way, footpaths, how people are going to get in, get out and so on and so forth, that get worked through as the project progresses. The people who have written to us would be partners with us in working those issues through, as Siemens were in Hull and as Drax were at IRFT. That is the truth of the matter. Now, at the moment this project is stalled, so as much as we tried, for instance, to persuade the MMO to return to the business of considering an HRO, they have declined to do so. I regret that the process is stalled, it need not be, but it is. But none of the problems that you have identified would (a) surprise me or (b) is insuperable. It is part of the normal process, as far as I am concerned.

606. MR BIRD: As far as these letters are concerned, which is what I am asking you about, none of them identify a specific requirement for either specific fuels or bulk liquid --

607. MR COOPER: No.

608. MR BIRD: -- or, indeed, any quantum.

609. MR COOPER: I can help you with that if you are interested.

610. MR BIRD: What is the answer?

611. CHAIRMAN: I think that we need to break at that point for Members of the House of Commons to go and do their duties.

Sitting suspended at 16.00

On resuming at 16.14—

285. CHAIRMAN: Mr Bird, we are quorate at present, so if you'd like to continue, I think as it is transcribed, if anybody—a member of the Committee—misses any part, they can always refer to it tomorrow.

286. MR BIRD: Thank you very much, my Lord. We were just touching on the issue of ABP 14 and the customer demand that you rely upon in those letters. And I was asking you, Mr Cooper, in terms of the detail of that customer demand, what their stated requirement is for, in terms of capacity and types of fuel?

287. MR COOPER: At the moment, the largest customer that would be at IWDJ is United Molasses, which has indicated that it would take between one and one-and-a-half million tonnes of capacity there.

288. MR BIRD: And are they an existing Immingham tenant?

289. MR COOPER: They're a Hull customer. They're an in-dock Hull customer operating within the constraints of the dock system in Hull. And between P66, Calor, Humber Oil Terminal Trustees, the aggregate tonnage that I have in front of me is somewhere in the order of three-quarters of a million to a million tonnes.

290. MR BIRD: But that's currently coming through the existing gas jetty or the South Killingholme jetty, isn't it?

291. MR COOPER: I don't think it's coming through South Killingholme, but it is going through the gas jetty and some of it is actually going through IOT.

292. MR BIRD: Right, so that's, as it were, not additional new capacity which is needed; it's simply relocating the existing throughput. So as far as your known customer demand is concerned, it's from a company which is already happily occupying premises at Hull and is for a maximum of one to 1.5 million tonnes.

293. MR COOPER: Yes, the 'happily occupying premises in Hull' is an interesting spin but yes, they're existing customers of ours.

294. MR BIRD: Well, forgive me. The first paragraph of the letter from the UM Group says, 'We are already well-established customers of ABP in Hull,' which doesn't seem to indicate any dissatisfaction with their premises in Hull, which is why I said 'happily'.

295. MR COOPER: No, there's a fairly fundamental point here, which is that we are in the business of enabling our customers to grow.

296. MR BIRD: Yes.

297. MR COOPER: So they are outgrowing their facilities in Hull. In order to get a ship through the locks in Hull, it is necessarily small by modern standards. If they aspire to grow, they will need a riverside berth—the same trend that has happened in containers and in cars and in coal and oil will apply to them as well.

298. MR BIRD: And what is the fuel with which United Molasses is involved, as far as this one to 1.5 million tonnes is concerned?

299. MR COOPER: They started out in Molasses. They are now in the business of diesel and aviation fuel and general refined products. They are traders.

300. MR BIRD: Yes. And as I understand it from your evidence that you gave earlier today, you take no issue with the report prepared on behalf of Able by IHS in terms of the liquid bulks needs for UK refined product and LNG in the UK. And that's Able's exhibit 12.

301. MR COOPER: Yeah, the—

302. MR BIRD: I think your words were you couldn't get a cigarette paper between ABP's position and that of IHS.

303. MR COOPER: I think there was, if you'll excuse a degree of elaboration, we were taken to one paragraph, weren't we. This report does not address LNG as a

bunkering fuel; it is silent on it. It addresses LNG in the context of supplying LNG to the gas pipelines as part of the generation mix.

304. MR BIRD: Is the UM Group concerned with LNG?

305. MR COOPER: Not that I'm aware of.

306. MR BIRD: Right. Do you have any customer demand for LNG?

307. MR COOPER: The prospective customer demand for LNG, prospective customer demand for LNG, is in respect of bunkering. I think I took the Committee through what is happening in respect of the desulphurisation of marine oil fuels.

308. MR BIRD: Do you have any existing customer demand for LNG?

309. MR COOPER: No.

310. MR BIRD: No. As far as your prospective LNG demand is concerned, that is purely speculative, isn't it?

311. MR COOPER: There's degrees of... It is our job, to an extent, to anticipate and provide for future markets. That is kind of what's happened with offshore wind as well, which wasn't a market that was established that long ago. So it is the case that we believe that there will be—ADP is reviewing across the group the ambition for LNG bunkering facilities because we think, we know, talking to our customers... I was with a French shipping company not many weeks ago who said, 'What are you going to be doing about LNG bunkering?'

312. MR BIRD: And what are the requirements of LNG bunkering?

313. MR COOPER: Well, again, I'm not going to claim any particular expertise on this, but the ability, I believe, to unload, store and reload LNG to vessels. And I think that certainly one model is that an LNG bunkering vessel would—now, today you have fuel oil vessels doing bunkering on the Humber—would operate on the Humber,

providing LNG. Alternatively, vessels may tie up and take LNG directly.

314. MR BIRD: Yes, well how is the LNG stored on the triangle site?

315. MR COOPER: The LNG would be stored on the triangle site in specific LNG storage facilities, which are expensive and, without doubt, they are specialist.

316. MR BIRD: Yes, and what are the implications for LNG storage on the triangle site for the AMEP scheme in terms of hazardous substances and health and safety?

317. MR COOPER: Well, LNG definitely requires a cordon sanitaire.

318. MR BIRD: What is the extent of that cordon sanitaire?

319. MR COOPER: It depends on the quantity of fuel that you are storing on the site.

320. MR BIRD: Yes. And what is the quantity of LNG that you anticipate being stored on the site?

321. MR COOPER: Okay, so the study that we are beginning with our colleagues, hopefully funded with European support, is designed to absolutely establish those criteria.

322. MR BIRD: Well, you're advancing the so-called compromise before this Joint Committee in order to facilitate the potential to accommodate LNG on the site. Did we hear at all, in your evidence today, about the potential implications of what you might store on the site for the operation of the AMEP site beyond simply the loss of the triangle?

323. MR COOPER: Well, I am imagining that if, as a result of that study... The study will identify the measures that need to be taken in order to provide for a safe facility. We know that LNG is challenging. We do not have proposals to have a major LNG import facility, such as exists at the Isle of Grain. This is a medium-sized facility.

324. MR BIRD: What does that mean?

325. MR COOPER: It means that it's modest in scale and serving a bunkering market.

326. MR BIRD: But what does that mean? Don't bandy adjectives with me. What does it mean?

327. MR COOPER: I'm not bandying adjectives; I am telling you that we are at the beginning of a process with our partners to establish what the feasibility of an LNG facility would be on that site.

328. MR BIRD: So you are unable to inform the Joint Committee what the implications of one of your potential fuel storage facilities on this site might be for the overall use of the AMEP site, aren't you?

329. MR COOPER: Well, I'm also going to say to you, helpfully, that I don't think LNG would go with the use of the site by UM and others for their purposes. So we regard the LNG prospect as one which is amongst the mix of uses to which IWDJ could be put.

330. MR BIRD: So it's not relevant to the compromise because it wouldn't happen.

331. MR COOPER: I'm not saying it wouldn't happen.

332. MR BIRD: Then why are you promoting LNG, if it's not consistent with the compromise?

333. MR COOPER: The compromise is that we wish to have the facility to develop the IWDJ site.

334. MR BIRD: Yes, and you won't develop it, as you told us—you were very keen to tell us this morning that effectively ABP is a reactive port operator that responds to customer demand, which is why I asked you about customer demand, and you've taken us down the LNG bunker fuel route.

335. MR COOPER: No, I took you primarily down the conventional refined product route.

336. MR BIRD: Yes, well that only got you to one to 1.5 million tonnes. So, unsurprisingly, I wanted to test with you where the additional storage facility, or how it might be used.

337. MR COOPER: Sorry, but the way these things would work is that... In general, the way these things work is that if we are lucky, we will have a basic, core customer demand that enables us to go ahead with the project. That is what we believe that we have in this instance. We actually then also have a commercial department whose job it is to go out and optimise the asset that we have just built. So I don't imagine that these three customers are the end of the story.

338. MR BIRD: Well, are they even the beginning of the story, is what I'm asking you, Mr Cooper. As far as this investment is concerned, I know £40 million may be small beer to ABP, but presumably there is some rigour in the decision-making process to deploy that amount of capital on the scheme.

339. MR COOPER: I would expect that as this process unfolds—assume that we can unlock this process, which is the purpose of the compromise—then the issues that you are seeking to drive at will become resolved in the ordinary course and that by the time we get to the point... What I've said is that the ABP board would proceed once consent was granted. By the time we get to consent, which won't be granted until the issues you've identified have been addressed, by the time we get to consent we'll be in a position to proceed with this project because we will have identified and firmed the customer demand that enables it to go ahead.

340. MR BIRD: Yes, well forgive me. I think the evidence you gave earlier today was that there was a fair wind with the board and the board was intending to proceed with all rigour.

341. MR COOPER: I haven't changed the words. I said once we have consent, we

intend to proceed.

342. MR BIRD: Yes. And in terms of that, we've identified a number of issues which have yet to be looked at or established and on which you have no evidence to present before the Joint Committee.

343. MR COOPER: And we think we have a certain amount of time, which I would hope would be shortened, in which to resolve those issues.

344. MR BIRD: Well, in terms of establishing the soundness of the compromise, there is in fact no evidence, is there, before the Committee on those matters? There's simply your assertion.

345. MR COOPER: I am paid as Chief Executive to lead projects through from start to end and that is what is happening in this case. I could wish that this one were not stalled. There is inevitably a process of iteration that takes place between us and our customers. It continues to take place with something that's nearly commissioned, namely the renewal for fuel tablets. It continues to take place on the north bank of the Humber in respect of Green Port Hull.

346. MR BIRD: Forgive me, Mr Cooper, we are not simply here dealing with a proposal which affects ABP and its commercial interests. You are advancing a compromise before this Joint Committee on the basis that it can go ahead without any adverse effect on the AMEP scheme at all.

347. MR COOPER: The analysis that we have performed suggests that 400 turbines can be handled along –

348. MR BIRD: That's not the issue.

349. MR COOPER: Well, I think it is.

350. MR BIRD: We're talking about here the effect of the storage of LNG on the site and the potential implications and the ability to do that.

351. MR COOPER: If we find—I mean, this is pretty binary, okay? It's pretty binary. If the study concludes that IWDJ is not the place for LNG, that is not the pillar on which we are proposing the IWDJ. The pillar on which we are proposing IWDJ is imported refined products and the needs of our customers. It happens to be the case that there is alternative interest in the site. There is often alternative interest in the site. And that alternative interest is based on a trend towards desulphurisation of fuels used in powering merchant vessels.

352. MR BIRD: Let's move on to other issues: the caverns which are referred to. We take up plan ABP 3, we see the two caverns shown on ABP 3 in yellow, don't we? And they are not within ABP's control, are they?

353. MR COOPER: No.

354. MR BIRD: They are in the control of Phillips 66 and Calor.

355. MR COOPER: Yes.

356. MR BIRD: Yes. There's no evidence, is there, that there's any, as it were, additional capacity in those caverns available to store any imported product which might come through the triangle site.

357. MR COOPER: Can I revert to you on that?

358. MR BIRD: Well, you have no evidence at the moment, have you, that there's any spare capacity which would be made available by either Calor or Phillips 66?

359. MR COOPER: No, it's just weird that both of them would say, 'We need to be down that end of the port because of the caverns,' if there wasn't capacity to handle their cargo.

360. MR BIRD: There are two separate issues. I'm asking you firstly about, as it were, new demand which might have a need for caverns—

361. MR COOPER: I thought you just told me that it wasn't new demand.

362. MR BIRD: Well, there are two aspects. I'm probing the weight to be attached to your 4 million tonnes per annum figure, because you rely on the particular advantage of that triangle site in terms of its proximity to the caverns. That's only an advantage, isn't it, if those who might import fuels through the IWDJ can access the caverns or they're made available.

363. MR COOPER: Yup. You would have to work with partners to provide access to those caverns.

364. MR BIRD: Nothing in the Calor letter or the Phillips 66 letter in ABP 14 would suggest that there is any prospect of either of those firms making cavern space available to any third party companies, is there?

365. MR COOPER: I'm not entirely sure I understand where this is going. The people who would use the caverns would be Calor and Phillips 66.

366. MR BIRD: They already use the caverns, don't they?

367. MR COOPER: You've made that point.

368. MR BIRD: Yes. So in terms of new demand, then there is no particular advantage, is there, in terms of proximity to the cavern space.

369. MR COOPER: No, the advantage is precisely to P66 and Calor.

370. MR BIRD: And that only arises, any need to access the caverns from the IWDJ, only arises if the gas jetty is replaced.

371. MR COOPER: That is true.

372. MR BIRD: Yes. And the gas jetty only needs to be replaced in order to preserve

the option, as you describe it, of HIT 3.

373. MR COOPER: Well, yes and no. The factor that will cause the gas jetty to have to be relocated is HIT 3, as you correctly state. One of the challenges that the gas jetty has at the moment is that it can only take vessels of up to 50,000 tons. And Panamax facility would suggest 80,000 tonnes. So there are probably two drivers to the gas jetty. It ain't large enough for current shipping requirements, but you're right—the primary mover of it is the gas jetty.

374. MR BIRD: Yes. It is HIT 3.

375. MR COOPER: Sorry, is HIT3.

376. MR BIRD: Yes. And that isn't a firm proposal, is it? It is simply an option.

377. MR COOPER: No, I've been absolutely open with you. It's about preserving the optionality to expand those terminals.

378. MR BIRD: We'll come back to alternatives in due course. If we then just return back to your ABP 7, please, which is the artist's impression—back, I'm afraid, to the issue of the railway and the rail spur. I don't think I need to ask you to turn it up. I think we can do it without me asking you to turn up the document, but the transport assessment in support of the harbour revision order. And I can give you the reference: it's 7.2.2, paragraph 7.2.2 on page 28 of the transport assessment, if you want to look it up. But that identifies that the proposal set out in your harbour revision order application would be serviced by trains of I think 22 wagons in length.

379. MR COOPER: If that's what it says, that's what it says.

380. MR BIRD: Yes. Is there room on the rail spur into the site for 22 wagons to be sited whilst re-fuelling without blocking Station Road and the access to the Oil Pipeline Agency?

381. MR COOPER: I will have to defer to my colleagues on that.

382. MR BIRD: So you don't know.

383. MR COOPER: No.

384. MR BIRD: Pretty critical though, isn't it?

385. MR COOPER: I'm Chief Executive. I'm not privy to every detail of every part of every project that we do.

386. MR BIRD: If the site cannot be adequately serviced by rail and if you cannot access the GPSS, there is inadequate capacity for the GPSS, that would mean, wouldn't it, that all of the fuel imported would have to exit in tankers.

387. MR COOPER: If those two were the case. I can't think of a third alternative.

388. MR BIRD: As far as a Panamax vessel is concerned, which you referred to, how many rail tankers would it take to empty a Panamax?

389. MR COOPER: I don't have that detail.

390. MR BIRD: I'm told it's 2,000. Would that be about right?

391. MR COOPER: I don't know.

392. MR BIRD: No. And 60 of those are proposed in your harbour revision order to access the triangle site, aren't they? Sixty Panamax vessels a year, so more than one a week. Yes?

393. MR COOPER: Yes.

394. MR BIRD: Right. So 2,000 tankers potentially required in order to service the site up and down Station Road through the AMEP scheme every week.

395. MR COOPER: That doesn't seem to me to be an undue volume.

396. MR BIRD: In terms of the impact on the AMEP scheme, we can see Station Road on this artist's impression, can't we?

397. MR COOPER: Yup.

398. MR BIRD: Yes. And the Joint Committee will be able to envisage the effect on the operations of this site having regard to what's being handled, of the 2,000 vehicles a week. And these are tankers going up and down the road.

399. MR COOPER: I've heard the statement.

400. MR BIRD: No, they can envisage, can't they? They'll be able to envisage the effect on the scheme of the use of Station Road by that many tankers per week.

401. MR COOPER: Yes. I don't think they should be unduly concerned. It's not that high a volume of traffic.

402. MR BIRD: Then finally, in terms of just the artist's impression, as far as the hazardous substance consent issues are concerned, we've touched on some. The Environment Agency and their objection on the harbour revision order, which is Able document 7A, if you want to take that up, identifies that there's likely to be a need for a bunding in order to provide flood defence to the storage tanks.

403. MR COOPER: Yup.

404. MR BIRD: Is that shown on any drawing anywhere, to your knowledge, and the effect that that would have in terms of the tank storage proposal shown on the artist's impression?

405. MR COOPER: No, the artist's impression is pre- the responses that we've had from the Environment Agency and others.

406. MR BIRD: Has there been any modelling of the site with the assumed delivery profile and fuels mix which shows that 300,000 cubic metres of tank storage would be adequate for the proposed throughput?

407. MR COOPER: I would have to come back to you on that.

408. MR BIRD: You don't know.

409. MR COOPER: I don't know.

410. MR BIRD: So the position as of today is that ABP does not, does it, have a single consent which would be required to build the IWDJ or indeed its tank storage.

411. MR COOPER: No, and nor would I expect us to.

412. MR BIRD: It neither has, nor has it sought to acquire the rights necessary to be able to operate the tank storage in accordance with statutory or other requirements, has it?

413. MR COOPER: Correct.

414. MR BIRD: And there's no evidence that there is any prospect of it being able to acquire those rights before this Joint Committee, is there?

415. MR COOPER: I'd be surprised if we weren't, but no.

416. MR BIRD: Right. And as a matter of fact, ABP have had many years to supplement their land holdings at ABP on land allocated for port-related uses to the north of its existing port facility and has not chosen to do so, has it?

417. MR COOPER: Yes, I'm not sure what the point of that is, but that is correct.

418. MR BIRD: Well, it goes to your flex or elbow room issue, doesn't it.

419. MR COOPER: Well, we have flex and elbow room. That's the point.

420. MR BIRD: Well, you told the joint Committee earlier there will become a point of time when that flex and elbow room will no longer be available.

421. MR COOPER: Yes, at which point we will be looking to acquire further real estate.

422. MR BIRD: Yes, well you also told us that you were a long-term thinking business and so it's relevant to see to what extent there has been long-term thinking here, because that goes to the weight, doesn't it, that one attaches to your elbow room argument.

423. MR COOPER: The need for elbow room has to be proportionate to the foreseeable demand. What this enables us to do is to develop two substantial Panamax riverside deep-water facilities. The context of Immingham, we're the country's largest port. That is a meaningful level of elbow room. Do I wish we had more? Yes. Do we have that today? No. Are we always mindful of the opportunity to acquire? Yes. In due time.

424. MR BIRD: All right. And just finally in terms of the IWDJ, does it in fact have approval from the ABP board in terms of the incurring of £40 million worth of cost as of today?

425. MR COOPER: It would be entirely premature for that to be the case.

426. MR BIRD: So no.

427. MR COOPER: No.

428. MR BIRD: And in terms of national security of supply, there's no evidence, is there, that additional tank storage is required in the UK in order to service either the existing or future liquid bulks business.

429. MR COOPER: What's the basis of that statement?

430. MR BIRD: Well, you—as I understood it—agreed with the IHS report.

431. MR COOPER: I think I agreed with one paragraph in it.

432. MR BIRD: No, forgive me; I think the question was put very much more broadly than simply agreeing with one paragraph. It was put to you on the basis of as between ABP and IHS, there was no more than a cigarette paper between you. And you were then subsequently taken to a single paragraph in the report, where you raised a query, but that's not on this issue. So let's just be clear: do you, or does ABP, challenge the overall findings of the IHS report?

433. MR COOPER: As I said at the time, in terms of a national business plan, a national business plan, then this to us seemed like a cogent, well-written report.

434. MR BIRD: Good.

435. MR COOPER: In terms of its applicability to Immingham, it is rather more limited.

436. MR BIRD: Well, I was asking you as a national business plan because I was asking about the UK security of supply. So we can agree, can we not, in light of the IHS report that in regard to the national interest, in terms of security of supply, there is no demonstrated need for additional storage capacity for any bulk fuel.

437. MR COOPER: On a national inventory basis, I would agree; not on an Immingham basis.

438. MR BIRD: Well, as far as the Immingham basis is concerned, that is, as it were, a commercial interest of ABP and its potential customers, isn't it?

439. MR COOPER: Yes. I'm not aware that that's to be ignored.

440. MR BIRD: No, I'm not suggesting it was.

441. MR COOPER: Okay.

442. MR BIRD: Now there is no evidence in terms of the Immingham position that the existing liquid bulk facilities operated by others are at capacity, is there?

443. MR COOPER: At present, we understand that there is spare capacity within the Simon Storage facilities.

444. MR BIRD: And how much spare capacity?

445. MR COOPER: This is a matter for Simon Storage. They don't disclose that sort of information to us. They are the tenant; they operate the facility.

446. MR BIRD: All right. And they operate the east and west jetties and the storage area behind, don't they?

447. MR COOPER: Correct, yup.

448. MR BIRD: Yes. They also operate the Seal Sands facility, don't they?

449. MR COOPER: They do.

450. MR BIRD: Yes, which is a huge liquid bulk storage facility, isn't it?

451. MR COOPER: Yup.

452. MR BIRD: And are they, beyond the refineries themselves, are they the principal liquid bulk storage tenant of ABP?

453. MR COOPER: I believe so, yes.

454. MR BIRD: Yes. And there's no letter from them, is there, complaining about, as it were, the absence of capacity and the need for additional storage to be put before the

Joint Committee as yet?

455. MR COOPER: Simon Storage signed an MOU with us.

456. MR BIRD: All right.

457. MR COOPER: I don't know whether that is part of it. But, I mean, Simon Storage have an interest in IWDJ.

458. MR BIRD: Yes, but they have existing capacity. Do they have existing development land available to them?

459. MR COOPER: Within Immingham?

460. MR BIRD: Yes.

461. MR COOPER: Not that I'm aware of. I need to check with my colleagues.

462. MR BIRD: Perhaps you could check.

463. MR COOPER: Okay.

464. MR BIRD: And as far as the memorandum of understanding is concerned, what does that provide?

465. MR COOPER: That provides comfort to us that they would wish to use IWDJ where it's to be developed.

466. MR BIRD: Right. And that, in a sense, is not dissimilar to the Conoco Phillips letter, is it? If we just take that up again, which is the letter of 14 October, and this is ABP 14.

467. MR COOPER: Yup.

468. MR BIRD: But we note, don't we, from the last paragraph of the Phillips 66 letter, that as far as Philips 66 is concerned, in terms of where they see the public interest lying, they do not see the public interest as between the AMEP scheme and IWDJ as lying in favour of the IWDJ, do they?

469. MR COOPER: 'We would support finding a mutually acceptable way forward for Able and ABP to each proceed with their respective developments.'

470. MR BIRD: Yes.

471. MR COOPER: I'm not sure how you can confuse that.

472. MR BIRD: 'For the avoidance of doubt, Phillips 66 Limited would not support opposing the Planning Commission granted to Able MEP only in order to afford ABP the option to develop in future the Immingham West and Deepwater Jetty.'

473. MR COOPER: I think they're asking for us not to have to make choices, aren't they?

474. MR BIRD: Well, in the ideal world, but they say if you do have to make a choice it would be in favour of AMEP, don't they?

475. MR COOPER: I think you can draw that inference from that sentence.

476. MR BIRD: You do?

477. MR COOPER: I do.

478. MR BIRD: Good. And what is ABP's position? If the Joint Committee take the view that the amendment or the compromise would actually frustrate AMEP, is it ABP's view that the need for the IWDJ is still sufficient to justify frustrating that scheme, all other things being equal?

479. MR COOPER: We would explore all the options and retain all the options open

to us at the board, yes.

480. MR BIRD: Well, forgive me, that's not really an answer to the question. What is ABP's position?

481. MR COOPER: We haven't made that decision yet.

482. MR BIRD: Well, it's quite important to know what ABP's position is. So you haven't actually in fact considered what the position is?

483. MR COOPER: No. We've considered it, but we haven't made the decision yet.

484. MR BIRD: I see. Good. Then can we please take up, in the core reference bundle, document 11, which is the Port of Immingham master plan.

485. CHAIRMAN: Sorry, would you repeat that, Mr Bird?

486. MR BIRD: Sorry, my Lord. It's in the core reference bundle and it's document 11, which will be in the third of the bundles. And if we could go in that document please, Mr Cooper, to page 43.

487. MR COOPER: Yup.

488. MR BIRD: There's a review of the liquid bulks market. We have—

489. MR COOPER: Can you say which paragraph?

490. MR BIRD: Oh, sorry. I beg your pardon. It's 5.58, which you'll see 'Liquid Bulks Market Overview' on page 42.

491. MR COOPER: Yup.

492. MR BIRD: But then on page 43 there's an 'Immingham Tomorrow' section. Do you see that, from 5.65 onwards?

493. MR COOPER: Yes.

494. MR BIRD: And we can see from 5.65, can't we, that as of September 2012 ABP had identified the potential to increase demand to its existing liquid bulk facilities at the oil terminal and the east and west jetties.

495. MR COOPER: Yup.

496. MR BIRD: And if we go on in the document to 5.66, we can see that as part of the wider actions being taken by ABP, it includes deepening the estuary's Sunk Dredged Channel, doesn't it?

497. MR COOPER: I wish, yes.

498. MR BIRD: Well, you've got consent for that. There's a marine license for that, isn't there?

499. MR COOPER: Yup.

500. MR BIRD: And it has been partly implemented, hasn't it?

501. MR COOPER: I would need check with you on that.

502. MR BIRD: All right. And the purpose of that is to enable larger single shipments to be serviced, isn't it?

503. MR COOPER: It is, yes.

504. MR BIRD: Yes. And if we go on to page 64 in the document, 7.37—

505. MR COOPER: Sorry, I'm just struggling with the font size. I know it's our document.

506. MR BIRD: Sorry, no, the light's not good for this font size either. So 7.37 and 7.38 on page 64. It is within a section dealing with the Immingham Oil Terminal developments, but we can see that it's identified as providing an important gateway. There's reference to the deep-water facilities and the existing terminal. At 7.38, 'Opportunities exist for new liquid bulk traffic such as additional oil cargos, aviation fuel, white fuels and gases, albeit that they will require further capital investment in the current facility to develop its commercial potential.' Yes?

507. MR COOPER: Yup.

508. MR BIRD: And we see then, further down the paragraph, reference to the gas jetty in the context of HIT 3, the Humber International Terminal berth 3, which you say 'will require alternative exit supply routes for these white oil trades currently handled by the jetty. Part of this proposal is to transfer this operation to the western deep-water jetty and/or IOT.'

509. MR COOPER: Yup.

510. MR BIRD: So the IOT is expressly identified, isn't it, in your master plan as an alternative to the western deep-water jetty.

511. MR COOPER: Yes. It is predicated on us getting access to IOT.

512. MR BIRD: Yes, and you have powers, don't you, as a statutory undertaker of compulsory acquisition.

513. MR COOPER: Glory. That would be a fairly radical step to take with one of our customers.

514. MR BIRD: You do, as a matter of fact, have such powers, if it were to be in the national interest, to provide that additional storage facility, wouldn't you?

515. MR COOPER: Yeah, I have no idea what it would cost to compensate the refineries for the interest they have in IOT.

516. MR BIRD: Well, as far as IOT is concerned, we're talking here, are we not, as an extension to IOT, as opposed to depriving the refineries of the use of IOT.

517. MR COOPER: Why are we talking as an extension?

518. MR BIRD: Well, isn't that what's being proposed? 'A new deep-sea berth for large tankers and a short-sea berth for inter-European and coastal trades can be constructed to meet these demands alongside additional tank storage.'

519. MR COOPER: Okay, which assumed that we had taken this asset back in hand.

520. MR BIRD: Okay. Well, have you sought to see whether or not you could provide the same facilities without taking the asset back in hand, through negotiation with the refinery?

521. MR COOPER: I have attended meetings with HOTT and TOTAL myself at which the subject of further developing the asset have been raised. At present, and as far as I can see for the foreseeable future, the prospect of reaching agreement with the licensees of that facility, seems to me to be remarkably limited.

522. MR BIRD: Unless you use the powers that you have in order to encourage a more receptive approach.

523. MR COOPER: I have to say, I have absolutely no intention of threatening our customers with CPO. None whatsoever. And there's absolutely no need to do that.

524. MR BIRD: Well, as far as the Joint Committee is concerned, they need to consider what the effects of the IWDJ would be on the AMEP scheme. They need to consider what the effects might be of the provision of the facility, or re-provision of the facility, elsewhere within the port were you to make out a case for that requirement, don't they? It's relevant to see to what extent you have investigated it and what the impacts might be on the existing operators.

525. MR COOPER: Well, I can reassure the Committee that threatening customers with CPOs is kind of the last thing that we do. And I have no intention of so doing.

526. MR BIRD: And as far as the East Gate development is concerned, if we go to 7.47 on page 65. Again, that is identified as being 14 acres in size, yes?

527. MR COOPER: Yup.

528. MR BIRD: And available for specialist storage to support future developments at IOT.

529. MR COOPER: I can read the words, yes.

530. MR BIRD: Yes, good. And can we then just go back in time a little to the draft master plan, which you made reference to in your evidence earlier today, which is the Able exhibit 5, if we take up the smaller blue bundle.

531. MR COOPER: Yup.

532. MR BIRD: At tab 5 of that, this is I think the earlier version, the April 2010 version of the master plan.

533. MR COOPER: This is the consultation draft.

534. MR BIRD: The consultation version, good. And if we go within that please first to page 61 and it's paragraph 7.35, which is within a section headed 'Immingham Oil Terminal Developments,' which is on the preceding page. It starts on page 60, but in paragraph 7.35 there's a similar paragraph that we've just referred to in the approved master plan. But that identifies at the end, does it not, that the transfer of the gas jetty business, if required, would be to the new IOT developments, not to the IWDJ.

535. MR COOPER: That's what it says, yes.

536. MR BIRD: Yes. And the iteration of the master plan, September 2012, was

produced in order to put before the panel, was it not, in considering your objections to the making of the development consent order in the revised form.

537. MR COOPER: I don't think I'd put it in quite those terms, but...

538. MR BIRD: Well, as a matter of fact, that is the timeline, isn't it? You were asked about the timeline. This was produced in September 2012, just as the panel was considering the compulsory acquisition stage of the DCO procedures, wasn't it?

539. MR COOPER: No, in respect of timeline, that is correct—not necessarily purpose.

540. MR BIRD: Good. Well, put that aside for the moment. We will need to come back to it for one other matter in due course. Though you don't in fact have any evidence, do you, that an additional 3.5 or four million tonnes of liquid bulks could not be handled through the Port of Immingham by means other than the IWDJ, do you? There's been no demonstration that no alternatives exist.

541. MR COOPER: We have considered each alternative and the needs of the market and concluded that IWDJ is required. It serves a different market and different customers. It is, I have to say, without the threat or execution of CPO, unlikely that Simon and others will gain access to IOT. In order for them to grow, they need a new facility.

542. MR BIRD: Can we then move to HIT 3, which I think is the next issue I need to ask you about. And if we go back to the master plan which was approved in September 2012, which is document 11 in the third volume of the reference documents, and go to page 61. Do you have that, Mr Cooper?

543. MR COOPER: Yeah, I do.

544. MR BIRD: Good. We see there the Humber International Terminal berth 3 introduced. 7.27 at the bottom of the page, it goes over to page 62, indicates that a harbour revision order and related consent is currently underway. It's fair to say, isn't

it, that whilst I think a draft harbour revision order which contained both HIT 3 and the IWDJ was put before the panel, there has never been a harbour revision order underway as far as the HIT 3 is concerned.

545. MR COOPER: Can I—I'm sorry, please finish.

546. MR BIRD: I have.

547. MR COOPER: You have finished?

548. MR BIRD: Yes.

549. MR COOPER: Okay. Well, it is ABP's view that we have authority, existing authority, to build HIT 3 by virtue of the ABP Associated British Ports Act 1983. We do need permission to dredge, which we will need from the MMO in due course, but we don't need a consent to build the structure itself.

550. MR BIRD: Well, as far as the structure is concerned, in terms of the additional works required in order to create that structure, it's likely to have an effect, is it not, on the European sites.

551. MR COOPER: I'm deferring to my advice, which is that we do not need further consent for the building of the structure; we need consent for the dredging associated.

552. MR BIRD: That wasn't the question I asked you. It's likely, is it not, that an extension of the scale that you're proposing to HIT 3 would be likely to have an effect, a significant effect on the European sites.

553. MR COOPER: I can imagine it would have an effect, yes.

554. MR BIRD: Yes. You're not, are you, going to be able to rely on any existing rights to construct HIT 3 without having gone through an appropriate assessment, are you, if that is the case?

555. MR COOPER: I'm reiterating that the advice is that we have consent for HIT 3.

556. MR BIRD: Irrespective of the effect on the European site.

557. MR COOPER: That is our position.

558. MR BIRD: I see. Let's just go back in time though, just to see how HIT 3 was initially handled, so if we go back to tab 5 of the Able exhibits bundle, page 59 of that document.

559. MR COOPER: Yes.

560. MR BIRD: 7.21 promises a harbour revision order to be submitted at that stage. It was the Department for Transport, it would have been submitted to you in 2010. And now, as I understand it, there's no proposal, is there, to do anything in terms of HIT 3, it's a wait and see.

561. MR COOPER: No, we think we have consent for it.

562. MR BIRD: You've not proposed to do anything, have you, even if you've got consent?

563. MR COOPER: I made it clear in my evidence that HIT 3 was about optionality for future coal and biomass, so optionality is what HIT 3 is about.

564. MR BIRD: And what would the cost of HIT 3 be?

565. MR COOPER: About £130 million, including the facilities to handle biomass and rail infrastructure.

566. MR BIRD: And the present harbour revision order that is before the Marine Management Organisation for consideration, does have an environmental statement, it's in the documents here. It doesn't, does it, assess the combined effects of the IWDJ with HIT 3, does it?

567. MR COOPER: IWDJ with HIT 3; I believe not.

568. MR BIRD: No. But there would be a requirement, would there not, to do a combined assessment if it was reasonably likely that a HIT 3 would go ahead.

569. MR COOPER: I have to defer to my legal colleagues in respect of that.

570. MR BIRD: If that is the test it would follow from the absence of any combined assessment in the environmental assessment that someone has formed the view that there is no reasonable likelihood of HIT 3 going ahead, wouldn't it?

571. MR COOPER: I don't think that is the conclusion that can be drawn.

572. MR BIRD: But it would be a fair conclusion, wouldn't it?

573. MR COOPER: I think that we are in danger of confusing two things here. My view as Chief Executive is that IWDJ is, if consented, highly unlikely to go ahead. I completely accept that HIT 3 is about optionality, and it would not be our normal practice to consider HIT 3 in more detail than we have. We have a cost estimate, we know how many tonnes we would need to handle. We also know what trigger points there would need to be in order to trigger HIT 3, but it is fair to say that our judgment as to the timing as to when those trigger points might arise is flexible.

574. MR BIRD: And what then is the projected tonnage that HIT 3 would handle?

575. MR COOPER: Well HIT 3 would probably have capacity similar to HIT 1 and HIT 2.

576. MR BIRD: And what is their current capacity?

577. MR COOPER: Approximately 5 million tonnes/6 million tonnes each.

578. MR BIRD: So that's 12 million tonnes in total.

579. MR COOPER: Yes, they've held a record volume of 14 million tonnage.

580. MR BIRD: So 12 to 14 million tonnes.

581. MR COOPER: 10 to 12 comfortably.

582. MR BIRD: 10 to 12 comfortably; record 15.

583. MR COOPER: Record 14, I think. That was overtrading, that's when we needed more capacity. So what's required to justify it is a lesser tonnage.

584. MR BIRD: And as far as the principal driver for HIT 3 is concerned, it's biomass, isn't it, in terms of the market?

585. MR COOPER: It is, as I said in my evidence, both potentially coal, because I don't think we can entirely rule out coal. I think that would be a mistake, but biomass is a large part of it, and CCS coal is another large part of it.

586. MR BIRD: But subject to customer demand.

587. MR COOPER: I'm not sure that the board would allow me to spend £130 million without some element of commitment.

588. MR BIRD: And in terms of the master plan; go back, please, to the reference exhibit 11. Do you have that?

589. MR COOPER: Yes.

590. MR BIRD: And within that to page 62, where we see a computer generated image of HIT 3 shown in that figure, yes?

591. MR COOPER: Yes.

592. MR BIRD: It's the third berth. And if we go back just to page 10, in the context of the capacity of that, there are various forecasts on demand on which the master plan is based, aren't there, at table 1.1 at the top of page 10?

593. MR COOPER: Yes.

594. MR BIRD: And for biomass they assumed 8 million tonnes in 202; 10 million tonnes in 2030 for biomass; and for coal, 15.5 million tonnes in 2020; and 15 million tonnes in 2030. In terms of the current coal imports at Immingham, what are they in terms of tonnage?

595. MR COOPER: I'm happy to have the figure corrected by my colleagues, but I think we handled across HIT in 2013 something close to 14 million tonnes of coal.

596. MR BIRD: And in terms of biomass?

597. MR COOPER: Last year, very little. This year slightly more, and next year prospectively, I think, about 4.5 million tonnes. I think the Drax letter refers to 6 million tonnes.

598. MR BIRD: Yes, so Drax is your principal existing client in terms of biomass.

599. MR COOPER: It is.

600. MR BIRD: Are there any others?

601. MR COOPER: Not at present.

602. MR BIRD: No. And in terms of the coal forecast that we see in table 1.1., I think all of these forecasts date from 2006, don't they? 1.13 refers to the MDS trans-modal work, and various footnotes refer to the trans-modal work as being 2007 or 2006.

603. MR COOPER: I'll have to take your word for it.

604. MR BIRD: What are the revised projections in terms of coal imports for 2020 and 2030?

605. MR COOPER: I do have a piece of paper somewhere with that. I believe that the number for 2030 is 10. So 2020 is 15 dropping to 10 in 2030.

606. MR BIRD: Did you go beyond 2030 in terms of your forecast?

607. MR COOPER: One of our generating partners said going beyond 18 months is a bit of a mug's game in this business.

608. MR BIRD: No, but I wasn't asking you about your generating partners. Do you project forward beyond 2030?

609. MR COOPER: I'm sorry, it's not entirely a flippant comment. We do listen to our customers when taking account of forward projections, so the answer is no.

610. MR BIRD: I'm more interested in you; so you don't. So 2030 is your most up-to-date and longest term projection.

611. MR COOPER: Correct.

612. MR BIRD: And that shows a reduction in 5 million tonnes.

613. MR COOPER: It does.

614. MR BIRD: Beyond biomass, is there any projected dry bulks which would make up for that reduction in your forecasts?

615. MR COOPER: HIT has and can handle substantial scale panama agribulks, as they are more generally known, and in 2013 we actually had to remove that traffic from HIT in order to accommodate the exceptionally high levels of coal. The demand for animal feed and fertiliser is probably a couple of million tonnes a year.

616. MR BIRD: Right, well that would fit with table 1.1, although it indicates it's going up to 3 million. But you say you had to relocate that. Is that currently serviced elsewhere within the port?

617. MR COOPER: Some of it has been serviced on smaller ships within the port, and some of it has actually gone to other locations, some of it within ABP. All of it on smaller ships, so they're suffering a freight rate dilution, which I'm quite sure they would like to have reversed.

618. MR BIRD: And in terms of the forecasts of biomass, when the master plan was drawn up, if we go on in the document to page 50, there is a list of likely customers for the imported biomass in the Immingham area from 6.16 onwards, isn't there? And those included the Real Ventures Reality Energy Centre at Immingham in 6.16; Centrica's application for the Glanford Brigg Biomass Power Station, just towards the end of 6.16. The Heron Renewable Energy Plant at the Port of Immingham in 6.17, and then the conversion of the Drax Plants at Selby in 6.18. And then finally 6.19, top of the next page, planning permission for a site at Stallingborough of 65 megawatts, RWE Innogy. How many of those are currently active projects?

619. MR COOPER: There is a diversity of view within ABP on the answer to that question. Clearly some of them have been cancelled. Actually Drax has probably put through more demand than we anticipated back then, and the volume per burner is higher than they anticipated and we anticipated by a factor of probably 10%, which is actually kind of acknowledged, helpfully, in your expert report.

620. My view as Chief Executive is that—

621. MR BIRD: My question was a very specific one. Which of these projects is still active other than Drax?

622. MR COOPER: Real Ventures would claim that they are still active.

623. MR BIRD: What's your view as ABP on how active they are given their failure to secure, as I understand it, contracts for different funding?

624. MR COOPER: They remain eternally optimistic.

625. MR BIRD: Do I detect from that, that you are not similarly optimistic, Mr Cooper?

626. MR COOPER: I think that at one point around the ABP Group we probably had about 10 dedicated biomass projects. It is fair to say that they might be down to two, and my view is that dedicated biomass struggles against conversion, but I have got colleagues who tell me I'm wrong on that.

627. MR BIRD: So as far as you are concerned, 6.18, which deals with the conversion of the Drax 4,000 megawatts Selby Plant, is the significant biomass demand, isn't it, which has materialised?

628. MR COOPER: Yes, what I would say about this list is it failed to take account of other people's plans possibly. Over the page we talk about co-firing, which has gone. Co-firing has largely gone—sorry, that's page 51. I have to say that the problem with any sort of business plan—there's a picture in here of RFT, I think. I can't find it now, but I have to say the RFT that has emerged is completely different from what was in here. The premise on which biomass might be taken up is the conversion of other coal-fired plant adjacent to or near Immingham. So today, that business plan would talk about Egra and the E.ON Plant at Cottam and West Burton.

629. MR BIRD: Let's just put this in context. Let's go to the Tolvik Report, which is Able exhibit 10, so the small blue exhibits, document 10. Page 5, which you were taken to earlier, has the map of the UK coal-fired power stations with coal to biomass conversion plans. And above that figure 1, there's table 4, which sets out the conversion plans. Do you have any dispute with the factual accuracy of the table, and in particular, the status of any proposals or otherwise for conversion, Mr Cooper?

630. MR COOPER: I don't dispute the public nature of what is there. I do dispute the private commercial facts surrounding those power stations.

631. MR BIRD: When you say private commercial facts, do any of them, or are any of them committed to securing biomass through Immingham, whether exclusively or otherwise?

632. MR COOPER: Egra in particular have gone to extensive lengths to protect their biomass supply chain with us through Immingham.

633. MR BIRD: Yes, but they don't have, do they, contracts for different funding for the conversion.

634. MR COOPER: Not yet.

635. MR BIRD: No.

636. MR COOPER: Can I just say, because they are relevant too, that the EDF Plant, which is Cottam and West Burton, where it says "no stated intention to convert", again, I've talked about optionality in respect of HIT 3. Both of those plants are going through feasibility studies for conversion as we speak.

637. MR BIRD: So in terms of the biomass current demand, it's 4.5 million tonnes. In terms of the capacity of HIT 1, 2 and 3 for biomass, what would that be combined, assuming that you were down to the coal importation level in 2030?

638. MR COOPER: So if we take out—I don't want to forget the agribulks entirely. HIT 1 is about 6 million tonnes; HIT 3, on the face of it, would have similar capacity. I should stress that such is the variability of energy policy, that we are generally future-proofing these facilities so that they can handle coal as well as biomass, certainly in terms of the equipment that we're putting on them.

639. MR BIRD: Yes, but your own projections for coal, in terms of 2030, are lower than they were in 2012, aren't they, by some margin?

640. MR COOPER: They're down by 5 million. Sorry, your question was biomass; so biomass, 6 million tonnes across HIT 1, potential for a mix of coal and biomass across

HIT 3. And HIT 2 in our plans is pretty much dedicated to coal, which again is about 6 million tonnes. And HIT 1 can take coal as well, it's being equipped to take coal. So somewhere in there the capacity is, between the three facilities, to take 10 million tonnes of coal. And the capacity in there to say take 10 million tonnes of biomass, but the capacity to flex between the two fuels in the light of our customer-specific requirements.

641. MR BIRD: And the present identified requirement of 4.5 million tonnes.

642. MR COOPER: No, that's not present identified requirement. You asked what the throughput was for, for next year.

643. MR BIRD: No, I appreciate that, but what you have identified customer requirement for at present is the 4.5 million tonnes.

644. MR COOPER: No, that's not what I'm saying. You asked what the throughput forecast was for next year. As Drax ramps up, it's 4.5 million tonnes. The year after it's 6. And if they go to a fourth burner it could easily be 8, which is the number in your consultant's report at the midway stage, so I congratulate him on his accuracy.

645. MR BIRD: Yes, there's no dispute there in terms of that. And of course, there's no firm commitment, is there, to go to the fourth burner?

646. MR COOPER: This really does go back to the elbow room point. Drax need us to be able to handle the fourth burner. I have spent time with Drax at a reasonably senior level; they are keeping their options open. If they take out a fourth burner and convert to biomass, as I've indicated to you earlier, the volume requirement will be increased by a factor of 1.6, so broadly 1.5 million tonnes of coal becomes 2.5 million tonne of biomass.

647. MR BIRD: And in terms of AMEP, in terms of customer demand—we'll come back to the detail of that in due course both with you and others, they too need to have flexibility, don't they, in order to respond to that demand?

648. MR COOPER: I think our proposals fully reflect that flexibility.

649. MR BIRD: We'll come back to the detail of that, but you can accept the principle?

650. MR COOPER: Yes, we have in our compromise, yes.

651. MR BIRD: And in terms of biomass, Immingham is not, is it, the only ABP Port capable or able to accommodate the biomass market on the Humber?

652. MR COOPER: No, we have a facility at Hull.

653. MR BIRD: Yes. What's the capacity of the facility at Hull?

654. MR COOPER: One million tonnes.

655. MR BIRD: Is that capable of being extended?

656. MR COOPER: Not at present; and it's not capable of taking the large ships that this stuff is being carried over from the United States in.

657. MR BIRD: Is there potential for improvements, alterations and dredging, if required, in order to accommodate the increased biomass demand through Hull?

658. MR COOPER: Not without a major configuration report, no.

659. MR BIRD: But there are other ports beyond the Humber in order to serve the biomass market, aren't there, and certainly able to support the power stations identified in the Tolvik Report?

660. MR COOPER: We operate in a competitive market. Our competitors up at the Tyne, in particular, potentially Teesside, Liverpool, Bristol, all have the potential to handle biomass. They suffer from certain disadvantages in certain cases, but I'm not quite sure why ABP should give up its competitive right, in my view, to aspire to handle

that cargo.

661. MR BIRD: So, again, as far as the national interest is concerned in terms of biomass, you accept there are alternatives.

662. MR COOPER: I don't accept that that's in the national interest at all, and I'll explain for why. All of those places, in terms of serving those power stations, have a longer haul than Immingham does. One of the features of biomass, which needs to be clearly understood, is that the supply chain for biomass is a lot thinner than it is for coal. By that I mean that coal sits on our ground, you've seen a photograph of it there, and it also sits on ground at the power stations. And there is bluntly several weeks' supply of coal at any given time in the supply chain either on our docks or at the power stations. Biomass is completely different. Drax will hold—I think it's three weeks' supply. We will hold about three weeks' supply. And the longer rail haul and the need for constantly feeding the beast, as it were, puts a major strain on the biomass supply chain. It's not designed to hold large quantities of stock. I would be so delighted to take the Committee up to actually show you how the biomass supply chain works. If we could, please tell us, because I'd very much like to show it to you. But it ain't the same as coal in many, many respects, and one of them is that it can't afford a long rail haul. And that, by the way, is why we have won business back from the Tyne, because we're proximate.

663. MR BIRD: My Lord Chairman, I notice the time. I'm about to start on, as it were, the next and final phase of my questions, and that may be a convenient moment to break before doing so, but I'm quite happy to—

664. CHAIRMAN: I think you're quite right, Mr Bird. I think it may be a convenient time to break. But before we close this part of the Committee, if any Members of the Committee have questions that they want to put either to Mr Bird or to Mr Cooper just at the moment, perhaps we could deal with those. There don't appear to be any questions at the moment, and so without you starting on another section of your cross-examination, I think it would be a sensible time to break for the day. I want to thank you both very much indeed for your assistance. The Committee stands adjourned until 10 o'clock tomorrow.

DAY 4

PUBLIC SESSION

MINUTES OF ORAL EVIDENCE

taken before

**JOINT COMMITTEE ON THE ABLE MARINE ENERGY PARK
DEVELOPMENT CONSENT ORDER 2014**

Thursday 16 October 2014

In Committee Room 4

PRESENT:

Viscount Ullswater (In the Chairman)

Mr Craig Whittaker MP

Dr Matthew Offord MP

Paul Blomfield MP

Lord Armstrong of Ilminster

Lord Plant of Highfield

IN ATTENDANCE

Mr Simon Bird QC, Francis Taylor Building

Mr Andrew Newcombe QC, Francis Taylor Building

Witnesses:

Mr James Cooper, Associated British Ports

Mr Richard Slark, Pöyry Management Consulting

IN PUBLIC SESSION

INDEX

Subject	Page
Mr Cooper, examined by Mr Bird	8
Mr Cooper, examined by Mr Newcombe	52
Mr Slark, examined by Mr Newcombe	74

(At 10.10)

1. CHAIRMAN: In calling the Committee, I should just note that again we are in a public session and, therefore, I would be grateful if anyone with a mobile phone – that means everybody – would be kind enough to switch it to silent or to vibrate.
2. Mr Bird, you were in the process of a cross-examination of Mr Cooper. However, my colleague, Mr Whittaker, would like to ask one or two questions before you commence, if that is okay.
3. MR BIRD: Obviously, entirely, and, if at any stage during my cross-examination any other members of the Joint Committee wish to intervene, then simply indicate.
4. MR WHITTAKER: Mr Cooper, good morning. I wonder if you could tell me when the owners of Able acquired the land that surrounds your triangle.
5. MR COOPER: I do not know. I think that you should ask them.
6. MR WHITTAKER: So you were not aware when they purchased it at all?
7. MR COOPER: We have been aware of them accumulating land where they have for a long time.
8. MR WHITTAKER: So you have been aware of that for a long time; before 2010?
9. MR COOPER: I would have to defer to my colleagues; I was not an executive director at that time, but quite probably, yes.
10. MR WHITTAKER: Just a follow up on that then, you have just said that you were aware that they were acquiring land over a period of time, was that land on the open market?

11. MR COOPER: Again, you are asking a level of detail; I was not at the executive director at the time that this land was being accumulated. I am sorry, I am sure that we can get the answer for you, but I do not have it.

12. MR WHITTAKER: If you could, that would help to put a couple of things into perspective, for me in particular. Just finally then, and you may not know the answer to this either, but did ABP take any steps to acquire the same land at any particular time?

13. MR COOPER: Again, I would have to consult with colleagues who have been in the business longer than I have.

14. MR WHITTAKER: Okay, thank you.

15. CHAIRMAN: Would you like to ask a question? Mr Blomfield?

16. MR BLOMFIELD: Yes, Chairman. Thank you very much. I think that this might be an opportune moment as it is around a similar area. I think that I asked a question yesterday about when you published specific proposals for the western deepwater jetty – I am trying to get the time line right – and I think that you said that proposals were published in 2010.

17. MR COOPER: Draft consultation.

18. MR BLOMFIELD: When we actually came across the draft consultant in subsequent discussion yesterday afternoon, that says that there is potential for a further deepwater river jetty capable of accepting Panamax-size vessels, etc. Can I just ask for clarification of when you published specific proposals for that jetty?

19. MR COOPER: How specific?

20. MR BLOMFIELD: Rather than a speculative suggestion that this is something that might be useful, which the Draft Master Plan rather suggests, when there were specific plans put forward.

21. MR COOPER: My guess response to that might be when we applied for the HRO, in that sense. It is interesting to see what is said about, for instance IRFT, the renewables fuels terminal at Green Port, in the 2010 business plan, because at that stage – that is now four years ago – the fully-formed product would not have been there. Indeed, the picture of IRFT, as I said yesterday, is completely different to what has actually been built there. It is the nature of this business, perhaps not quite as much as it might be with airports, but not far off, for projects to evolve over a period of time. To spot the opportunity back in 2010 presented by, probably, at that time a focus on the need for larger vessel size, I would suggest – that is the reference to Panamax – for that to be further supplanted by what then was probably but a gleam in the mind's eye, which is – dare I say? – the impact of Shell Oil fracking in the States on the demand for global gasoline, which is a change that helps drive the project forward. Actually, if you look at the 2010 draft, and I think the 2012 sort of final business plan, neither of which – I am not washing my hands of it, because I am chief executive of ABP, but I became chief executive in 2013, so I saw it as a non-executive director and not as an executive director. The thing that strikes me as remarkable about it, and I hope that I have the same level of success, is the number of projects that are referred to in there that have actually come to fruition. I am genuinely impressed by it, because I think that, if you had gone back four years, the degree of scepticism that would have been about, for instance, IRFT, is reflected in the Panel discussions. There is actually a paper presented by Able giving coal and biomass a reality check. It is there.

22. MR BLOMFIELD: Thank you.

23. CHAIRMAN: Mr Bird, thank you.

24. MR BIRD: I think that Mr Newcombe wanted to introduce a document or a couple of topics which arise out of matters that happened yesterday and now may be a convenient moment to do that, if you are agreeable.

25. MR NEWCOMBE: My lord, one further sheet to add to the origami this morning, forgive me, which I will have circulated now. Then, I am afraid, my second point is possibly the threat of a little further origami. I will explain in a moment.

26. My lord, I pause so members of the Committee can just glance at it. The vast bulk of the note is a somewhat unedifying list of statutes of some antiquity. The reason for putting this in is to deal with, and I hope stop off as an issue, because the Committee has more than enough to be considering, this question of whether or not ABP is one single undertaking or whatever. It is quite an important point and yesterday was the first indication that we had that the matter may not be seen in the same way by Able. ABP is, itself, a statutory undertaking. Indeed, it is the creature of statute. It is effectively a statutory company. But each of the ports is a separate undertaking and also, as I identified yesterday, the harbour master who controls wet traffic on the Humber, himself, has his own set of statutory duties and responsibilities. Although he is part of ABP, I explained how those are not congruent or wholly congruent with those of the Port of Immingham. The number of Acts there reflects the basic point of the common law and I will rehearse this as quickly as I can. It may be that Members of the Committee are already seized of it, but it may help if I simply repeat the point or make it clear. Essentially, wherever one puts a bit of concrete in a tidal river, and I am just concerned here with tidal waters – the position is slightly different on inland navigation – there is a public right of navigation over tidal waters wherever the ebb and flow of the tide persists, which essentially means that there is a right of navigation, including over the inter tidal, when it is covered by water. If you then go and put a piece of concrete – in my somewhat inelegant phrase – in the way, you are interfering with the public right of navigation. In the absence of some form of statutory authority, a member of the public who was inconvenienced by that would be able to go and seek an injunction or some other form of relief to get that piece of concrete removed. Given that the ports are brought forward in the public interest, *ex hypothesi*, the practice over many centuries – and I referred to Acts of Queen Anne, but they go back even to Tudor times – was to get it authorised by Parliament such that the statutory undertaker then had the defence of saying, “Yes, although it could be a public nuisance, I have statutory authority and provided I have done everything without negligence, then you have no cause of action.” That is the reason behind the various private acts and other types of order which were promoted particularly with some vigour in the three last quarters of the 19th Century. Each of those, subject to one point to which I will come in a moment, is fundamentally different. They are all site specific. Indeed, they are all scheme specific. That is why, as ports grow, you get more private acts to authorise them. The one caveat I mentioned is very sensibly the predecessor to the Parliamentary Council, which back in 1845

produced what is called a “Clauses Act”, which is essentially the statutory equivalent of Toys R Us. They are a set of common clauses which can be incorporated into private acts of Parliament if and in so far as necessary. There is to that extent commonality, but virtually every port in this jurisdiction is so authorised and they are all different and they are all separate statutory undertakings.

27. I hope that that is a helpful point to make and I will speak to Mr Bird separately outside in the hope that we can at least reach a common position on that. If the Committee have any questions on what I have just said, I will deal with those now, but, subject to that, I will move on to my second point.

28. CHAIRMAN: Thank you, Mr Newcombe. Has the Committee any comments to make on that particular point? [No] Thank you, Mr Newcombe; I believe you can move on.

29. MR NEWCOMBE: The second point, my lord, I can take more briefly. Mr Cooper was asked some questions about HIT 3 – the Humber International Terminal 3 – yesterday. He did the best he could as chief executive but for, perhaps, understandable reasons, when it condescended to a level of detail, he simply fell back and said, I will have to ask those who are dealing with it day to day. Given the apparent importance which Able attach to that, I am minded to produce for the Committee the scoping opinion which was produced by the MMO in July of this year for the proposed Humber International Terminal 3. A scoping opinion, as the Committee appreciates, follows, essentially, an acceptance that a scheme will require environmental assessment and, in order that that can be focused, there is a mechanism whereby in advance of lodging the application the putative applicant can put in an application for a scoping opinion with a report indicating what they think are the relevant matters to be covered in the Environmental Statement and then, without prejudice to raising other matters in due course, the decision maker carries out some consultation and then sends back a scoping opinion as to their present view of what they see as being necessary in the Environmental Statement. I am going to review some other papers which are with it to see whether that will assist the Committee. The reason why I am not putting them in now is I want in so far as possible to narrow them down to that which is absolutely necessary for fairly obvious reasons.

30. Forgive me, I have eaten into Mr Bird's time, but I hope that that is helpful.
31. CHAIRMAN: Thank you very much, Mr Newcombe. Mr Bird.
32. MR BIRD: Thank you, my lord. Mr Cooper, good morning. We can take it from this note in terms of the statutory undertaking that has been put in that it is not ABP's position, therefore, that as far as its overall statutory undertaking is concerned, there would be serious detriment, you are concerned exclusively with the impact on Immingham. Is that correct?
33. MR COOPER: No, you may not take that conclusion.
34. MR BIRD: Right. The Committee is expected to have regard to the overall statutory undertaking in terms of assessing serious detriment.
35. MR COOPER: The importance of Immingham to the group cannot be underestimated. In that sense it matters to the group.
36. MR BIRD: So you do seek to rely on the overall statutory undertaking position in terms of serious detriment.
37. MR COOPER: No. Listen, I am not a lawyer, as previously discussed.
38. MR BIRD: I am asking you your position, not as a lawyer.
39. MR COOPER: It is important to us that Immingham is enabled to expand.
40. MR BIRD: Yes. That was not the point. Are you or are you not relying on ABP's overall statutory position as overall statutory undertaker as set out in the first sentence of this note?
41. MR COOPER: No.

42. MR BIRD: Right. Good. As far as the scoping opinion for HIT 3 is concerned, you indicated yesterday that HIT 3 would cost some £140 million.

43. MR COOPER: I said 130 million.

44. MR BIRD: It was 130 million, I apologise. £130 million for which there was as yet no board approval.

45. MR COOPER: No.

46. MR BIRD: Moving just over the matter of finance, the IWDJ, you said yesterday, would cost some £40 million.

47. MR COOPER: Yes.

48. MR BIRD: What does that include? Does it include the jetty?

49. MR COOPER: Yes, it does.

50. MR BIRD: Tanks?

51. MR COOPER: I believe it includes the jetty and the jetty pier back to the land and the preparation of the land.

52. MR BIRD: So not the tanks?

53. MR COOPER: Not necessarily the tanks or the pipework.

54. MR BIRD: Or the pumps?

55. MR COOPER: No.

56. MR BIRD: Control system?

57. MR COOPER: No.
58. MR BIRD: Overfill protection?
59. MR COOPER: No.
60. MR BIRD: Second in tertiary container?
61. MR COOPER: I will have to pass on that.
62. MR BIRD: Railway link?
63. MR COOPER: I believe it would use railway, yes.
64. MR BIRD: And road improvements and bridge over the railway?
65. MR COOPER: I would have to check on that.
66. MR BIRD: If you could do that, I would be grateful.
67. MR COOPER: Yes.
68. MR BIRD: And assumed compensation for the acquisition of any rights, does it include that?
69. MR COOPER: I would have to check on that as well.
70. MR BIRD: Would you do that as well?
71. MR COOPER: Yes.
72. MR BIRD: I am grateful. Then as far as biomass is concerned, just another loose end from yesterday, there is the Hull riverside bulk terminal, is there not, being advanced by ABP for biomass?

73. MR COOPER: Yes.
74. MR BIRD: What is its capacity?
75. MR COOPER: I think four to five million tonnes.
76. MR BIRD: Certainly my understanding is that it is up to five million tonnes. That is still a current project?
77. MR COOPER: I would not describe it as a current project. It is a project that we keep a weather eye on.
78. MR BIRD: Yes, there is an application in with the marine management.
79. MR COOPER: There is indeed an application in with the MMO.
80. MR BIRD: Which has not been withdrawn.
81. MR COOPER: It has not been withdrawn.
82. MR BIRD: And then Hull, therefore, is regarded as a suitable location by ABP for accommodating biomass?
83. MR COOPER: Hull has the potential to accommodate biomass. It has certain challenges compared with Immingham, notably that the HRBT project would be materially more expensive to deliver than HIT 3 would need to deliver.
84. MR BIRD: But it is not so expensive that it would cease to be an appropriate location for biomass.
85. MR COOPER: It would depend economically on there being sufficient demand to justify ... If HIT 3 is 130 million, HRBT is about 170 million. It also has higher recurring operating expenditure than HIT 3 because of the continuous dredging

requirements that would persist at Hull. As a consequence, we would require a higher level of certainty of future volumes for HRBT than we would for HIT 3.

86. MR BIRD: If you could just take up the Able volume of exhibits, please, which is the blue volume, and go within that to tab 10, which is the Tolvik Report, which assesses the biomass and coal sector and projections into the future. Could you please go to page 9 of that? At paragraph 8.3 we see the report says that it is noted that in 2013 POI handled 17 million tonnes of coal and the 3 million tonnes of capacity for Drax was under construction, suggesting a total bulk handling capability of at least 20 million tonnes for these fuels. Is the 17 million tonnes correct for 2013?

87. MR COOPER: It includes coal handled across the Tata Quays, but it is correct. Well, sorry, it is factually correct that the port handles 17 million tonnes of coal. It is not particularly relevant to this discussion that the dedicated Tata facility handles a stream of 4 million tonnes of that.

88. MR BIRD: It is relevant, because there was capacity at the Tata Quay to handle that 3 to 4 million tonnes.

89. MR COOPER: It is not ours to give away.

90. MR BIRD: But it was available to handle that 3 to 4 million tonnes – yes?

91. MR COOPER: Sorry, the 3 to 4 million tonnes of Tata coal for the making of steel.

92. MR BIRD: Yes.

93. MR COOPER: Not for the generation of power.

94. MR BIRD: That is part of the demand for importation through Immingham, isn't it?

95. MR COOPER: The Tata terminal is a dedicated terminal serving the Tata plant at Scunthorpe.

96. MR BIRD: What is its capacity?

97. MR COOPER: To be honest, I suspect that that is kind of – well, I don't know the answer to that question, but it is not actually germane to the issue because we do not control that capacity.

98. MR BIRD: You do not control it, but it is part of the overall coal tonnage which you rely upon in support of your ...

99. MR COOPER: No, it is not part of that.

100. MR BIRD: The 17 million is part of the coal imported, so that coal is part of that 17 million tonnes, isn't it?

101. MR COOPER: No, the case I made yesterday for HIT 3 was around generating coal. It has got nothing to do with Tata coal.

102. MR BIRD: I am looking at overall coal.

103. MR COOPER: I understand what you are looking at. That is not the case for HIT 3.

104. MR BIRD: Let us break it down. As far as the 17 million tonnes are concerned, that includes 3 to 4 million tonnes for steel, Tata steel, .

105. MR COOPER: Yes.

106. MR BIRD: And you don't know whether or not there may be greater capacity to import coal through that terminal, be it for Tata or anybody else.

107. MR COOPER: It is not in our gift.

108. MR BIRD: Right. But it would potentially be in the gift of Tata.

109. MR COOPER: It could be in the gift of Tata, yes.

110. MR BIRD: Is it also correct that at the same time as the 17 million tonnes was being imported, so about 13 or 14 million tonnes at HIT 1 and 2, 3 million tonnes of capacity for Drax was under construction.

111. MR COOPER: I am not sure what the reference is to the 3 million tonnes of capacity for Drax being under construction. I think that that must be a reference to the building of the biomass storage facilities.

112. MR BIRD: It is, yes. Was that under construction?

113. MR COOPER: Yes, but it is not additional berth capacity.

114. MR BIRD: No, I am not asking you about additional. You were handling 13 or 14 million tonnes of coal and at the same time constructing a facility for 3 million tonnes of biomass

115. MR COOPER: Which is replacement tonnage.

116. MR BIRD: At HIT 3.

117. MR COOPER: Yes, not incremental.

118. MR BIRD: So that would indicate that there is scope with the existing HIT 1 and 2 for 13 to 14 million tonnes of coal and 3 million tonnes of biomass.

119. MR COOPER: No, I think that you have just skipped into a bit of double counting.

120. MR BIRD: Have I?

121. MR COOPER: Yes.

122. MR BIRD: How?

123. MR COOPER: Because the 3 million tonnes of capacity for Drax is biomass storage capacity, it is not berth capacity. We cannot handle another ship. It is a replacement of Drax coal at a rate of 1 tonne for every 1.6 tonnes of biomass. It is not incremental berth capacity.

124. MR BIRD: The issue is the berth capacity as opposed to the ...

125. MR COOPER: It is the berth capacity, absolutely. Last year berth capacity at HIT was running at an occupancy rate of around, at times, 90%. I have to tell you that that is inefficient. At that point you are incurring costs that – I am looking at the relevant director – exceed the revenues that are being burnt. It is our view that in an ideal world we would have – certainly last year we would have had HIT 3, because something in the order of 15 to 18 million tonnes is what can be handled across three berths. It is about 5 to 6 million tonnes per berth comfortably. We are moving up towards 6 to 7 million tonnes. To use an uncomfortable word, maybe, but I am happy to explain it, you are over trading. You are over utilising the facility and you are generating inefficiencies as a result. When we talk about 14 million tonnes of generating capacity – yes, and the IBT immediately adjacent to it – in order to justify an efficiently run HIT 3 or an efficiently run HIT terminals, 1, 2 and 3, we are looking at demand in the order of, I would say, 15 to 18 million tonnes. Last year we were looking at 14 million tonnes. We were perilously close to that, yes

126. MR BIRD: But then we have to look on this page, do we not, 7.7 and table 7?

127. MR COOPER: Yes.

128. MR BIRD: Which looks at the future forecast in relation to coal, which at 2020, just looking to 2020 reference case, identifies imports of just 12.4 million tonnes, and that is into the UK as a whole, isn't it?

129. MR COOPER: Yes. As we said yesterday, that domestic production number looks mighty high to us, but anyway ...

130. MR BIRD: As far as the report is concerned, 7.8 of the report, points out that, if the Port of Immingham were to retain their current 40% share of the coal import market in 2020, it would handle just 5 million tonnes of coal per annum not the ten which you indicated was within your business plan.

131. MR COOPER: And, as I said yesterday, if you look at the map on page 5 of the same report, then draw yourself a rough circle around the Humber – that is the inlet halfway up the UK – where you will see Ferrybridge, Eggborough, Drax, West Burton, Cotham and Radcliffe, you will see that we would contend, given our location and facilities and the total supply chain costs associated with hauling from port to power station, that our market share of what is left of the UK coal-fired power generating will inevitably rise.

132. MR BIRD: Yes, but you have it rising to 80%, haven't you?

133. MR COOPER: Well, if you accept the numbers that are in the table, as I said, we believe the domestic production numbers are in our view way too high.

134. MR BIRD: You are not suggesting, are you, that the Port of Immingham has any potential of achieving an 80% market share on that analysis, are you?

135. MR COOPER: I would expect that Drax and Radcliffe are the last power stations standing. I would expect us to have a very meaningful market share of those two power stations. I would expect that from those two alone, never mind whatever else is left in 2020, and we do expect coal to persist for longer than was previously anticipated, that those two power stations alone could be generating 6 or 7 million tonnes for us.

136. MR BIRD: I think that the answer to my question is, no, you are not suggesting that you could secure an 80% market share of that domestic market.

137. MR COOPER: I am suggesting that we could secure 10 million tonnes.
138. MR BIRD: That is not supported by those forecasts, is it?
139. MR COOPER: No, but I do not think that I have to agree with these forecasts, do I?
140. MR BIRD: No, I am just seeking your view. Let us move on, please. In terms of alternatives, the Immingham oil terminal ...
141. MR COOPER: Yes, CPA was spoken of yesterday, which ABP already owns. It is a bit of law that I must reflect on.
142. MR BIRD: As far as the powers of compulsory acquisition, what is it that you say you would need to acquire which you do not already own in order to improve or extend the Immingham oil terminal facilities?
143. MR COOPER: Sorry.
144. MR BIRD: What is it that you say that you would have to ultimately acquire by way of land or rights in order to increase the capacity ...
145. MR COOPER: I am completely lost with this question. We already own the Immingham oil terminal.
146. MR BIRD: Yes. Yesterday, in one of the response, in terms of looking at development at the east gate, for example, you said that you would have to acquire rights and, when I put to you also in relation to the Immingham oil terminal the potential for increased capacity there, you said that you were not able to do that. That is how the issue arises. What I want to know from you is what rights you say you would have to acquire from others in order to deliver improved berthing or increased berthing facilities at the Immingham oil terminal.

147. MR COOPER: I am not sure that we need to acquire anything. I think that we would need to negotiate something which is not readily negotiable.

148. MR BIRD: But there is no physical or other technical reason why the Immingham oil terminal could not be extended, for example, to the east.

149. MR COOPER: Can I come back to you on that?

150. MR BIRD: I am asking you. You are not aware of any evidence, are you?

151. MR COOPER: No, but that does not mean that there is not.

152. MR BIRD: But you have none at the moment.

153. MR COOPER: If I look at the Able map, the Immingham oil terminal ...

154. MR BIRD: Let us make sure we are all looking at the same thing. You are looking at 5.

155. MR COOPER: Yes, in the A3 version if that helps people. It is ABP3. I am happy to have this checked. If I look to the west, we have as previously discussed some ...

156. MR BIRD: I asked you about the east.

157. MR COOPER: That is fine. If we look to the east, I have not drawn a straight line at right angles from this map, but I cannot see that there is scope for the expansion without straying into someone else's rights.

158. MR BIRD: So you would have to acquire someone else's rights, but whose rights would they be?

159. MR COOPER: I think they are Total's. I do not think they are for sale.

160. MR BIRD: Where would they be and what would they be for?

161. MR COOPER: Sorry.

162. MR BIRD: What are those existing rights used for by Total?

163. MR COOPER: They are not used for anything, but they have previously been earmarked for a possible terminal for Total.

164. MR BIRD: Is this the east gate development area?

165. MR COOPER: No. We would not mark someone else's land as our development land.

166. MR BIRD: I just want to be quite clear what you are looking at. I was asking you about extending the Immingham oil terminal to the east. Let us look at the berthing facilities first. Is there any reason why that could not be achieved?

167. MR COOPER: It seems to me we are straying pretty rapidly into someone else's ground or water.

168. MR BIRD: Yes. So you would have to acquire some rights.

169. MR COOPER: Yes, but the rights are not available.

170. MR BIRD: Well, you can acquire them as a statutory undertaker, can you not?

171. MR COOPER: I don't think we can.

172. MR BIRD: I see.

173. MR COOPER: I am sorry, I am not the lawyer, but I don't think that being a statutory undertaker gives us a right to go out and compulsorily purchase someone else's land. I wish it did, because, my goodness me, we could have some fun.

174. MR BIRD: You have no powers of acquisition which would enable you to achieve that extension, is that right?

175. MR COOPER: I am happy to be corrected, but not as I am aware.

176. MR BIRD: This is actually advanced as a proposal in your Master Plan

177. MR COOPER: Well, it would have taken negotiation.

178. MR BIRD: So you can ...

179. MR COOPER: We can negotiate, we cannot enforce – as far as I am aware.

180. MR BIRD: Subject to that issue, there is no technical or other reason that you are aware of why that terminal could not be extended to the east.

181. MR COOPER: I think that it is a fairly major obstacle, but, if that is the way you want to put it, that is fine.

182. MR BIRD: There would then be the potential to access the east gate potential development area as set out in your Master Plan.

183. MR COOPER: If we were successful in acquiring repairing rights and associated, perhaps, land then that would flow, yes.

184. MR BIRD: If the capacity of the berth exceeded 5 million tonnes per annum, is there anything to stop ABP applying for a development consent order?

185. MR COOPER: Not that I am aware of.

186. MR BIRD: Therefore, you can apply for rights of compulsory acquisition through the development consent order just as Able did, can't you?

187. MR COOPER: Yes. I have to say that it is not ... The discussions with Total are unlikely ...

188. MR BIRD: No, forgive me, answer that question.

189. MR COOPER: Yes.

190. MR BIRD: You could do that.

191. MR COOPER: We could indeed.

192. MR BIRD: What is your issue in terms of compulsory acquisition given the Government has put in place through the Planning Act a mechanism in order to deliver schemes of national importance?

193. MR COOPER: Well, the issue that I have is that it is in the wrong place and we already own land and waterfront and we don't need to go compulsorily acquiring someone else's land.

194. MR BIRD: You say "wrong place", it is the right place as far as your existing Port Master Plan is concerned or at least one of the right places, is it not?

195. MR COOPER: The Port Master Plan is a living document.

196. MR BIRD: Well, it has not been withdrawn.

197. MR COOPER: No.

198. MR BIRD: And, as I understand it, it is in one of the right places as far as the Master Plan is concerned in order to provide for additional oil storage and importation facilities, isn't it, as a matter of fact?

199. MR COOPER: It is as a matter of fact, yes.

200. MR BIRD: Good. I see nothing from ABP which would suggest that it is seeking to revise or amend its Master Plan in order to delete reference to it.

201. MR COOPER: We are actually due to revise the Master Plan. These are DfT driven documents and it is coming up for renewal.

202. MR BIRD: Yes, but to date you have nothing to indicate that the oil terminal would cease to carry any potential?

203. MR COOPER: The updating process, Mr Bird, takes place in private and that is called the annual five-year business plan. I can assure you that the annual five-year business plan of ABP does not envisage extending IOT given the obstacles that exist to that.

204. MR BIRD: Forgive me, if the triangle site were not available, would that position change?

205. MR COOPER: If the triangle site were not available – I don't know.

206. MR BIRD: So it might?

207. MR COOPER: It might or it might not.

208. MR BIRD: "It might" will do for my purposes, I think, Mr Cooper.

209. MR COOPER: Well, it might not is mine.

210. MR BIRD: As far as HIT 1 and 2 are concerned, let us just move north on this aerial photograph, HIT 3: is there any reason why that could not be designed and extended so as to accommodate a dedicated quay for liquid bulks at the northern end between it and the South Killingholme jetty?

211. MR COOPER: What, and have a liquid bulk carrier sitting alongside a coal carrier on the jetty? Is that what you are suggesting?

212. MR BIRD: There are various permutations. Have ABP considered the potential to extend HIT 3 in a way which would provide for additional berthing for oil or liquid bulks importation?

213. MR COOPER: I don't believe that that option exists.

214. MR BIRD: You say that you do not believe it exists. Has it been examined?

215. MR COOPER: Can I come back to you on that?

216. MR BIRD: Yes. You don't know?

217. MR COOPER: I am not aware that it has been examined but I can see from this some substantial difficulties with it. I would have thought that the first difficulty is we are going to get mighty close to the South Killingholme jetty.

218. MR BIRD: That is a design issue, is it not? It depends on the size of HIT 3.

219. MR COOPER: HIT 3 is going to be another Panamax berth. It is going to be another 260 to 300 metres. It is going to be capable – I am sorry, not Panamax; *Light and Copes*.

220. MR BIRD: Yes, right.

221. MR COOPER: Even bigger.

222. MR BIRD: Then the South Killingholme jetty – sorry, the gas jetty, just staying with the gas jetty next then. As I understand your answer to me yesterday, you claim to have powers to effectively construct HIT 3 because of the powers which relate to the Immingham gas jetty, the historic powers under which the gas jetty was constructed.

223. MR COOPER: I am advised that we have powers under the 1983 Act.

224. MR BIRD: Leaving aside HIT 3, you would have powers to improve and extend the facilities at the gas jetty in order to provide for additional liquid bulks importation, would you not?

225. MR COOPER: If we did not have a need for coal and biomass, yes.

226. MR BIRD: If HIT 3 does not transpire and it is only an option that you are retaining at the moment, there is nothing to prevent ABP, according to your evidence yesterday, extending and improving the existing gas jetty to facilitate increased importation, is there?

227. MR COOPER: No, if we were not building HIT 3.

228. MR BIRD: As far as the OPA site, which we see on Able 5, is concerned, we can see on the left-hand edge as you look north, just to the bottom of the “O” of the OPA, there is a sizeable area of land within their site, is there not, which is not presently used for tank storage?

229. MR COOPER: Did you say ABP5 or Able 5?

230. MR BIRD: Able 5. It shows the OPA site. You can see just at the bottom of the letter “O” of OPA ...

231. MR COOPER: I am sorry; I am being obtuse.

232. MR BIRD: That is fine. You need to have it in front of you. It is the selected core. It is tab 5 of the selected core exhibits. If you have ABP3, that might be easier for you to have in hand. The Committee can stay with the original if that helps. You have the dotted blue.

233. MR COOPER: Yes.

234. MR BIRD: To the left-hand side of the red star, which notes the Government pipeline and storage system feed running down that left-hand side of that site, there is what appears to be an undeveloped strip of their site, is there not?

235. MR COOPER: You mean the bit that is in blue that encompasses one of the caverns?

236. MR BIRD: No. It is all within the dotted area.

237. MR COOPER: In the dotted OPA site you are talking about.

238. MR BIRD: Yes.

239. MR COOPER: Okay, yes.

240. MR BIRD: There is land apparently within their site which might have the potential for additional bulk fuel storage.

241. MR COOPER: We believe that that might be the case, but I understand there are certain challenges, but yes.

242. MR BIRD: Do you know how much?

243. MR COOPER: No. I don't know how much.

244. MR BIRD: As far as the South Killingholme jetty itself is concerned, is there any reason why that could not be extended or improved to accommodate increased liquid bulk importation?

245. MR COOPER: That is not ours.

246. MR BIRD: I am not asking you that.

247. MR COOPER: I don't know.

248. MR BIRD: So you don't know.

249. MR COOPER: I don't know what the conditional constraints on it are.

250. MR BIRD: So ABP has not assessed the potential there.

251. MR COOPER: It is quite difficult for us to just go wandering around other people's sites, but no.

252. MR BIRD: So you have not. You do, though, own land at Stallingborough, do you not?

253. MR COOPER: We do.

254. MR BIRD: And what size is that then?

255. MR COOPER: 25 acres. I am looking at the port director, I may have got that wrong.

256. MR BIRD: I do not think for my purposes we need to look at a map. I just want to ask you about that area of land.

257. MR NEWCOMBE: I would like him to look at the map, please.

258. MR COOPER: Where are we?

259. MR NEWCOMBE: It is the Port Master Plan which is core document 11. It appears in a number of places. Page 27 is Port of Immingham land use as at four years ago. It is a convenient place to go.

260. MR COOPER: Yes.

261. MR BIRD: It does not, in fact, on page 27 show the location of the Stallingborough site. It is off plan, as it were, and shown here for diagrammatic

purposes. Let us just let the Committee catch up. This is in the third volume, document 11. It is volume 3 of the big bundles. It is page 27. The box here says 48 acres.

262. MR COOPER: So 50 acres, okay.

263. MR BIRD: I am instructed that that is about 1.15 kilometres from the banks of the Humber.

264. MR COOPER: Yes.

265. MR BIRD: It has road and rail access.

266. MR COOPER: It certainly has road access. I have been to it.

267. MR BIRD: I am instructed that it has rail access.

268. MR COOPER: Well, that may be right, too.

269. MR BIRD: Confirmed. It would have space for a large tank farm.

270. MR COOPER: In technical terms, it would do that, yes.

271. MR BIRD: And we are dealing here with liquid bulks which are capable of being pumped, as we know, some distance and indeed around the country.

272. MR COOPER: So it would be expensive, it is not water frontage and we don't own the land between the port and Stallingborough, so there are numerous challenges to developing it for that kind of purpose. It was acquired for off-port storage.

273. MR BIRD: It was acquired for the right purpose.

274. MR COOPER: Off-port storage of goods that would be taken there probably by truck rather than by pipeline.

275. MR BIRD: Yes, but, as you have said, it is a flexible business, the Master Plan is flexible, and it may flex in order to meet market demands, and it is investigating whether Stallingborough could meet part of that market demand.

276. MR COOPER: I do not think that it meets economic requirements.

277. MR BIRD: Has that been analysed?

278. MR COOPER: I would have to say that it has not been analysed, but I can safely assume that building a one and a half kilometre pipeline from Immingham to Stallingborough would render it uneconomic as off-port storage. I think there are other things that we can use it for rather more economically.

279. MR BIRD: Right. Why were you so reticent yesterday about accepting the fact that the GPSS system to accommodate use of the triangle would not pose a similar constraint if it needs to be upgraded, without any knowledge at all as to what the costs of that upgrade or the potential may be?

280. MR COOPER: Well, because typically, as I explained yesterday, we are working our way through these projects one step at a time and we do have to clarify, indeed, what the capability is of the GPSS pipeline.

281. MR BIRD: You have not worked your way through any step of that process as far as the GPSS is concerned, as we established yesterday.

282. MR COOPER: As we established yesterday, there are a number of obstacles to progressing IWDJ, one is what is going on in this room now and the other is the privatisation of the OPA. It will not take long to establish these matters as and when momentum is restored to this process.

283. MR BIRD: Forgive me, Mr Cooper, you are relying upon a constraint which applies equally to another site, as being effectively an absolute constraint, whilst seeking to rely on a very similar constraint in relation to the triangle and indicating that it is easily resolved, without any evidence at all.

284. MR COOPER: Well, I did not think I said it was easily resolved. I said that it is one of the issues that is normally resolved.

285. MR BIRD: All right, normally resolved, without any evidence at all.

286. MR COOPER: We are practised developers and we will overcome these obstacles as they arise.

287. MR BIRD: Let us move on. As far as ABP and wind energy are concerned, as I understand the position, correct me if I am wrong, ABP supports the Government's policy in terms of offshore wind, its delivery and indeed its renewable energy targets.

288. MR COOPER: We are agnostic.

289. MR BIRD: You are agnostic. I see. Has that position changed?

290. MR COOPER: No. We support a number of different energy types as a group.

291. MR BIRD: If you take up the Master Plan, this is your core document 11, it would be fair to say, would it not, that in terms of renewable energy, it identifies that renewable energy is one of the ...

292. MR COOPER: Where have you gone to?

293. MR BIRD: If you would go to page 10 of that, it is 1.17. We see there the first picture setting out the wind turbine. We see the Port of Immingham being advanced as being important in terms of the low carbon economy. Yes?

294. MR COOPER: Yes.

295. MR BIRD: And you set out in the Master Plan, at the top of page 12, a reference to Government policy and you stress the longstanding links that ABP has in pursuing opportunities to support a number of renewable energy sectors.

296. MR COOPER: Yes.

297. MR BIRD: But you are agnostic, are you, as to whether or not those sectors succeed?

298. MR COOPER: Well, we have different customers with different requirements, Mr Bird, so I suspect that Drax's interest in offshore wind is somewhat constrained. I suspect that Siemens' interest in what Drax does is somewhat constrained. It is not our job to take sides.

299. MR BIRD: I am not asking you whether you take sides.

300. MR COOPER: Well, that is what I meant by being agnostic.

301. MR BIRD: It is whether you support Government policy to increase the provision of renewable energy in the period to 2050.

302. MR COOPER: I do not take political positions.

303. MR BIRD: It is not a political position.

304. MR COOPER: It is a political position.

305. MR BIRD: You as an operator of ports support Government policy in terms of the delivery of its key objectives.

306. MR COOPER: I support my customers and their needs.

307. MR BIRD: I see. If AMEP can be made to work, as I understand it you have no objection in principle to it, and work as a whole, that would be a good thing in terms of the Government's objectives, would it not, whatever you might think of those objectives?

308. MR COOPER: I can see that AMEP supports certain Government objectives, yes.

309. MR BIRD: Good. As far as ABP is concerned, one of the reasons why you may be agnostic is because of what you said yesterday that, effectively, you are a reactive port operator, you invest when you have a customer and when demand is established.

310. MR COOPER: Correct.

311. MR BIRD: You are not, are you, in the business of creating markets?

312. MR COOPER: It is very hard for a port to create a market.

313. MR BIRD: In terms of your position, you are on the board of the Offshore Wind Industry Council, are you not? You told us yesterday.

314. MR COOPER: I am not on the board. I am a member of it.

315. MR BIRD: You are a member?

316. MR COOPER: Yes.

317. MR BIRD: I see. In your personal capacity, you are sufficiently in favour to be a member of that Council or is that in an ABP capacity?

318. MR COOPER: It is definitely in an ABP capacity.

319. MR BIRD: Right. But it is fair to say, is it not, that as far as ABP is concerned it does not run nor does it have any current plans to run an offshore wind turbine manufacturing port?

320. MR COOPER: No. We are providing the facilities for one, so we are – well, it depends what you mean by “run”. If you mean operate, we may yet operate Green Port Hull. The discussions with Siemens about who actually operates the port are ongoing.

It is not part of the agreement that we signed with them for the construction of the port. There is often a split in our business between who operates the facility and who builds and uses it.

321. MR BIRD: Yes, but Green Port Hull, as its name suggests, is a port, isn't it? Siemens do not intend to manufacture at Green Port Hull. The manufacturing, as you identified yesterday, if it is consented, would be blades at port.,

322. MR COOPER: No, there is an assembly plant there.

323. MR BIRD: No, that is an assembly plant.

324. MR COOPER: I think the differentiation between assembly and manufacturing is completely specious.

325. MR BIRD: That is your evidence, is it, to the Joint Committee that there is no distinction between an assembly port and its requirements and a manufacturing port? What is that based on?

326. MR COOPER: That is based on the fact that, if you go to Jaguar Land Rover, for instance, at Solihull which I had the pleasure of doing the other day, we had a debate about whether it is assembly or manufacture. In essence, they are taking components often made elsewhere, in Germany or the Far East, and they are putting them together. You can have a debate about whether that is assembly or manufacturer, but that is actually what is going on there. The raw manufacturer of the components is taking place often somewhere else, to the benefit of the wider economy, a lot of it within the West Midlands, but some of it in Germany and some of it in Asia and so on and so forth.

327. MR BIRD: As far as Siemens are concerned, to the extent that they manufacture in accordance with their present proposals, it would be blades at port. The nacelles would be imported from Denmark, would they not?

328. MR COOPER: Yes, and the reason that they changed that is that there is surplus in the nacelle capacity and there was no need to build another nacelle factory, in their view, in an over served market.

329. MR BIRD: We will come back to market issues if not with you with others. As far as a manufacturing port is concerned, it will inevitably, if manufacturing is taking place, operate differently, will it not, not least because there will be importation of raw materials to a manufacturing port which you do not have at an assembly port?

330. MR COOPER: Well, how do the components get to the assembly port?

331. MR BIRD: There is a difference between, in terms of, for example, the number of vessel movements, the number of transportation movements involved in putting together assembled products and, effectively, making the product from the raw material, is there not?

332. MR COOPER: So which raw materials are going to come to us?

333. MR BIRD: You cannot ask me questions, sorry.

334. MR COOPER: I do apologise.

335. MR BIRD: I am asking you whether you have actually undertaken any analysis of the difference between an assembly port and a manufacturing port. If so, where is it?

336. MR COOPER: We expect that components will be imported to both facilities, though I would note that it is Government policy that over 50% of the components of a wind turbine are domestically made and in that case I am expecting that much of that will arrive by road or conceivably by rail into GPH and AMEP and not by ship, because, if it is made in the United Kingdom, it will arrive hopefully from the belt between Hull and Liverpool by road.

337. MR BIRD: In terms of the problems facing the wind industry, the offshore wind industry in particular, the issue of cost is critical, is it not, at present?

338. MR COOPER: That has been impressed upon me.

339. MR BIRD: Yes. And one of the factors which increases the costs is the transportation of, for example, assembled or unassembled components in order to assemble them in the UK. It is cheaper to manufacture and assemble and deploy from UK sites.

340. MR COOPER: That is not necessarily the case.

341. MR BIRD: Well, it is more likely to be the case than not.

342. MR COOPER: I don't think it is, actually. That would just challenge the whole principle of international trade.

343. MR BIRD: No, it is a question of ...

344. MR COOPER: Some people have a competitive advantage. There is existing capacity and the marginal costs of producing a nacelle in Europe is a lot less than the cost of producing a nacelle in the UK.

345. MR BIRD: Forgive me, Mr Cooper, has any assessment been undertaken by ABP of this or is this just Mr Cooper?

346. MR COOPER: This is just Mr Cooper.

347. MR BIRD: Right. You are not, are you, an expert in offshore wind turbine manufacture?

348. MR COOPER: No. I freely admit that I am not an expert and very much, Mr Bird, if that will make you happy, but it has become very clear to us that, in order to persuade Siemens to come to Hull, there had to be a base load of demand for their product. That sort of makes sense, doesn't it? I am sorry, I asked you a question. The process by which Siemens have satisfied themselves – we know a little bit about this

process, having been talking to Siemens for four years. It has been fraught, I mean there is no doubt about it. There have been times when the Siemens project has looked unsteady because of Siemens' lack of confidence about having a base load of volume to justify the £160 million that they are spending, bearing in mind they already have facilities in Europe from which they could manufacture, so why spend another £160 million – that has been ignored in the equation – when you have existing facilities? They have worked fantastically hard with Government to satisfy themselves that there is sufficient demand for Siemens. Now, one of the reasons that they have felt themselves comfortable, apart from their endless trooping in and out of Government departments, their endless lobbying of MPs and their endless lobbying of everybody else, is that they have a track record of winning the lion's share. I did a little study myself the other day to look at what Siemens' market share is of the offshore wind industry and I sort of split it between operating, under construction, consented and in planning, so as far as the eye can see. That just assumes by the way that everything that is out there that is consented or in planning is going to happen in full and that is a pretty bold assumption. But of the operating facilities that there are at the moment, Siemens' share of the turbines in operation in UK waters is 70%, of the farms that are under construction at the moment, it is over 80% and of the farms in consented or in planning, and I have to say not many have necessarily made a decision about who they are going to use as their turbine supplier, but where we believe we know the answer, then the figures you are talking about are just ahead of 80%. Any which way you cut it, Siemens have satisfied themselves that they have got a substantial market share of what they acknowledge is a declining market, but, combined substantial market share with declining market, it is enough to proceed with £160 million worth of investment in the UK, alongside our £160 million of investment.

349. MR BIRD: Yes, Mr Cooper, does that not, in fact, make the point, however, because, in fact, the terms of the delivery that the Government have identified, it is not being delivered at a cost which will enable the targets to be met, so there is a need to drive costs down, is there not, and competition is a key consideration in driving costs down?

350. MR COOPER: Yes.

351. MR BIRD: Good.

352. MR COOPER: And we have spoken to the developers as well and they are keen that there be an alternative to Siemens.

353. MR BIRD: Yes.

354. MR COOPER: They fully understand that. We expect there to be an alternative to Siemens.

355. MR BIRD: Good. As far the issue of development costs, which you touched upon in your evidence yesterday, you did a comparison between the cost of Green Port Hull and the cost of AMEP, didn't you?

356. MR COOPER: Yes.

357. MR BIRD: In terms of the cost of Green Port Hull, you put that in at £136 million.

358. MR COOPER: Yes.

359. MR BIRD: Is that the total cost?

360. MR COOPER: It is the total cost of Green Port Hull. There is another £20 million which I referred to yesterday, which is the opening up of the Paull estate, which is 21 million.

361. MR BIRD: That is 136 million. You then give various figures for AMEP, ranging from I think 790 million to 800 million.

362. MR COOPER: No, I will ...

363. MR BIRD: I will put the correct figures ...

364. MR COOPER: Okay, you put the question again.

365. MR BIRD: I am instructed that the figure is 436 million.

366. MR COOPER: Okay. Even very recently there was a press release from somebody connected with Able said 450 million, okay. I am just referring to the fact that in the Panel review when Able was asked about the cost to it the number went from 450, I think, to 485, because it did not include the land. It was not clear whether it included the costs of compensation. Then a number of 800 was offered. Then it became 790 and then 80 million of logistics park was thrown in there, so maybe it is 710. I do not know what the number is, but it is at least 450 million, isn't it?

367. MR BIRD: I put it to you that it is 436 million on my instructions. If we look at that, Green Port Hull is 134 acres or 53.6 hectares, is it not?

368. MR COOPER: Yes.

369. MR BIRD: And AMEP is 590 acres and 236 hectares.

370. MR COOPER: Yes.

371. MR BIRD: So Green Port Hull per hectare is costing 2.5 million, whereas AMEP would be £1.8 million per hectare. That is not the impression that you sought to give the Joint Committee yesterday.

372. MR COOPER: The point is that it is about utility. If 400 turbines are going out across an asset that has cost 450 million and 300 turbines are going out across an asset that was costing £136 or 160 million – pick your number – then there is a cost per turbine moved and that is the ultimate test. It is not the cost per acre or the cost per shed or the cost per this, that or the other. It is the cost per turbine. I am merely using as best I can apples and apples without getting into a whole lot of genetic modification. We don't have open books. I fully accept that. I am comparing a fully-prepared site, which is what I presume AMEP is proposing, I don't know, and which Green Port Hull will be, and I am noting the difference – I don't know if the 450 ... Does the 450 ... I

am sorry, I am not allowed to ask you questions. It strikes me that so far as apples and apples, it is clearly much more expensive per assessed turbine and that is the measure of economic efficiency at the end of the day.

373. MR BIRD: What account in that exercise have you taken of the need for turbines to have foundations?

374. MR COOPER: Well, I am not quite what the relevance of that question is in terms of that, but there are ...

375. MR BIRD: How valuable to, as it were, a manufacturing port dealing with offshore wind turbines is the foundation construction business?

376. MR COOPER: I am told that foundation manufacturing is a relatively low margin part of the construction. I am told that there are a number of locations around the coast that can handle it and I am told that in all likelihood there will be somewhere in the UK a single foundations manufacturer and I am told that it might even be at Green Port Hull.

377. MR BIRD: And what type of foundation are you ...

378. MR COOPER: You are getting into interesting grounds and I am sure that other people are more expert on construction.

379. MR BIRD: It is not for you to comment on then?

380. MR COOPER: No.

381. MR BIRD: I will move on.

382. MR NEWCOMBE: Forgive me intervening, if there is a point about the cost profitability of turbines, then Mr Cooper is the witness to put it to, certainly in the first instance, and it would assist me if Able have a particular figure in mind. If for whatever reason, either through commercial confidentiality or otherwise, they either don't have a

figure or they don't want to release it, so be it, but in order to give Mr Cooper a fair chance of answering the question and commenting in so far as he can – the Committee has seen that in so far as he cannot comment, he very frankly says, “No, I can't go any further” – it would assist certainly me selfishly, though the Committee may take a different view, if Mr Bird could put that figure or figures.

383. MR BIRD: My lord, I am not prepared to put a specific figure. I was testing this witness to see to what extent he had an understanding of the nature of the figures involved and that was the point of the question and he has given his answer that he cannot.

384. MR COOPER: I am sorry, I can do crude maths and the crude maths demonstrate exactly what I set out. It may be overly crude in which case please demonstrate the over crudeness. I can certainly quote from somebody, who has to be on the top of the list of potential targets for AMEP and of course these people are talking to us, who turned around the other day and said, “Whatever else I might or might not understand about AMEP, I do not understand who is going to bear the cost of it.” But it ain't us.

385. MR BIRD: That is the height of your evidence on that point, is it?

386. MR COOPER: I think that anecdote has a value.

387. MR BIRD: Well, is there anything else other than anecdotal as far as you are concerned?

388. MR COOPER: I have done the maths and I have explained to you how I come to the conclusion that AMEP is per-shipped-assessed turbine more expensive.

389. MR BIRD: Can we agree, though, that in terms of the Government's round three offshore wind farms and fields, they have the potential to be the largest wind farm market in the world?

390. MR COOPER: They do have that potential.

391. MR BIRD: Good. Immingham is ideally located for easy access to those wind farms.

392. MR COOPER: We accept that the Humber has a role.

393. MR BIRD: Good. There are other advantages in terms of Immingham, not least the proximity to Tata Steel at Scunthorpe.

394. MR COOPER: If Tata is selected, yes.

395. MR BIRD: And indeed the operations and maintenance facilities at Grimsby.

396. MR COOPER: Indeed.

397. MR BIRD: Again, clustering drives costs down, does it not?

398. MR COOPER: Well, we hope there is a cluster on the Humber, yes.

399. MR BIRD: In terms of the land requirements for the various manufacturers for parts of turbines, for example, nacelle manufacturers, blade manufacturers, tower manufacturers, foundation manufacturers, what is your understanding of the land areas which they each require, Mr Cooper?

400. MR COOPER: Siemens are still deciding ... Well, first of all, perhaps, an assessment of where we think the market may end up in the UK. We think there is no prospect of a nacelle ...

401. MR BIRD: I think that we are at cross purposes. I want to know your understanding of the actual land areas required by nacelle manufacturers, blade manufacturers, tower manufacturers and foundation manufacturers for the next generation wind turbines, so what is the hectareage required, for example, by a nacelle manufacturer?

402. MR COOPER: I don't know nacelle manufacturers, because we don't have one that is interested in settling at Paull.

403. MR BIRD: Blade manufacturer?

404. MR COOPER: Someone is talking to us about – I am sorry to do this – 60 acres, I am not quite sure what that is in hectares.

405. MR BIRD: 24 hectares. Tower manufacturer?

406. MR COOPER: Similar.

407. MR BIRD: Foundation manufacturer?

408. MR COOPER: I can't answer that question.

409. MR BIRD: I am instructed 30 hectares.

410. MR COOPER: And nacelle manufacturer I am instructed 50 hectares.

411. MR COOPER: Well, if you can find one, good luck.

412. MR BIRD: And the developers of the wind farms themselves, do you have any of those on your existing port's estate?

413. MR COOPER: Well, we have them in an O&M context.

414. MR BIRD: And what areas do they require for the next generation as opposed to the current generation of wind farms?

415. MR COOPER: For what O&M purposes?

416. MR BIRD: Yes.

417. MR COOPER: Well, not very much more than they have at the moment.

418. MR BIRD: Which is what?

419. MR COOPER: I cannot answer. I can get you a full list of who is in Grimsby docks, if you want.

420. MR BIRD: In terms of exclusive quay use, what is ABP's experience in terms of its negotiations and discussions with offshore wind turbine manufacturers in terms of the quay requirements and exclusive use?

421. MR COOPER: Well, that is an interesting question, because I think that the assumption that existed for much of the preparation of Green Port Hull was that it would be exclusive to Siemens. I think that Siemens are realising that there is, first of all, some capacity and, secondly, desirability to make the facility more open to other users, particularly as they wish to see manufacturers congregate at the Paull estate to the east of Hull. And they know that those manufacturers will not be exclusive to Siemens. They expect that those manufacturers will at least be serving one other turbine manufacturer. Siemens are in the process of reviewing how they can stimulate the attraction of the cluster to the Paull estate and we actually have another dock between the Paull estate and the King George dock and that is not exclusive to Siemens.

422. MR BIRD: I was asking you here about manufacturers.

423. MR COOPER: Siemens is a manufacturer.

424. MR BIRD: As far as Green Port Hull, we have established that it is not. As far as manufacturers ...

425. MR COOPER: I don't think that we did establish that, because I think that we put a spurious distinction between assembly and manufacture.

426. MR BIRD: No, we established that they did not manufacture, they assembled. I asked you about manufacturing.

427. MR COOPER: I don't accept the distinction.

428. MR BIRD: Because I am instructed by Able that the vast majority of the interest in AMEP is seeking exclusive use quays and the average length is 279 metres of quay for manufacturers.

429. MR COOPER: 275 metres of berth – what for one ship? I am sorry, I cannot answer your question. The ships are about 150 metres long.

430. MR BIRD: Exclusive quay use. The average is 279 metres.

431. MR COOPER: That is not the conversation that we have had. Conversations we are having broadly I think with some of the same people are not – I mean, there is no comparison.

432. MR BIRD: Can we then, please, go to ABP12? This is not your document, as I understand it.

433. MR COOPER: No, it is not.

434. MR BIRD: In terms of detailed questions, I assume that I put those to – is it Mr Galbraith?

435. MR COOPER: Yes.

436. MR BIRD: Would you prefer me to put questions in relation to that ...

437. MR COOPER: Let me hear the question and I will tell you.

438. MR BIRD: The figure that you gave was a 65 to 75% figure as being what you would aim for. That is only achievable, is it not, where there would be several berths available?

439. MR COOPER: I am not sure I understand why that would be the case. Is it several common user berths, is that what you are talking about?

440. MR BIRD: Yes.

441. MR COOPER: Common user berths not dedicated berths?

442. MR BIRD: Yes.

443. MR COOPER: I am not sure why that is the case. The highest berth utilisation I have seen is for actually single use berths.

444. MR BIRD: It would certainly depend on the number of vessels and the weather, for example, and random arrival patterns.

445. MR COOPER: Our understanding or my understanding, having discussed this with people who are more closely familiar with the operation of these facilities than I am, is that you should be able to load eight turbines per berth per week, four per ship, two ships per week. That gives you berth utilisation up to two days to load four turbines, so four days out of seven being used, that gives you sort of sufficient flex for weather and so on and so forth. That is eight turbines per week, 50 weeks in a year, 400 turbines, one berth. I accept that there is a requirement for space around that –

446. MR BIRD: Good.

447. MR COOPER: – but that is the maths that I have been given by actual operators in these facilities.

448. MR BIRD: So that is the basis and you are saying that you can achieve 65% to 75% occupancy on that basis?

449. MR COOPER: No, I did not. I said four out of seven, I cannot do the maths on that basis, but it is slightly over half, isn't it? It is probably about 55% or something like that.

450. MR BIRD: It is fair to say, is it not, that with a random vessel arrival pattern, one starts to get queuing at about 30%?

451. MR COOPER: We are fully familiar with random vessel arrival patterns. That is part of a port operator's job to manage that.

452. MR BIRD: Yes. To the extent that it cannot be managed.

453. MR COOPER: Well, there are various ways in which it can be managed.

454. MR BIRD: Yes. But, given that it is influenced, for example, not least by the weather, there are limitations on the extent to which it can be managed.

455. MR COOPER: I think that, if you have three spare days out of seven, you have plenty of latitude for managing around that particular issue. Actually, scheduling vessels, particularly where you are running apparently your dedicated berth is much easier. That was why, actually, in different industries like containers you see exceptionally high volumes, whether or not, of berth utilisation.

456. MR BIRD: We are not dealing with containers.

457. MR COOPER: I know we are not dealing with it, I am just saying to you that, if you control your own affairs, it is easier to manage those scheduling issues.

458. MR BIRD: Are you claiming that you can achieve or could achieve 65 to 75% with wind installation vessels serving the North Sea?

459. MR COOPER: I am told by professionals that achieving four out of seven is perfectly achievable. I have asked them whether they could push further and their view is, yes, but four out of seven – eight turbine a week – is the number that they gave me.

460. MR BIRD: What is the turbine size assumed?

461. MR COOPER: Those are Siemens 6 megawatts.

462. MR BIRD: So they do not cater for 8 or 10 megawatts?

463. MR COOPER: No, I don't think that the time taken is going to increase exponentially just because the turbine tower has got a little bit higher and the blade is a little bit longer.

464. MR BIRD: Then can we go on to ABP13 in the ABP documents? This again is prepared by others not you.

465. MR COOPER: Yes.

466. MR BIRD: Just here in relation to Green Port Hull, what is Siemens' expectation of their deployment in 2020 and in 2030?

467. MR COOPER: I don't know the answer to the second question. Actually, Siemens have been fairly hesitant in terms of disclosing their business plan. I believe that 300 per annum is a number with which they would be familiar.

468. MR BIRD: Is that 2020?

469. MR COOPER: Yes. We should be operational in the middle of 2016.

470. MR BIRD: So they are sufficiently comfortable in terms of the ability to achieve that business in the North Sea to progress with Green Port Hull?

471. MR COOPER: That is because they think that they have the market share momentum behind them.

472. MR BIRD: I think that away from that, there are two last matters that I just want to touch upon. As far as the AMEP scheme is concerned, if you could just go back in the ABP documents to ABP5, here I just want to look at the inset A on ABP5. It is the bottom right-hand corner. That shows the triangle site and has within the shaded area of

the ABP triangle overspill low level storage, three, of 5.2 hectares. As far as the words “low level” are concerned, what did you understand those to mean?

473. MR COOPER: The critical one is overspill but “low level” I actually took to be not very high.

474. MR BIRD: Good. You do appreciate that it is actually to be used, as it were ...

475. MR COOPER: As overspill, yes.

476. MR BIRD: Yes. Good.

477. MR COOPER: As overspill.

478. MR BIRD: Yes

479. MR COOPER: Not as coal storage, as overspill.

480. MR BIRD: I appreciate that. Your experience of offshore wind ports, be they manufacturing or assembly, storage areas are intensively used, are they not?

481. MR COOPER: They are carefully managed, yes.

482. MR BIRD: But intensively used?

483. MR COOPER: It depends.

484. MR BIRD: Well, it depends on a variety of factors. One of the factors that it will depend upon is the weather – yes?

485. MR COOPER: That may well be one of the factors. There is the efficiency of the plant, the efficiency of the out loading, a whole range of factors that go into storage and how much is needed.

486. MR BIRD: Of course. It is important, isn't it, to have the ability to store for manufacturers to ensure that they can continue to manufacture when otherwise their premises would be constrained because they have nowhere to put completed items elsewhere on the site, because, for example, weather may be delaying deployment or the season may delay deployment? You need storage, do you not?

487. MR COOPER: Our argument is not that there is not a need for storage, but that this is non-coal storage and there is plenty of other land available. So 2,000 acres or whatever Able has accumulated, go find another 13 acres somewhere else.

488. MR BIRD: I see. I think that I have been through the land area that people are seeking. Just in terms of the pumping station, you seem to dismiss the issue of cost as being relevant to the location of the pumping station. We can agree, can we not, that in the context of a scheme which is intended to drive down costs, anything which increases the costs which those involved in the industry would have to pay is a good thing?

489. MR COOPER: Say that again, sorry.

490. MR BIRD: Yes. In the context of a scheme which is intended to assist in driving down the cost of the offshore wind industry, anything which increases the costs of a scheme and, therefore, would increase the cost of potential occupiers would be a bad thing and anything that reduces those costs is a good thing, is it not?

491. MR COOPER: Not from a CPA perspective, it is not.

492. MR BIRD: Well, that is a relevant consideration, isn't it?

493. MR COOPER: What for the CPA purpose?

494. MR BIRD: Yes.

495. MR COOPER: I am told that cost is not a relevant issue for CPA purposes: just because something is cheaper does not make it justified – but maybe my lawyer should be changed.

496. MR BIRD: If the cost bears on the objective directly of the scheme, then it is relevant, isn't it?

497. MR COOPER: We believe that the incremental cost – I understand the point you are making – of moving to one of two locations is very marginal in the context of a 710 or £450 scheme.

498. MR BIRD: What is it?

499. MR COOPER: Our engineers have not got full access, but it is not – if it adds another 5 million, I would be surprised.

500. MR NEWCOMBE: I am developing an irritating habit of intervening. One of the problems that ABP had at the Panel process was Able was somewhat coy with figures. If this is a material point in relation to cost of the pumping station, I have refreshed my memory from the document which was produced to the Panel which considers in a little more than a page and a half four separate locations for the pumping station. So far as I can see, and I am entirely content to be corrected, but, as far as I can see, it does not condescend into cost. It will be my submission that relative cost is a material consideration but not determinative. Able clearly have an estimate for each of these. I would very much appreciate it if those figures were now put to my witness so he is able to express a fair and informed view. This approach of simply testing and wandering around without putting any positive information to the witness is, with respect – and I say this with regret – unfair. Can the relative costs please be put?

501. MR BIRD: My lord, Chairman, as you pointed out yesterday, the onus is on the petitioner and so it is fair to ask the petitioner to what extent they have investigated the issue of costs. We have not put a positive figure. Here the issue is whether they have investigated the issue of costs. It appears they have and their engineers have indicated a cost of ...

502. MR COOPER: They have indicated a marginal cost.

503. MR BIRD: Marginal cost. I am happy to stick with that marginal cost, £5 million.

504. MR COOPER: I would go for a ballpark of the top of my head.

505. MR BIRD: Ballpark off the top of your head?

506. MR NEWCOMBE: I am sure that my lord will tell me to shut up when I become more than usually tedious. However, I am going to insist on this point. Able is running apparently a case, notwithstanding the fact that it accepted at the Panel process, that there were alternative locations for the pumping station and it was chosen simply on the basis of cost. My recollection is that the Able witness was Mr Cram, but I will be corrected if I am wrong. I had expressly asked for figures which are clearly in Able's knowledge. I am not at the moment anxious to argue who has the onus of proof, but in order that we follow what Lord Sewel enjoined the parties to do, to cooperate – and cooperating and informing your Committee to the best of their ability – it would be extraordinarily helpful if those figures could either now be put or disclosed and Mr Cooper will have a chance to consider them. If Able refused, so be it.

507. MR BIRD: My lord, I am not taking the point any further than I have put it. I have the answer that I wanted from Mr Cooper and I am not prepared to put the figures before the Joint Committee at this stage.

508. As far as the Panel was concerned – and this is the final issue, Mr Cooper – the development consent order procedure under the Planning Act is intended, is it not, to be principally a paper or written representations procedure in the interests of trying to speed up the delivery of nationally important infrastructure projects, learning from the lessons of the past?

509. MR COOPER: You are more of an expert on this than me.

510. MR BIRD: Yes. Was that your understanding?

511. MR COOPER: I don't have an understanding, actually.

512. MR BIRD: Right. But you have no doubt checked and researched the history of ABP's involvement at the Panel, have you?

513. MR COOPER: I have some knowledge of the ...

514. MR BIRD: ABP had and took the opportunity to make written representations in relation to a variety of issues, not limited to the compulsory acquisition of the triangle site, but they certainly took the opportunity to make written representations in relation to the effect on the port of the acquisition of that site, didn't they?

515. MR COOPER: If you say so.

516. MR BIRD: Yes. Have you seen them?

517. MR COOPER: I cannot say that I have specifically seen them, no.

518. MR BIRD: The impression that you appeared to give to the Joint Committee yesterday was that the sole consideration of ABP's position in relation to the triangle was limited to 15 minutes at a Panel hearing.

519. MR NEWCOMBE: With respect, that is a fundamental misrepresentation. I expressly took the Panel to the point and showed the Panel the matter which related to ABP's ability to ask questions direct of the relevant Able witnesses. The point was put clearly in that compass. With respect, I would invite the question to be reformulated on a fair basis.

520. MR BIRD: I think that it is a fair question. I am asking about the context in which that particular evidence was given by Mr Cooper, my lord. I just wanted to establish that, in fact, ABP did have and did take the opportunity to make written

representations and the Panel hearing on the issue is to test any issues which the Panel wish to test arising from those written representations, isn't it?

521. MR COOPER: It is our view that the time allocated for the examination of the issues was not great.

522. MR BIRD: My lord, those are my questions.

523. CHAIRMAN: Thank you very much, Mr Cooper. Are there any questions that the Panel wish to put to Mr Cooper at the moment? Lord Plant.

524. LORD PLANT: It is not a question, actually, but I think that it might be useful. Tata Steel has been referred to several times during the morning and at 10.30 the Government made a statement on the future of Tata Steel. It might be interesting to find out what that statement said.

525. MR COOPER: A deal was announced yesterday for the disposal of part of the Scunthorpe works. The impact of that transaction I have to say I am not sure. It's too early to judge, isn't it? Zero.

526. CHAIRMAN: Thank you, Mr Bird. Mr Newcombe, have you any questions that you wish to put or any further material you want to deal with with Mr Cooper?

527. MR NEWCOMBE: My lord, there are one or two matters. Just before I do that, though, I do need to double check the basis upon which I am proceeding. Mr Cooper explained yesterday – and if I can invite the panel to have ABP12 open in front of them – that berth occupancy and quay utilisation were useful management tools in judging the efficiency of infrastructure which had been built. You will recall that he gave the information as a general rule of thumb, and no more than that, 65 to 75%. In the spirit of fairness and openness, ABP has identified what it says are the relevant key utilisation figures. It will be my submission, unless I am told expressly to the contrary, that it is inconceivable that Able have not carried out a similar exercise. These figures were not – I repeat not – calculated by Mr Cooper, but he has taken them as a starting point and commented on them. I am concerned about two things. First, none of these figures has

actually been challenged. If they are to be challenged, then I, and, in my respectful submission, the Committee, are entitled to know what Able say are the figures which the Committee should use. There is then in so far as a difference a clarity of it and my team will have a fair opportunity to respond. If again for whatever reason this is yet another set of figures with which Able propose to be coy, so be it, but, in fairness to Mr Bird and those who instruct him, I am making it very clear now, and I rarely take points on cross-examination in this fashion – Mr Bird knows that – my submission will be, in the absence of direct challenge to these and telling one of my two relevant witnesses on this what those alternative figures ought to be, the Committee can only proceed on the basis that ABP12 has got it right. The reason for mentioning it now is not to be tedious, but to give Mr Bird and those who sit behind him a fair opportunity, if they have the figures, to put them to Mr Cooper so, so far as he is concerned, he can comment on them.

528. MR BIRD: My lord, Able's position is that ABP12 is not, in fact, relevant to a manufacturing port as advanced by AMEP and that is the point that I will be taking up with Mr Galbraith when he comes to speak to the figures. I did not consider it appropriate to deal with it with this particular witness.

529. CHAIRMAN: Well, that is where we stand.

530. MR NEWCOMBE: Right, Mr Cooper. Starting with that, on the basis that you have already told, ABP has developed Green Port Hull or is developing Green Port Hull with Siemens.

531. MR COOPER: Yes.

532. MR NEWCOMBE: Do you invite the Committee to assume that Siemens know what they are talking about in this area or know nothing about it?

533. MR COOPER: No, I think Siemens are pretty much the global experts.

534. MR NEWCOMBE: All right. With the experience of talking to Siemens and Green Port Hull, ABP has produced these figures. The first question, you heard Mr Bird say that they are irrelevant, is that a view that you take?

535. MR COOPER: I am sorry, can you say that again?

536. MR NEWCOMBE: It is me mumbling again. You heard Mr Bird's view – my word, but essentially what he was saying – that ABP12 and the figures in it are irrelevant to considering use of an energy park. Do you consider them to be relevant or irrelevant?

537. MR COOPER: No, they are highly relevant.

538. MR NEWCOMBE: Given that you have just told the Committee, and it has not been challenged, that Siemens do know what they are talking about, Mr Bird in cross-examination of you elicited the figure of 300 turbines per year as Siemens' expectation at Green Port Hull before 2020. Do you recall that?

539. MR COOPER: By 2020, yes.

540. MR NEWCOMBE: If Siemens know what they are talking about and ABP know what they are talking about as port operators, and they are content that they can do that business on the materially reduced quay length and area at Green Port Hull, what does that tell us about the empire at – forgive me, that is a tendentious way of putting it – about the land requirements which Able suggest they need for 400 turbines and 200 nacelles plus 50 foundations?

541. MR COOPER: I am going to come back to some boring old part of this process. We are seeking to not have to compulsorily purchase a relatively modest parcel of land. The critical fact for us is the quay, it is the waterfront. That is because we are a conventional boring old port operator which handles cargo across berths. That is the way that we are made. What Able does, the jobs that Able say that they will bring to AMEP, will not be created at the berth front. They will be created in the factories behind, if that is what actually happens. It is then about the efficient movement of the

goods into and out of those factories. I have intimated that I suspect that most of the goods in are going to come other than across the berth at AMEP. They could come through Immingham, for goodness sake. I would be delighted. We have container facilities there for handling in-bound components and I expect they will. Maybe they will come on DFDS ferries, who knows. But the main point is that what our compromise does is it does not threaten the job creating capacity which lies behind in the factories. That is where the jobs are created. The actual number of people required to move 400,000 tonnes of cargo a year across a quay is very small. That is not the job creation scheme here. The job creation scheme is the manufacturing. That is not impacted by our proposal. The answer to Mr Newcombe's question is that berth occupancy does matter in terms of economics and nothing that we are proposing suggests that there will be excessive berth occupancy or even a particularly great risk of what Mr Bird was referring to, which is commonly known as demurrage, which is, if you have to keep a ship waiting for a berth before it can be serviced, then you have to pay the ship owner for the delay. It is something we manage all the time as a port operator.

542. MR NEWCOMBE: This is the next point and at the moment I am moving backwards through the points that Mr Bird was putting to you today. He gave to you the figure, assuming my note is correct, of a requirement for a sole occupancy berth of 279 metres of quay. Do you recall that?

543. MR COOPER: Yes.

544. MR NEWCOMBE: Give the Committee a feel for the length overall of the vessels here to be employed, whether at Green Port Hull or at the AMEP facility. If you don't know the answer ...

545. MR COOPER: I am told that they are about 150 metres in length and getting larger, like all other shipping. We referred to that trend all along. As the turbines are getting larger, they will need to be larger. I am told that they could get to 175 metres in length, say 200.

546. MR NEWCOMBE: Just have a look at Able's exhibit 3, if you would, please. Now, I am going to assume – and I want you to assume, unless we are told to the contrary – that Able has sought here to present a wholly fair and accurate representation of what is proposed. Just pausing, so somebody can tell me I am wrong. Silence. I will continue. Do you see the two vessels there?

547. MR COOPER: Yes.

548. MR NEWCOMBE: Just looking at it, and without bothering to scale it – if it is necessary we will have it scaled – how many of those vessels do you think can actually get along that quay?

549. MR COOPER: Six or seven I should think.

550. MR NEWCOMBE: Good. We can see how close those two vessels are parked. Do you see that?

551. MR COOPER: Yes, you can park vessels close to each other and they used to tell us it is not a problem.

552. MR NEWCOMBE: All right. If we are now talking about a need to serve six vessels, up to six vessels, and that, as I understand it, is what the ES for Able says, six times 279, by my appalling maths, is, as the late lamented Sophie Tucker might have said, a hell of a lot more than the 1,200 odd metres of quay which Able is here proposing. Do you understand the point?

553. MR COOPER: Yes, I can do the maths – a bit.

554. MR NEWCOMBE: Right. No doubt that is yet another point on which we may get some elucidation, but I will move on. You were asked about the OPA site. Do you recall that?

555. MR COOPER: Yes.

556. MR NEWCOMBE: Who owns it?

557. MR COOPER: The Government.

558. MR NEWCOMBE: Well, I am not going to trouble you with this, but, as the Committee will probably be aware and, if necessary, we will make a submission about it, compulsory purchase does not extend to Crown land.

559. MR COOPER: That is frustrating.

560. MR NEWCOMBE: So far as the alternatives are concerned, could you again have the Port Master Plan? It is core document 11. For my purposes, it frankly matters not whether it is the draft or the finalised version. I happen to be in the finalised version. Do you see the triangle ...

561. MR COOPER: Which page are you on?

562. MR NEWCOMBE: I am terribly sorry. I assume that the chief executive will be telepathic. It is page 27. You should there have in landscape form a Port of Immingham land use 2010.

563. MR COOPER: Yes.

564. MR NEWCOMBE: Give me a feel – I am not going to hold you to it – for the proximity or lack of proximity between the triangle site and the OPA with the Government pipeline.

565. MR COOPER: Sorry, the triangle site to the Government pipeline?

566. MR NEWCOMBE: Yes, and the OPA site.

567. MR COOPER: Well, immediately adjacent.

568. MR NEWCOMBE: Thank you. Again, if you do not know, I am instructed that Stallingborough is of the order of a mile and a half from the coast. Does that accord with your understanding?

569. MR COOPER: Yes, it is inland.

570. MR NEWCOMBE: IT is indicated, helpfully, off to the right – no doubt, “where be dragons” – how far off to the right, do you know? If you don’t know, then just say.

571. MR COOPER: I will have to defer to my colleagues on my right.

572. MR NEWCOMBE: Okay, it doesn’t matter. Now, we have seen the difficulties with compulsory acquisition. In this case Able’s compulsory acquisition of ABP’s land being opposed.,

573. MR COOPER: Yes.

574. MR NEWCOMBE: And it is still an issue before this inquiry.

575. MR COOPER: Yes.

576. MR NEWCOMBE: But even if a statutory undertaker is not involved, please take this from me as a matter of law – if I have it wrong, Mr Bird will say – even where a statutory undertaker is not involved, there still has to be shown to be a compelling case in the public interest. All right. What is the public interest in acquiring however many hundreds or thousands of metres of land and sterilising it to construct a pipeline to Stallingborough when one can actually connect direct into the OPA? Where is the balance of advantage there, having regard to the public interest?

577. MR COOPER: Well, there is no balance of advantage either to the public interest or to the purse.

578. MR NEWCOMBE: A lot of Mr Bird's cross-examination was directed to saying, "You haven't got any evidence that you couldn't put it there. You haven't got any evidence that you couldn't put it here." Do you recall that line of cross-examination?

579. MR COOPER: Yes.

580. MR NEWCOMBE: The first question: have you seen any assessment coming from Able as opposed to a mere forensic frolic? Have you seen any evidence coming from Able that actually any of the suggestions that they have put to you begin to be realistic options?

581. MR COOPER: As alternatives to IWDJ?

582. MR NEWCOMBE: Yes. Have you seen any evidence coming from Able which enables you to say, "Wait a minute, that might be a possibility"?

583. MR COOPER: None. I have not had a light bulb moment – "Oh my God, why didn't I think of that?"

584. MR NEWCOMBE: All right. But I am going to assume, again, and I make this clear in fairness, so people are not taken by surprise when I close, that Able either have done it and for whatever reason have chosen not to release it or have not done it, in which case my point about a forensic frolic remains. Come now, still looking at the Port of Immingham land use plan in the Port Master Plan, and look immediately to the right, it is effectively slightly south east, of where the Port of Immingham presently stops. We are still on page 27 of the Port Master Plan.

585. MR COOPER: Yes.

586. MR NEWCOMBE: It may be that I lost the plot at this stage, but there was also in this context, if I understood you correctly, reference to Total owning some land.

587. MR COOPER: I believe they are the landowner immediately to the right on that map.

588. MR NEWCOMBE: We know that Total have already had a difference of opinion with ABP, and, if anybody needs to remind themselves of it, it is evidenced at Able 6B. Do you recall that?

589. MR COOPER: It is the letter.

590. MR NEWCOMBE: Yes, I do.

591. MR COOPER: One of the powers, again please assume that I am correct in law, again I will be corrected if I have misunderstood the law, when promoting a DCO, it would be perfectly possible for the promoter to promote compulsory acquisition of land to compensate a landowner for other land which is being proposed for compulsory acquisition. Do you understand the way that I put that?

592. MR COOPER: Can you repeat it to me?

593. MR NEWCOMBE: Of course, I can. As a matter of law, if I want to go out and promote a DCO tomorrow to erect a nationally significant piece of infrastructure, like the table there, and I want to acquire the carpet where I want to erect that table, as a matter of law, if someone says that, well, I have already got a table there and I need somewhere else to put it, it would be perfectly open to the promoter in parallel – indeed as part of the same DCO – to promote compulsory acquisition of that what I will call compensatory land.

594. MR COOPER: Okay.

595. MR NEWCOMBE: It would have been open to Able to do that here in relation to ABP, but again, as a matter of record, it has not done so.

596. MR COOPER: Yes.

597. MR NEWCOMBE: Help me with this. I want you here to reiterate. The triangle land, you have already accepted is comparatively small.

598. MR COOPER: Yes.

599. MR NEWCOMBE: What then is the significance of this triangle land so far as the Port of Immingham is concerned? It is a bit bigger than a pocket handkerchief but what is the significance? Why is it so important; why are we all here?

600. MR COOPER: The significance is that it is 100% – to go back to percentages that Mr Bird started with some time yesterday – it is 100% of the remaining deepwater frontage that the Port of Immingham has that has not been developed. It is our last remaining deepwater access point. That is the significance.

601. MR NEWCOMBE: Able say -, and again I am paraphrasing crudely, but I hope accurately, Mr Bird's cross-examination – Able say, "We need the land, you've got powers of compulsory acquisition and, anyway, you have done nothing to use this land and you could over the years have acquired more land." I hope that that is accurate. Do you recall that line of questioning?

602. MR COOPER: It sounds familiar.

603. MR NEWCOMBE: In circumstances where, unless the Committee forms a fundamentally different view of the importance of the triangle land – and here I am not concerned whether it is going to service the IWDJ, or some other future one, HIT 3, if it were moved, or, indeed, the importation of teddy bears from Siberia – you stated the importance in terms of the triangle having what I call "jettyable" access to deepwater.

604. MR COOPER: Correct.

605. MR NEWCOMBE: What is the balance to justify Able's compulsory acquisition of this land in circumstances where for whatever reason they could have but have chosen not to seek, much less identify any compensatory land elsewhere or even to themselves acquire, by way of compensation, that land? Where is the balance in the public interest in that?

606. MR COOPER: I am sorry, Mr Newcombe, I am going to ask you to repeat the question.

607. MR NEWCOMBE: Let me try to break it down. The line of questioning was in the terms that I put to you, namely, Able want it and, as a matter of record, they have not proposed compensatory land.

608. MR COOPER: They have not.

609. MR NEWCOMBE: Assume, I hope not impertinently, that, irrespective of whether it is needed for the IWDJ or any other use, the triangle land is the last piece of “jettyable” access to deepwater for the Port of Immingham, assume they accept that – they may not, but assume they do – in those circumstances, help us with your view of how we draw the balance in the public interest between robbing Peter, ABP, with not even no compulsory acquisition of other land to compensate, but no identification even of it.

610. MR COOPER: I think that I do get the question. I think that for us it is 100% of our last deepwater access and, boringly, that is what we do as a port. There has been no proposal to offer us any alternative waterfront with similar characteristics and, in terms of public interest, I cannot understand how our need for deepwater access and the ability to develop the country’s largest port marries with overspill storage, to be honest.

611. MR NEWCOMBE: Do not forget the pumping station.

612. MR COOPER: Oh, sorry, the pumping station, how could I?

613. MR NEWCOMBE: I am moving to a different and more minor matter, and I am still going backwards through the cross-examination, we are still on this morning. If I made a correct note, you juxtaposed one tonne of coal with 1.6 tonnes of biomass.

614. MR COOPER: That is correct.

615. MR NEWCOMBE: Just so I pick up the point, it may be obvious, but what is the significance of the weight difference in terms of port handling?

616. MR COOPER: We have the capacity to handle a certain number of tonnes. Essentially, what the conversion to biomass – and take Drax as a hypothetical example. Drax burns I think about 10 million tonnes of coal a year when all its six burners are for coal-fire burning. If they were to convert all of it to biomass, then that number would go up to approximately 16 million tonnes. The challenge for us is, actually, we need more capacity to handle biomass than we do for the same volume of coal. It places increased demands on our berth and our handling facilities, conveyors and so on and so forth.

617. MR NEWCOMBE: Forget the biomass, but stay with coal, and we are grateful, Lord Plant, I certainly was not aware of the announcement about Tata Steel, thank you very much, and we will, if it would assist the Committee, see whether we can obtain a press release or whatever is necessary, if that would be helpful. We will put that in in due course. Just sticking with it, though, it seemed to be being suggested that you could go in and do something at Tata Coal and reuse the area presently dedicated or used for Tata Coal. Do you recall that?

618. MR COOPER: Yes.

619. MR NEWCOMBE: Did Mr Bird tell you that Able had already spoken to Tata Coal and they were perfectly happy with that?

620. MR COOPER: I am sorry, Able have already spoken to Tata Coal?

621. MR NEWCOMBE: Did Mr Bird suggest to you that Able had already taken the precaution of speaking to Tata Coal and Tata Coal were entirely relaxed and you could have their land?

622. MR COOPER: I don't remember that.

623. MR NEWCOMBE: Good. I don't either. You mentioned about generating coal and you also mentioned Tata reusing their coal for a different purpose.

624. MR COOPER: Correct.

625. MR NEWCOMBE: What is the difference between what I am instructed is called metallurgical coal and generating coal?

626. MR COOPER: I am afraid I ...

627. MR NEWCOMBE: If you don't know, don't ...

628. MR COOPER: I can, Mr Newcombe. It is end use.

629. MR NEWCOMBE: Thank you. I am now coming back to yesterday's questions and towards the end – forgive me, I may well have misheard you and I have not had the opportunity to check the transcript, for obvious reasons – I thought that I heard you use the term “freight rate dilution”.

630. MR COOPER: I did, I am sorry about that.

631. MR NEWCOMBE: You put Newcombe's brain to tilt, which is not difficult, but it is possible that there are others in the room, who don't necessarily understand the term. Could you explain this?

632. MR COOPER: The bigger the ship the lower the freight rate per tonne of cargo handled. I hope that that makes some sort of logical sense. Actually, the difference between different sized ships can be quite significant, several pounds per tonne. When we talked yesterday about the happy or unhappy existing customers of ABP, what they are looking for is a competitive advantage or the protection of a competitive position by being able to afford themselves the same shipping costs or the best shipping costs that are available to them. They get that through being able to charter or to use bigger ships which have a lower freight rate per tonne of cargo coming through. In some instances, that difference can be very significant. I am not an expert on all aspects of it, but I know that in certain parts of the country our ability to compete is pretty much stymied by the fact that our larger competitors – we do sometimes have them – are able to handle much larger ships with much larger freight-carrying capacity and, therefore, much lower

freight rate per tonne than our own port. For people like Calor and United Molasses and so on and so forth, the effective shipping cost, which is probably the biggest part of the logistics, is a key competitive issue.

633. MR NEWCOMBE: Thank you. Mr Bird also put to you various questions about LNG, forgive the acronym. Is LNG a core part of ABP's requirements for the IWDJ or is it merely a potential use which is being explored?

634. MR COOPER: It is a potential use which is being explored. It is a new potential market.

635. MR NEWCOMBE: If I recall correctly, that was referable to the sulphur emissions control point and the change from bunkering, etc.

636. MR COOPER: Yes.

637. MR NEWCOMBE: Clearly, LNG can only come forward, as you very fairly accepted, if it passes all the relevant consents, including, if it blows up, it does not destroy all the wind turbines next door if that facility were built.

638. MR COOPER: Yes.

639. MR NEWCOMBE: It will only come forward in circumstances, in my submission, where it will not...

640. MR BIRD: It is not your submission at this stage, this is re-examination, if you do not mind.

641. MR NEWCOMBE: If you prefer me to put the point a different way, I am entirely content to do so. Mr Cooper, for the purposes of my question, assume that it will only come forward if and in so far as it is not going to have an adverse impact on the neighbouring land use.

642. MR COOPER: Yes.

643. MR NEWCOMBE: Just assume that. If I am wrong, the Committee will form a different view. In those circumstances, can LNG itself in any way frustrate the Able proposal?

644. MR COOPER: No, it cannot.

645. MR NEWCOMBE: All right. You will recall the frustration, though, was the point that Mr Bird at a slightly later stage in the cross-examination was putting to you.

646. MR COOPER: Yes.

647. MR NEWCOMBE: He was asking, if I understood the question correctly – and, no disrespect to Mr Bird, I did not entirely follow it, but assuming that I am half way accurate in my note – he was asking what ABP's view would be or ABP's position were the promotion of the compromise to frustrate the AMEP proposal.

648. MR COOPER: The promotion of the compromise to frustrate the AMEP proposal – yes, okay.

649. MR NEWCOMBE: Yes. Have you seen any evidence to show why – I mean evidence coming from Able – following the model of Green Port Hull, they cannot operate to the full capacity they have environmentally assessed on less land without any frustration?

650. MR COOPER: It is not less land, it is on less waterfront. The impact on their land is tiny. It is on less waterfront. It is a critical part of what we are saying.

651. MR NEWCOMBE: Mr Cooper, I acknowledge the point. I put it badly and I acknowledge the correction, thank you. I come now to Phillips 66. For this you need ABP14. It is one of the documents that was inserted in there at the start of yesterday afternoon. I have filed a copy of Phillips 66 in there. I suspect that others will as well. Do you have it in front of you?

652. MR COOPER: I do, yes.

653. MR NEWCOMBE: Your attention was directed by Mr Bird to the last paragraph on the second page. Do you see that?

654. MR COOPER: Yes.

655. MR NEWCOMBE: In particular you were stressing that P66 would not support opposing the planning permission granted to Able only in order to afford ABP the option to develop in the future, etc. Do you see that?

656. MR COOPER: Yes.

657. MR NEWCOMBE: I want you to assume that these letters need to be read fairly and in context. Would you, please, read out aloud the previous paragraph to which your attention was not directed?

658. MR COOPER: “Phillips 66 Ltd would welcome the situation whereby Able’s marine energy park could be developed in a way that also allows for ABP to devote the Immingham western deepwater jetty when needed in future.”

659. MR NEWCOMBE: Thank you. I am not going to ask you how that letter falls to be interpreted. That is a matter for the Committee. Bear with me one second, if you will, please, Mr Cooper and my lord. I am just checking my notes. It was part of Mr Bird’s cross-examination, but it also tips a hat to Mr Whittaker’s helpful questions yesterday. Let us start with the IWDJ application, that is the Harbour Revision Order application, which is presently “live”. Remind us what the Marine Management Organisation’s position is on that.

660. MR COOPER: That it will not progress it while this is going on.

661. MR NEWCOMBE: You used the adjective “stalled” yesterday. Was it in that regard?

662. MR COOPER: Yes.

663. MR NEWCOMBE: In circumstances where the process for an order, which you described as an iterative process – according to my note yesterday – in circumstances where there are objections to it and others who have made representations, but it is stalled, how easy or difficult is it for a promoter such as ABP actually to get people to talk to them constructively unless and until the problem is resolved?

664. MR COOPER: The fact of the matter is we are talking to the objectors constructively. We are finding our way through some of the issues. In that sense, we are continuing to make progress in the background. The problem is that we do not have the march of feet from the MMO.

665. MR NEWCOMBE: And the certainty is still lacking.

666. MR COOPER: Certainty is still lacking, yes.

667. MR NEWCOMBE: Thank you. So far as the OPA is concerned, you told the committee, using your word, the process is “stalled” for a different reason. Remind us of what that is.

668. MR COOPER: That is privatisation. Having sat on the other side of the table as an advisor on privatisations, there comes a point where these things get set in stone and it is difficult to interfere, if you like, with what it is that is going to go to the market in a meaningful way. I think that that is where we have got to with the OPA. The only thing that I find frustrating with the OPA is that, as a process, it seems to be taking quite a long time and we would much rather that its future was settled.

669. MR NEWCOMBE: I am instructed by my instructing solicitor for these purposes and by general counsel to ABP that, if the compromise is progressed and emerges successfully from this process, amongst others, the full IWDJ application will be withdrawn for fairly obvious reasons. Does that accord with your understanding?

670. MR COOPER: Yes.

671. MR NEWCOMBE: In those circumstances, Mr Cooper, please give the Committee, with respect, your view as to the utility or otherwise for present purposes of a detailed examination of the full IWDJ proposal?

672. MR COOPER: It is going to be a waste of time.

673. MR NEWCOMBE: All right. Notwithstanding the fact that that is your view, nonetheless, we should not prejudge the Committee's view and you were asked a number of questions where, as chief executive ... Forgive me, before I put that question, let me ask a preliminary question. Give me a feel, please, for the relationship between the chief executive, and you told us yesterday you lead all the projects, but what is the relationship in terms of levels of detail between the chief executive, on the one hand, and, say, the project manager of a particular project, on the other?

674. MR COOPER: The way that we internally structure is that I hold the glorious title of chief executive. I have a number of prime responsibilities, the first is to set the strategy of the company or at least present a strategy of the company to the board for their consideration and acceptance. The second one, which I think is important, is the role of leadership, in terms of the business, in terms of leading the management team, setting them objectives and holding them accountable for the delivery of those objectives. The nature of ABP as an organisation is that it always has been and it remains to a considerable extent a federation. It is not possible or, in my view, desirable to manage every detail of the business from the centre. My approach is very much to look to – I will use a distasteful modern phrase, with some hesitation – empower the senior management in the regions. These are largely regional businesses serving regional economies and regional customer bases, even where they have a nationally-significant role, such as Immingham. Almost everything that we do, and there are exceptions to this rule, is within 70 miles of the port or 100 miles. It is important that John Fitzgerald, who is sitting over there, is the person who is accountable to me for the running of the Humber ports. It is not my job to interfere unduly in the detail of his day-to-day running of it, because to do so would be to disempower him and that is not my style. He is responsible for the delivery of the major projects on the Humber in association with project management teams, engineering teams, compliance teams, environmental teams, legal teams, etc. We have

regular steering groups which I attend which address the major issues arising generally on live active projects. IWDJ features every month in our review of what is happening on the Humber, but, since not very much is happening, it is not a long conversation compared to, say, Green Port Hull or Immingham renewable fuel terminal where we are spending £260 million between the two. Is that enough of an answer? I hope that it conveys a sense of how ABP is managed.

675. MR NEWCOMBE: In those circumstances, Mr Cooper, you said, when you ran to the limits of your detailed knowledge, “I don’t know, but I can find out”. Having regard to that, please, I am going to ask you, using the ABP mechanism, when you finish giving evidence – that is, when you can start talking to people again – to go through the transcript, I think the first part of Mr Bird’s cross-examination, to identify the questions that he asked there and to take those as headings and provide short answers to them.

676. MR COOPER: In writing?

677. MR NEWCOMBE: In writing and then I am going to invite you to sign it. If questions arise in due course, we will cross that bridge when we come to it. But are you prepared to do that?

678. MR COOPER: Absolutely.

679. MR NEWCOMBE: My lord, that concludes my re-examination of this witness. I do not know whether the Committee has any further questions.

680. CHAIRMAN: I am looking to Members of the Committee to see whether they have any further questions. Lord Armstrong.

681. LORD ARMSTRONG: I would like to ask something which arose out of the witness’ recent statement. I thought that I heard him say that, if the compromise proposal was accepted, the deepwater jetty application would be withdrawn.

682. MR COOPER: And resubmitted.

683. LORD ARMSTRONG: And resubmitted.

684. MR COOPER: Because it takes on a different shape and form from the one that we have submitted at the moment. At the moment we have submitted an HRO application in respect of the unmodified IWDJ. The first column on that page – help me, Mr Newcombe, if you can. Is it 18? No.

685. MR NEWCOMBE: It's nine, I think. Forgive me, no – 10. So ABP 10.

686. MR COOPER: ABP 10 –

687. MR NEWCOMBE: Just pause, if people want to get it in front of them.

688. MR COOPER: ABP 10 has two columns on it. And the application at the moment is in respect of the as-petitioned and it would need to be – sorry, is that right?

689. MR NEWCOMBE: Forgive me; it may help if I intervene. The application as lodged is for what I've described as 'the Full Monty' IWDJ, which is inconsistent with the AMEP proposal.

690. MR COOPER: I beg your pardon.

691. MR NEWCOMBE: The as-petitioned involves a greater reduction in the quay of AMEP, but the compromise involves, essentially, 50% of the IWDJ and a reduced AMEP scheme. And it would be the final column here, which is a matter of law, which would be the subject of a fresh application.

692. MR COOPER: So the final column is what we would go back with because it is meaningfully different from the current application, so we would have to withdraw the current application and put in a new application for the second column, 'As later proposed to Able' column.

693. LORD ARMSTRONG: So you are not saying that even with the compromise, the

jetty could not go ahead? Or are you saying that the jetty, the deep-water jetty, you would want to go ahead but you would have to reframe the application?

694. MR COOPER: Absolutely.

695. LORD ARMSTRONG: That is the application to the National Marine Organisation, is it?

696. MR COOPER: Maritime Management Marine... Marine Management Organisation.

697. LORD ARMSTRONG: Thank you. I'm afraid I got it wrong the first time.

698. MR COOPER: Marine Management Organisation.

699. LORD ARMSTRONG: What is the sort of timetable on that?

700. MR COOPER: Oh, that's a good question. It can be pretty elastic. It depends. I think that the MMO is getting slicker at managing these processes. I'd prefer to defer to my lawyers as to how long it should take as opposed to how long it might take. We have found some applications taking a wee while, but the MMO – and I meet with the Chief Executive periodically – assures us that he is looking to expedite applications where appropriate.

701. LORD ARMSTRONG: So you would be going ahead with it as fast as the MMO would permit?

702. MR COOPER: Yeah, yeah. Absolutely. Absolutely.

703. LORD ARMSTRONG: Thank you, my Lord Chairman.

704. CHAIRMAN: Right. I think, Mr Newcombe, that comes to the end of our session with Mr Cooper. I'd like to thank Mr Cooper for giving his evidence. Thank you very much indeed. And I suggest that you may stand down.

705. MR NEWCOMBE: My Lord, in those circumstances, I will be proceeding to call my second witness, Mr Slark. And we anticipated... Just while Mr Cooper is moving and Mr Slark is coming forward, the bulk of his testimony will be directed at explaining ABP 13, which we looked at yesterday in headline term with Mr Cooper.

706.

707. CHAIRMAN: Mr Newcombe, I just wanted to have a consideration over the time. It is now quarter past twelve. Would you be able to achieve sufficiency within three quarters of an hour, to make this a worthwhile consideration?

708. MR NEWCOMBE: I can certainly take Mr Slark some of the way through his testimony but not all of the way. And picking up the best use of Committee time, if I may do so, some of it is quite dense material. I don't say that in any rude form, but the Committee might feel it would be better to hear Mr Slark and then have the cross-examination follow immediately on Monday, when what he has actually said is fresh in the mind, rather than having to retain it over three, four days – which I suspect might well save more time than we lose by adjourning today. But that's merely a thought, shooting from the hip.

709. CHAIRMAN: The clerk reminds quite correctly that we would have the transcripts of what was said today to consider over the weekend if there is anything. So if Mr Bird doesn't have any objection to the sort of flow of the information, I suggest we go ahead.

710. MR BIRD: None at all, my Lord.

711. MR NEWCOMBE: My Lord, I'm grateful. Can I also indicate, please, in the same way that I did for Mr Cooper, neither I nor Mr Slark will be discombobulated if we get to a particular point and members of the Committee have a question at that stage, when it is fresh in their mind, rather than saving it up until Monday or whatever. Forgive me; I hope that's a helpful indication.

712. CHAIR: Thank you.

713. MR NEWCOMBE: Mr Slark, what is your full name please?

714. MR SLARK: My name is Richard Slark.

715. MR NEWCOMBE: And what position do you hold and what is your organisation?

716. MR SLARK: I'm a director with Pöyry Management Consulting. I have responsibilities there predominantly for the consulting activities related to renewable energy across the UK market and the wider European arena.

717. MR NEWCOMBE: For those who may not have heard of Pöyry, just tell us who they are.

718. MR SLARK: Pöyry is a publicly listed engineering and consulting company. It's listed in Helsinki, where it is headquarters. It employs about 7,000 people globally and is active on a global scale. Within the UK it has engineering activities, but predominantly management consulting activities related to two practice areas: one of which is energy, which I represent, and the other is related to the forest industry and the forestry supply chain.

719. MR NEWCOMBE: Mr Slark, as I understand it, you have an Honours degree in Economics and also an MSc in Environmental Management, and that you have acted as an expert witness in several litigations in the United Kingdom, and that you have some 20 years' experience in energy markets.

720. MR SLARK: That is correct.

721. MR NEWCOMBE: Thank you. Right. And there is a request that you speak up a bit, please.

722. MR SLARK: Sorry.

723. MR NEWCOMBE: Imitate the foghorn, please. Now, this is dense stuff and I want to take it steadily, not hopefully too slowly but I do want to take it steadily. And you heard Mr Cooper explain the broad structure of his understanding of your six tables and two figures yesterday. Firstly, without – and don't bother to spare Mr Cooper's blushes. Did he get it roughly right?

724. MR SLARK: He did, yes.

725. MR NEWCOMBE: I'm relieved, because I hold the responsibility for asking the questions. Now, please summarise for us – and just give us a clue as to what these tables are showing us – and a headline as to what is the progression we follow as we go through them and finally finish at figures 1 and 2.

726. MR SLARK: So if we take, as the starting point, table 1 and it appears at ABP 13, I started on the analysis looking initially at the period to 2020. This is the area to which most renewable policy, as currently in place, relates to. And I've started with what I've termed 'the policy ambition.' So this is related to government policy as set out in terms of the quantum of renewable energy required and in this specific case looking purely at offshore wind. So that policy ambition relates to the very first line that I've set out there. And I've looked at it in these tables here at two markets: for the UK market and also for Belgium and the Netherlands, which are two markets that I consider the most relevant in considering the AMEP facility.

727. MR NEWCOMBE: Just pause there – a couple of asides. Firstly, I have drawn a solid line between table 2 and table 3 on the basis that tables 1 and 2 are paired; i.e. it's pre-2020 and post-2020?

728. MR SLARK: That is correct. So as I've moved from table 1 to table 2, I've moved on in time period, looking at the period after 2020 to 2030 as the next phase of renewable energy policy, an area over which there is less certainty but nonetheless there is emerging policy, firm in some markets, non-existent in others, and emerging under the European arena at the moment.

729. MR NEWCOMBE: Second, I note that tables 1 and 2 in the two different time

brackets follow what is essentially a megawatt or gigawatt progression to, in the bottom line in each case, an annual build rate in gigawatt years. Do you see that?

730. MR SLARK: That is correct.

731. MR NEWCOMBE: I've then drawn another line at the foot of the page under table 4, because as I've understood it, tables 3 and 4 are similarly paired.

732. MR SLARK: Tables 3 and 4 are similarly paired. And the purpose of those tables is to take the figures derived in tables 1 and 2, from a gigawatt energy capacity term, into a deployment rate in turbines. That is the sole purpose of those tables.

733. MR NEWCOMBE: And as we've identified, that's on the basis of an assumption of anticipated turbine size, which is in the third line in each table. And unsurprisingly, it progresses from six pre-2020 to eight post-2020.

734. MR SLARK: Yes, that's correct.

735. MR NEWCOMBE: All right. If we go over the page to the last two tables, those are paired to an extent in that one is pre-2020 and one is post-2020, but there's a slight difference in what you're considering, which we see from the title. Could you explain please what the difference between those tables is? Again, in headline form. We will come to the detail in a moment.

736. MR SLARK: Yes. So in tables 5 and 6 I've considered a higher case for turbine deployment than I've presented earlier in tables 3 and 4. And so the purpose of those tables is to set out a maxima that I consider possible under the current renewable policy side, where I've set aside funding constraints in determining what the scope for turbine deployment is.

737. MR NEWCOMBE: Finally, the two figures. Each start with the AMEP case assessed in the environmental statement – 400 turbines etc. Do you see that at the top in each line?

738. MR SLARK: I do.

739. MR NEWCOMBE: And then as the inverted triangle diminishes in size, you've gone through various different scenarios. Again, tell us the significance of those, but in headline form so we understand where you're going.

740. MR SLARK: So the purpose of this figure is to restate the numbers that appear in the earlier tables, just summarising the turbine numbers as they are relevant to the AMEP facility potentially. And they step down in significance, starting from the environmental statement level, based on 400 turbines, and then step through the turbine numbers I've derived in my tables. So if we look at figure 1, the first line – which I've defined as a contestable market for the Humber region – are the values derived in table 5. And again in figure 1, the contestable market for the Humber, after taking account of funding constraints, is the number derived in table 3. The last number that appears – and I must correct myself, doesn't actually appear earlier in one of the other tables – but is my interpretation of looking at that Humber market, but allowing for the Siemens development of Green Port Hull to compete for a share of that market.

741. MR NEWCOMBE: Last couple of preliminary points before we take a deep breath and dive into the sums. Would you have open first of all ABP 4 please, which is one of the A3 pull-out plans in the ABP bundle of exhibits?

742. LORD ARMSTRONG: Which bundle is it?

743. MR NEWCOMBE: ABP 4, my Lord. What is this showing us please, Mr Slark, and what is its relevance to your evidence?

744. MR SLARK: So ABP 4 is a plan of the North Sea, but it is focused predominantly on the UK. It shows in the yellow shaded areas the round three offshore developments in the UK market and in a purple shade the round two earlier phase of offshore wind developments, including the Scottish territorial water developments. It also shows upon it a number of port facilities relevant to the development and deployment of offshore wind. And it also marks on it a semi-circular dashed line which is a distance 200 nautical miles from the Humber and represents the likely serviceable

range for deployment of offshore wind turbines from a facility located in the Humber.

745. MR NEWCOMBE: Look at the Port of Sheerness in the Thames estuary please and metaphorically steam out of the Thames estuary heading initially for Vlissingen and then turning due north until you get to the circular figure 8. Do you see that?

746. MR SLARK: I do.

747. MR NEWCOMBE: What is figure 8 and the associated purple marking beside it? What is that showing?

748. MR SLARK: Figure 8 shows the Galloper offshore wind development site.

749. MR NEWCOMBE: What's happened to Galloper since this plan was finalised?

750. MR SLARK: Last weekend, on 10 October, RWE announced that it was not proceeding with the Galloper offshore wind development in its current form.

751. MR NEWCOMBE: Should we, for present purposes, be putting a cross on it, or just circling it, or what? How do you want us to deal with that?

752. MR SLARK: I would assume that Galloper is postponed indefinitely.

753. MR NEWCOMBE: Thank you. Does that mean cross?

754. MR SLARK: I would put that as a cross for current purposes.

755. MR NEWCOMBE: Thank you.

756. MR WHITTAKER: Can I just ask on what grounds you base that on being indefinite?

757. MR SLARK: The Galloper project has been under development for a number of years, predominantly under two sponsors, RWE and SSE, as the two funding utilities

behind that project. SSE withdrew from the project earlier in the year and RWE has been looking for partners to take forward that project with. It's currently timed out. Effectively, there is an inability to bring that project forward quick enough to receive funding under the renewables obligation, which had been the intended renewables support mechanism that would be required to provide the additional revenue to that project that it will not receive from the wholesale electricity market. The renewable obligation closes to new projects on 31 March 2017 and projects have to be operational before that date and accredited through a process run of Ofgem.

758. MR WHITTAKER: So just for absolute clarity then, it's not your opinion; it's actually just timed out.

759. MR SLARK: It's timed out under that funding mechanism.

760. MR WHITTAKER: Okay. Let me go to my original question then. Is it fair to put a cross there, yes or no, and on what basis if you're putting a cross there?

761. MR SLARK: The basis I would put a cross there at the moment is that the project moves from one of a reasonable degree of certainty to one of no certainty whatsoever.

762. MR WHITTAKER: Your opinion or fact?

763. MR SLARK: That's my opinion.

764. MR WHITTAKER: Thank you.

765. MR NEWCOMBE: On in the ABP bundle please to ABP 8, which is a series of four smaller plans. What do we see here?

766. MR SLARK: In ABP 8 we see a similar map, redrawn to illustrate a similar 200 nautical mile sailing distance, but restated from four alternative ports illustrating the development zones: both the UK zones that we've seen earlier, but also some of the continental European zones being developed from other countries, which are shaded green on this map. In the top left-hand quadrant we see Esbjerg in Denmark and the

sailing distance from that port. On the top right, similarly for Bremerhaven in Germany. In the bottom left quadrant, Vlissingen in the Netherlands. And in the bottom right, from Forth in Scotland.

767. MR NEWCOMBE: All right. Come back to ABP 13 please and by all means take us to those plans and figures as appropriate, as we go through. Just picking up Mr Whittaker's question, sir, the words which Mr Slark used of the decision not to continue with the development of Galloper in its current form, where he was expressly quoting from the relevant press release by Galloper Wind Farm Limited. In other words, as we ABP understand it – or, forgive me, as ABP understands it, not continuing with it in its current form, its current consented form. If it would assist, I'm more than happy to have that copied and provided to you. It's only one page.

768. MR SLARK: That's all right.

769. MR NEWCOMBE: All right. We can postpone the dreadful moment no longer, Mr Slark. Take us in, please, to table 1. And on this one, because I want you to treat it in a little more detail – we may speed up in due course, but I want to treat this as a worked example, so that when we come to table 2 we can hopefully take it a little quicker. And I would also like you, please, following Mr Whittaker's line of questioning, I want you to justify each of these figures which you've put in here, insofar as you can, and identify the source, whether it's just your opinion or input from, for instance, the government's latest update to the *Renewable Energy Roadmap*, etc. Now, I will now shut up and you start. I reserve the right to intervene if I get lost.

770. MR SLARK: Thank you. And please, members of the Committee, similarly if I move ahead too quickly or mention an acronym, please do stop me at that point. I'll take the worked example and go through the UK column within that table and proceed down there. So the initial figure that appears there for the policy ambition, stated as 16 gigawatts of offshore wind installed capacity by 2020, I have taken the number directly from the DECC, as the appropriate government department, *Renewable Energy Roadmap Update*, issued in November 2013. That is the most current, updated policy available in this area. And that actually sources that number from one of the Electricity Market Reform Delivery Plan documents – again, another DECC source document. So

we can trace that roadmap back over a number of years and that number has varied a little bit, but has been in that region of 16 gigawatts for a number of years. But 16 gigawatts represents the current policy in the latest document published, albeit about 11 months ago.

771. Taking down to the next level, I've looked at that policy ambition from a perspective of what is fundable. We heard from Mr Cooper yesterday that renewable energy requires support in order to be taken forward. It is a relatively high cost generation source, particularly in respect of offshore wind, and as a result those projects are only developed with an appropriate support mechanism. The form of those support mechanisms varies both in the different countries but also over time. The UK is in a position of switching its support mechanism from the renewables obligation, which we referred to earlier in answering Mr Whittaker's question on Galloper, to a new form of support mechanism, referred to as the Feed-in Tariff Contract for Difference, or CFD, which will replace the renewables obligation and relates predominantly to the projects we're looking forward in relation to AMEP, because it will be those projects that become operational from 2017 onwards are likely to be funded from that mechanism. So in deriving a 10 gigawatt figure for the fundable ambition, I have looked to the expected funding available for offshore wind and I've sourced that number from a National Grid EMR document that related to the –

772. MR NEWCOMBE: Acronym.

773. MR SLARK: Sorry, to the National Grid's analytical report for the electricity market reform contract for difference. That was National Grid, as the appropriate statutory body, advice to ministers on recommending how the budgets are set for the contract for difference and the allocation between different renewable technologies. Again, that is a report that is likely to be issued annually. This was the first report in December 2013. And again, it's published by DECC as part of the supporting analysis for the contract for difference regime. And that states that in its primary – what it calls 'Scenario 1' – 10 gigawatts of offshore wind is what it envisages being funded through the contract for difference mechanism – or, sorry, funded through all of the renewable support mechanisms by 2020. So there is a disjoint between the policy ambition stated in the first line and the currently fundable element of support that is available to deliver

that ambition for offshore wind.

774. In the next line, I've simply taken off from that fundable ambition those projects that are already operational or under construction, so those committed projects that we already know will receive that mechanism, to derive a residual capacity that is still to be brought forward; in effect, looking at the market for offshore wind projects yet to be developed, for which AMEP and other similar facilities will compete. Nice round numbers on that first column. It is approximately five gigawatts of operational and under-construction offshore wind projects in the UK market – we've already heard the UK is the largest offshore market in the world – leaving a residual capacity to 2020 of another five gigawatts of projects that need to be brought forward to deliver that fundable ambition of 10 gigawatts.

775. MR NEWCOMBE: I'm terribly sorry to intervene, Mr Slark. Could you not only keep your voice up, but just speak a little bit slower, because this is being recorded and you'll be giving the people who have to produce the transcript in due course an unnecessary problem. My apologies.

776. MR SLARK: So taking that residual capacity –

777. MR NEWCOMBE: A little slower.

778. MR SLARK: Taking that residual capacity of five gigawatts and looking at the remaining period to 2020 of seven years, simple arithmetic suggests that that is an annual build rate of 0.83 gigawatts per annum for offshore wind.

779. MR NEWCOMBE: All right. Now canter down Belgium and the Netherlands, adopting a similar approach and also telling us why there is a question mark.

780. MR SLARK: Certainly. So for the Belgium and Netherlands, I have sourced the policy ambition from the equivalent documentation available for those markets. For Belgium, the last available document was a policy document released in response to the European Union Renewable Energy Directive called a *National Renewable Energy Action Plan*, or NREAP for short. These were the statutory requirements for each

member state to submit how it intended to comply with the Renewable Directive's 2020 targets on each member state. And within those documents, each member state set out a road map of how it would achieve that, giving deployment at key dates for the technologies that it intended to deploy in order to meet those renewable energy targets.

781. So for Belgium, they stated in that NREAP an offshore wind deployment figure of – and if you'll let me just check my notes... So for Belgium, of 1.5 gigawatts – sorry, that's not it. I'll come back to that number in a minute. Just let me finish... The Belgium figure was derived from the NREAP document. The equivalent figure for the Netherlands was derived from an updated document, after the NREAP, which is known as an SER publication, the equivalent of their DECC publication. And that's a 2013 publication providing that date. The combined capacities of those two numbers is 4.1 gigawatts.

782. MR NEWCOMBE: And the question mark?

783. MR SLARK: The reason for the question mark is because there isn't an equivalent fundable number for those two markets. The Netherlands have set out a fundable deployment volume to 2023 but not a clear element of how that will be delivered to 2020. Belgium has not set out any clear alternative number than that appeared in its NREAP. So for the purposes of these tables, rather than assume a difference between the ambition and a fundable element, I have assumed that for those member states that they fully intend to fund all of those policy ambitions.

784. MR NEWCOMBE: Carry on.

785. MR SLARK: So taking down to the third line of that table 1, I've identified that for the Belgium and Netherlands there is currently 1.7 gigawatts of operational committed offshore wind developments between those two markets, the result of which is that there is a residual capacity still to be built by 2020 of 2.4 gigawatts across those two markets. Using the same seven-year deployment period to 2020, that's the equivalent of 0.4 gigawatts per annum.

786. If we move to table 2, I've adopted a similar approach but when we look to the

question of policy ambition, there is a higher degree of uncertainty over just where that policy ambition sits in the period after 2020.

787. MR NEWCOMBE: Why is that?

788. MR SLARK: Much of the policy ambition across the European markets is currently driven by the Renewables Directive, which set out legally binding requirements on renewable energy for each member state. And the focus of policy has been on delivering those renewable energy targets in the period to 2020. Beyond that, there are a number of national policy targets that set out development before that – and I’ve already mentioned that the Netherlands has a 2023 policy ambition – but there isn’t the same overarching EU-led or any global renewable energy targets beyond that period. The European Union – well, the Commission – has currently proposed an approach to setting 2030 targets which, rather than set individual national targets, would set a target of 27% of energy to be sourced from renewable sources by 2030, up from the 20% 2020 target, but isn’t currently proposing to pass that down to each member state as a defined national target.

789. Now, that approach is consistent with UK government policy, which in looking for 2030 targets is focused on a low carbon target and leaving open to the market to allocate how best to meet that lower carbon target through a mixture of different mechanisms, which might include substituting gas for coal generation, nuclear for gas or coal generation; might include energy efficiency measures; might include the introduction of carbon capture and storage technologies; as well as the further deployment of renewables. So there is a much wider range of potential solutions to meeting 2030 carbon targets within the policy ambition for 2030.

790. That said, there is a target that has been discussed at the UK level for 2030 referencing that same DECC roadmap of November 2013 and the same Electricity Market Reform Delivery Plan, which suggests that between 2020 and 2030 there would be an additional deployment of 23 gigawatts of offshore wind. And that is where I’ve derived the figure in the first column.

791. What is not clear is how that 23 gigawatts of additional capacity will be funded.

There is no funding mechanism that is set out for the period after 2020 and yet there is an expectation that additional support will still be required for offshore wind in the period probably all the way through to 2030, even given reductions in cost anticipated for that technology.

792. MR NEWCOMBE: Are we now finished with tables 1 and 2? Or is there anything more you –

793. CHAIRMAN: Can I just ask a question?

794. MR NEWCOMBE: My Lord.

795. CHAIRMAN: In table 2, there's no addition for replacement gigawatts from offshore wind. I mean, I don't know too much about the technology, but some of the original offshore wind, will they need replacement in that period of 20 to 30?

796. MR SLARK: To the best of my knowledge, it's not presently envisaged that any of the existing offshore wind farms would be replaced or 'repowered', to use the industry terminology, within that timeframe. If it were, the cost of doing so would be very similar to deploying a new wind farm. You wouldn't be able to reuse much of the infrastructure that's in place to do that. But the lifetime of an offshore wind farm is typically expected to be 25 to 30 years and given the deployment for offshore wind that commenced around 2005-6, so the earliest projects, we're not really looking at any significant capacity in that period to 2030.

797. CHAIRMAN: Thank you. Thank you very much.

798. MR BLOMFIELD: I wonder if I could just ask for a clarification of the relationship between the residual capacity to be built and the annual build rate. I mean, you're making an assumption there that the annual build rate is absolutely smooth. Isn't the reality likely to be that it's going to be more clumpy?

799. MR SLARK: Absolutely. That is exactly what I've assumed, a simple average over that period as indicative of what a deployment rate would be over a period. And

I'm sure you are absolutely correct that it will be much lumpier than that. The difficulty you have is actually predicting when those projects will actually come forward and at what rate. And we also need to recognise this funding constraint that applies will also have a very significant aspect in filtering the rate at which projects actually come to development.

800. We also heard earlier from Mr Cooper that the pressures on reducing the cost of offshore wind are immense and that one of those cost drivers – one amongst many – is the constraints on the supply chain, which means that there's a degree to just how much lumpiness it's cost-effective to take on board, because restrictions on access to vessels, on access to any element of the supply chain, whether it's cables or any of the componentries, as well as the issues about port facilities themselves, means that that infrastructure isn't likely to develop unless it can be done on a sustained basis. So a peak deployment, say ahead of 2020 in 2019, isn't likely to be of a significant difference to what could be deployed in 2021 or 2018-19, because it just simply wouldn't be effective for the supply chain to develop to deliver that. So I accept the point that it's a simplistic assumption, but it's unlikely to be dramatically different from an approach that looked at it on a project-by-project basis.

801. MR BLOMFIELD: Thank you.

802. MR WHITTAKER: Thank you, Lord Chair. Can I just clarify your figures that you're using here? It may be just that I'm reading the resource badly, but in the *Renewable Energy Roadmap Update* of 2013, which you quote –

803. MR SLARK: Yes.

804. MR WHITTAKER: On page 54 it actually says the policy ambition is indeed 16 gigawatts up to 2020, but then it goes on to say that it's 39 gigawatts up to 2030. So is that me just reading that wrongly or...? Because there's a gap there of about 16 gigawatts.

805. MR SLARK: No, that's absolutely correct. So the source of my 23 gigawatts in table 2 is that 39 gigawatts that you've just referred to less the anticipated deployment to

2020 of 16 gigawatts.

806. MR WHITTAKER: Okay, thank you.

807. MR NEWCOMBE: My Lord, I'm just looking at the time. Insofar as the Committee have conspired to do some homework, I've got time to get Mr Slark to give some pointers as to how one moves from one two on to three and four, which may be helpful, but I don't think I'm going to have enough time, having regard to the clock, to get all the way through it. If it would be helpful, I can make good use of five minutes though.

808. CHAIRMAN: Please do.

809. MR NEWCOMBE: Thank you. All right. There is a progression, as we've already identified, between table 1 and table 2. And we see, for instance, in table 3, left-hand figure column headed 'UK national market' residual capacity to be built, five gigs. And if I'm not being even more stupid than I normally am, that comes from line 4 of table 1, doesn't it?

810. MR SLARK: It does, yes.

811. MR NEWCOMBE: I breathe a sigh of relief. And similarly we can see the progression in table 2, again from line 4 down to line 1 of table 4.

812. MR SLARK: That is correct.

813. MR NEWCOMBE: All right. You've got just under five minutes. What I want you to do is not explain the detail of all of this, but simply give some pointers as to how the tables work, so that anybody minded to look at this over the weekend or whatever, they're taking it from a running start.

814. MR SLARK: Certainly. So taking the numbers I've derived in tables 1 and 2 and looking at table 3, I have assumed in the period to 2020 – and for this the relevant period really is the latter period to 2020 – a turbine size of six megawatts as likely to be

representative of those turbines deployed in this period, 2017 to 2020, to meet that requirement. Looking at that annual build rate, assuming that they are each met by six megawatt turbines, results in a deployment rate of 138 turbines per year in the UK market under that fundable ambition.

815. I then wanted to step across that table to look at what that means for the Humber region. And so I've defined a 'UK contestable market', being those projects that are likely to fall within the serviceable range of the Humber. Now, perhaps I can refer you back to ABP 4 and the map with the 200 nautical mile range on it, illustrating which of the UK projects fall within that range. Now, without sitting there with our slide rules and calculating each megawatt proposed, roughly speaking that is 80% of the projects that are still likely to go ahead, fall within that range. So a very sizeable proportion of the UK fundable ambition sits within the range of the Humber. And so I have assumed for these purposes that that 80% number is used to determine this UK contestable market. And so the second column to the right of the UK national market reflects 80% of the UK national market at that point.

816. LORD ARMSTRONG: The other bit of it is Siemens, isn't it?

817. MR SLARK: It's not a matter of which developer will do that; it is projects that are located off the west coast of the country that are not feasibly supplied for wind farm deployment from a facility on the Humber. The sailing time and sailing distance, not to mention the English Channel as a navigating zone, make it impractical to use the Humber, irrespective of which facility on the Humber, for those wind farms. However, 80% of the wind farm capacity is likely to be towards the east coast of the country and within that plausible/feasible range of supply from the Humber. In this table I haven't made any indication of which facility on the Humber or indeed which other west coast facility – or North Sea facility, for that matter – might actually supply those turbines, just the size of the market for which they can compete.

818. MR NEWCOMBE: In the remaining 30 seconds or so, picking up my Lord Armstrong's question, could you just refer the Committee to where the significance of Green Port Hull and Siemens does come in, in your figures?

819. MR SLARK: Only in the figure 1 and figure 2 that appear in ABP 13, over the page from the tables in the very bottom of the triangle, have I allocated a contestable market for the Humber to suggest that that contestable market won't all fall to a single facility. In doing so, I have been remarkably generous. I have assumed that two-thirds of the facility may fall to AMEP, simply based on its design capability being greater than that at Green Port Hull, and I have completely disregarded any of the other facilities which could supply wind farms in that area.

820. To that point, if I can take you to ABP 8, there is just one observation I'll make on that. Looking very quickly at those four quadrants and the wind farms on the west coast of the UK that I've identified in that capacity, and equally all of the wind farms in Belgium and the Netherlands that I've identified as being contestable from the Humber, it is worth noting that none of those are exclusively contestable from the Humber. Other ports can contest, at least one other port that is identified on this map, can contest to compete for the supply installation of those facilities – and it is likely to be a competitive market. That said, I've simplified it within my numbers just to give an illustration that not all of that contestable market will fall to AMEP, but it is likely to be faced with other ports.

821. MR NEWCOMBE: My Lord, I'm looking at the clock.

822. CHAIRMAN: Have we come to a convenient moment?

823. MR NEWCOMNE: Very convenient. My apologies, I would have liked to have got further, but that's as far as we can usefully go and is a very convenient point.

824. CHAIRMAN: Well, thank you very much indeed for keeping your eye on the clock as you have. I will soon be adjourning the Committee until Monday at two o'clock in this room. I just need to confirm with the parties that you are content that Mr Blomfield to be absent for the first hour of the session, as I believe has been previously agreed.

[Agreement from the Committee]

825. CHAIRMAN: Thank you. I'd like to thank you both, and obviously Mr Slark, and I now say that the meeting is now adjourned. The Committee meeting is now adjourned.

MINUTES OF ORAL EVIDENCE

taken before

**JOINT COMMITTEE ON THE ABLE MARINE ENERGY PARK
DEVELOPMENT CONSENT ORDER 2014**

Monday 20 October 2014

In Committee Room 4

PRESENT:

Viscount Ullswater (In the Chairman)
Mr Craig Whittaker MP
Dr Matthew Offord MP
Paul Blomfield MP
Lord Armstrong of Ilminster
Lord Plant of Highfield

IN ATTENDANCE

Mr Simon Bird QC, appeared as Counsel on behalf of Able Humber Ports Limited
The Applicant for the Order Mr Ian McCulloch (of Bircham Dyson Bell LLP) appeared
as agent for Able Humber Ports Limited
The Applicant for the Order Mr Andrew Newcombe QC, appeared as Counsel on behalf
of Associated British Ports (Petitioners 1 & 2)
Mr Paul Irving (of Winckworth Sherwood LLP) appeared as agent of Associated British
Ports (Petitioners 1 & 2)
Mr Mark Westmoreland Smith appeared as Counsel on behalf of Associated British
Ports (Petitioners 1 & 2)

Witnesses for the Petitioner:

Mr Richard Slark, Pöyry
Mr Duncan Galbraith, Transprojex Limited

IN PUBLIC SESSION

(UNCORRECTED)

INDEX

Subject	Page
Mr Slark, examined by Mr Newcombe	3
Mr Slark, examined by Mr Bird	16
Mr Slark, examined by Mr Newcombe	49
Mr Galbraith, examined by Mr Newcombe	54

(At 14.00)

1. CHAIRMAN: I'd like to welcome everybody again to this Committee, and in calling the Committee to order I will just note that, again, we are in a public session, and would, therefore, just remind people to make certain that their mobile phones are on silent or vibrate. We are due to sit from two o'clock to half past five, and I'm suggesting that we might have a break for perhaps 10 minutes at about 4 o'clock, so that should give people hope. I think without more ado, I could ask Mr Newcombe to continue with his examination of Mr Slark.

2. MR NEWCOMBE: My lord, I'm grateful. Forgive my mentioning for completeness one minor matter. You will probably already be aware that the parties have agreed a set of suggested corrigenda for the two transcripts which we've had, which are confusingly day 3 and day 4 for not immediately obvious reasons, but because they refer back to the first two days when this Committee sat. Neither Mr Bird nor I is bursting to take the Committee through them on the basis that they are, we think, trivial or typos, but were the Committee to want to be taken through them, of course we will do so. But so far as the parties are concerned, there's no need.

3. CHAIRMAN: Yes, no – I think that's agreeable. Thank you very much.

4. MR NEWCOMBE: My lord, I'm very grateful. Mr Slark, welcome back. We need ABP 13, please, which is in the slim white bundle of ABP exhibits and is a table. I'll just pause while people have that in front of them. Now, we must do our best to make this appear other than making Mogadon look like a stimulant. You dealt with tables 1 and 2, and gave an anticipation of 3 and 4. Briefly, so that we start from firm ground, summarise what tables 1 and 2 are showing, and also I think there's a correction to one of the oral asides you made, to which you need to draw the Committee's attention.

5. MR SLARK: Thank you. You'll recall that, in looking at tables 1 and table 2, I started with the position of a policy ambition and then worked through to a fundable ambition, and then from that deducted the capacity that was already in place and operational or committed and under construction, to derive a residual capacity in both markets, and from that to determine an annual build rate. I believe I erroneously referred to a build rate calculated across seven years when the maths will clearly show I used six years to calculate the period out to 2020.

6. MR NEWCOMBE: So, just tell us to which table or tables is that comment directed, and which line in the table, just so there's no divide, please.

7. MR SLARK: So, that comment relates purely to table 1, and to the fourth line – sorry, the fifth line – the bottom line of that table – which refers to the figures of .83 and .4, being the annual build rates calculated as the residual capacity split between each of the six years.
8. MR NEWCOMBE: Alright. Come now to table 3, and you'll remember, Mr Slark, the last point – we identified it with your help – was the origin of the first line in table 3 and the first line in table 4, which pick up figures from lines 4, in each case, of tables 1 and 2, correct?
9. MR SLARK: That is correct.
10. MR NEWCOMBE: Alright. Now, adopting the same approach, taking it steadily – not dawdling, but steadily, please – take us through table 3 as a worked example, and where you are deriving the figures there, or the assumptions underlying the figures, from some document or other source, please tell us what that is. Take it away, please.
11. MR SLARK: Thank you. So, if we start with the first line of table 3, the figure of 5.0 is derived directly from the third line of table 1, as Mr Newcombe has just reminded us – sorry, the fourth line of figure 1 – table 1 – and the figure of .83 from the last line of table 1. I've then, moving to the right, taken a view not just of the UK national market but of what I've defined as a contestable market from the Humber Region, and taken a figure which is 80% of that national number, being my assessment of those projects within the UK market that are likely to be accessible from a facility based on the Humber.
12. MR NEWCOMBE: Alright, pause there. Move at the speed of the slowest man in the room, namely me. So, we move from 5 to 4 and .83 to .66 because it's 80%, correct?
13. MR SLARK: That's correct.
14. MR NEWCOMBE: Right. Carry on, please.
15. MR SLARK: I've done a similar process in reference to the markets in Belgium and the Netherlands, which you will recall I identified as the two continental European markets likely to be accessible from the Humber region. There, again, the first two lines of table 3 are derived from table 1, or taken straight from table 1 – the bottom two lines of that table. Then I have defined in the far right column of that table the total contestable market for the Humber region, and that is the sum of the two columns in the centre, namely the 6.4 gigawatts of capacity is the sum of the 4.0 for the UK and the 2.4 from Belgium and the Netherlands. Similarly, the annual build rate in the line below

that is the sum of the two central columns, and then in the rest of that table I have derived a “number of turbines per year” figure by dividing the capacity – the annual build rate capacity – by an anticipated turbine size.

16. Now, for simplicity, in table 3 I have assumed that the turbines built or deployed during the relevant period out to 2020 – that is, the latter part of this decade – will be six-megawatt turbines. You will see, if we look at the equivalent line on table 4, that for the last period, after 2020, I have assumed a larger turbine size of eight megawatts. But returning to table 3 and the last line of table 3, that is simply the second line divided by the third line in order to calculate a number of turbines per year, which I have suggested is 177 for the contestable market from the Humber region per year, in the period to 2020.

17. MR NEWCOMBE: And, again, clearly, Mr Slark, if for whatever reason somebody started installing – or the anticipated turbine size suddenly jumped to eight megawatts, then the simple arithmetic would reduce 177; conversely, if for whatever reason it suddenly slipped back to four megawatts, that would increase 177.

18. MR SLARK: That is correct.

19. MR NEWCOMBE: Alright – simple arithmetic progression. The last point on table 3 before you go on and carry out the same exercise, please, in relation to 4, pick up the 177, bottom right, fourth line of table 3, fully over to the right. Keep a finger in that page and go on to page 3 of this exhibit, where we see the figures. Just help us with how, if at all, 177 is relevant for the figures.

20. MR SLARK: You will recall that in figure 1 I have summarised just the turbine numbers from the previous tables, starting at 400 turbines being the AMEP Environment Statement case. The 177 appears in the third line of that, and is my calculation of the contestable market for the Humber region, expressed in number of turbines.

21. MR NEWCOMBE: Yes, and if we read that – the wording opposite 177 in figure 1 – we see the parenthesis explains the assumption “after policy funding constraints”. Now, you dealt with this on Thursday, but I would invite you, please, just to summarise and remind the Committee what are the funding changes – the fiscal and financial changes – emanating from Government which have occurred since the panel considered this proposal?

22. MR SLARK: So, what I’ve considered in the funding constraint is the available public subsidy set out to fund offshore wind, and specifically there I have taken account

of the National Grid report to DECC, which set out its assessment of the quantum of capacity that could be funded under the contract for difference scheme alongside the other support mechanisms in the period to 2020. It is worth commenting potentially at this stage, and we might want to return to it, that since that report was published in December 2013, DECC has confirmed the available funding for the first allocation of contracts for difference that will be issued this year, and that suggests an even great tightening in the available funding if that were to continue for the rest of the period to 2020.

23. MR NEWCOMBE: When you say “confirmed the various contracts for difference”, is that in relation to individual schemes or more generally?

24. MR SLARK: On 2 October, DECC published what it called the “final budget” for the first allocation round of contracts for difference. Now, this is an update to a number of documents that have come out over the last year as it progresses towards that period. It actually increased compared to an earlier draft the available funding for offshore wind by about £80 million, but the total available, which is likely to be in the region of, I believe, £235 million under the first contract round for the offshore wind category – now, that’s a definition of renewable technologies, not exclusively offshore wind but it’s likely to be predominantly offshore wind – in my estimation is sufficient to fund 700-800 megawatts of offshore wind. Now, the way the mechanism works, that is offshore wind balance between effectively 2017 and 2020. The year in which they become operational is almost irrelevant to the contract funding calculation. This is effectively sufficient funding for one large offshore wind farm.

25. MR NEWCOMBE: Unless there’s anything else you want to tell us about table 3, could you move us, as speedily as we can, through the not dissimilar table 4, differing only in the fact that it relates to post 2020, up to 2030. Take us through table 4, please.

26. MR SLARK: So, in table 4, the first two rows of table 4 have been taken from the last two rows of table 2, so, again, using the 2020 to 2030 period, and looking in this instance purely at the policy ambition numbers, because I do not have an estimate for what is fundable for that period, because funding mechanisms aren’t in place in any of the markets to deliver that. So, the figures for the UK national market, at 23 gigawatts and 2.3 gigawatts per year, are taken directly from table 2.

27. I’ve then assumed an anticipated turbine size for this period of 8 megawatts, suggesting a national deployment rate of about 288 turbines per year. Again, I have tried to estimate the proportion of that that is likely to be accessible from the Humber

region, and I have assumed that that continues to be at 80%, which is my assessment of those known projects – the proportion of UK capacity that was likely to be within that range. That would suggest the UK contestable market for the Humber region is around 230 turbines per year. Similarly for Belgium and the Netherlands, there is less information available, particularly for the Belgian market for that period, but that would suggest a total market averaging 30 turbines per year for those two markets combined from the known ambition, and, therefore, combining those two central columns again, suggests 260 turbines per year as the contestable market for facilities on the Humber.

28. MR NEWCOMBE: Is there anything else you need to say about table 4, or can we move on to the figures before coming to table 5?

29. MR SLARK: I think we can turn to figure 2.

30. MR NEWCOMBE: Alright. Just carry out the same exercise and translate the 260 into figure 2, if you would, please.

31. MR SLARK: So, again, as with figure 1 above it, the third row of figure 2 demonstrates that 260 turbines per year, being my assessment of the contestable market from the Humber region and, as I've put in parentheses there, to summarise, 80% of the UK market and 100% of the known Dutch and Belgian markets.

32. MR NEWCOMBE: Just cast your eye back to figure 1. The equivalent line in that pre 2020 is the 177 line, is it not?

33. MR SLARK: It is.

34. MR NEWCOMBE: Alright. If we look in the 177 line of the pre 2020, we see the assumption, which you've already explained, in parentheses there: policy funding constraints. If we look at the 260 line in figure 2, we see a different underlying assumption. Just explain to us why there is a difference in the underlying assumptions.

35. MR SLARK: The only reason for the difference is I haven't been able to break down a policy ambition into a level of the fundable ambition, because at this stage the funding available for that period from 2020 to 2030 is simply not known. In the absence of that knowledge, rather than suggest that funding will actually constrain offshore wind, I have simply assumed that sufficient funding will be made available. That may be a fairly ambitious assumption, but nonetheless that is the basis on which I've put these figures together.

36. MR NEWCOMBE: Alright. On to table 5, please, and again we see the difference between 5 and 6 in part – and I stress in part – is that table 5 is pre 2020 and table 6 is post 2020. Do you see that?

37. MR SLARK: I do.

38. MR NEWCOMBE: Alright. Just remind us – you have dealt with this before, but remind us, please, before we go into this – what are the other differences between table 5 and table 6?

39. MR SLARK: Putting it simply, in table 5 I have reproduced table 3 but ignoring the funding constraint, so in that sense I have assumed that the full policy ambition, which is the 18 gigawatts set out in the DECC roadmap and the EMR – sorry, the Electricity Market Reform Delivery Plan. Sorry, not 18; 16 gigawatts set out in that figure, which appears in the top line of table 1. I have assumed that that figure remains the ambition to 2020, ignoring the funding constraints as to whether we can deliver that or not, and have deducted from that 16 gigawatts the 5 gigawatts of operational and committed generation to produce a residual UK national market of 11 gigawatts to 2020. That's clearly a larger potential market if there were no funding constraints in that period, and at the UK-national-market level, taking the same approach as I did in table 3, that would suggest a UK national market of 305 turbines per year at six-megawatt turbines.

40. MR NEWCOMBE: And we can carry that across into figure 1, can't we, where we see the 311 line? And we can also see summarised the assumption you have made there so far as funding is concerned, because there you've made a different assumption, i.e. you've ignored any policy funding constraints.

41. MR SLARK: That is correct.

42. MR NEWCOMBE: Good. Any more we need to say about table 5, please?

43. MR SLARK: I don't think so. I think the same mechanics apply to the residual element of table 5 as they did for table 3, in particular how the contestable market combines the same Belgium and Netherlands figures as it did in table 3 with this revised UK national target.

44. MR NEWCOMBE: Good. Table 6.

45. MR SLARK: With table 6, I have restated, in that sense, table 4, but I have relaxed the assumption of reducing the UK market to 80% and instead have left that UK national market at 100% of the target, assuming that all of the developments that come on from 2020 onwards are within range of facilities on the Humber and can be serviced by facilities on the Humber, and that – assuming that is plausible – raises the total contestable market for the Humber region to 318 turbines.

46. MR NEWCOMBE: Alright. Again, please, carry that figure through, for the avoidance of doubt, into figure 2.

47. MR SLARK: So, in figure 2, the second line shows 318 turbines, which I have summarised there as 100% of the UK market, the Dutch market and the Belgian market.

48. MR NEWCOMBE: Alright. Now, unless there's anything further you need to say about table 6, we can move to figures 1 and 2. By cross-referencing, we've already dealt with the first three lines in each figure, which leaves us only with the fourth line, which involves consideration of Siemens' Green Port Hull, and that figure, as I understand it, does not come from any of the preceding tables. Could you just explain the derivation of that, please?

49. MR SLARK: Certainly. What I have attempted to do in last line of figures 1 and figure 2 is suggest a potential allocation for this Humber regional market between competing facilities. Now, what I wanted to recognise in that bottom line was that any facility on the Humber will not have that market to itself. It will be competing with other ports – those ports could be located elsewhere around the North Sea – but in particular would be competing with any facilities in the Humber, because at that point there would no unique characteristics of one facility over another.

50. And so I have, for simplicity's sake, simply looked at the Humber for competition, identified that there is a competing facility to AMEP at Green Port Hull for Siemens, and I have allocated a proportion of that market to Siemens. Now, in doing so I was guided by what I believe to be the approximate sizes of the two facilities. The Siemens facility as confirmed in size is somewhat smaller than the AMEP facility, and so I allocated the capacity in favour of AMEP, but recognising that there would be in all likelihood competition from at least the Siemens facility at Green Port Hull as well as potentially from other facilities located elsewhere. So, I have split the 177 turbines that occur in line three of figure 1 for the Humber region as a whole between AMEP on the one hand and the Green Port Hull facility on the other.

51. MR NEWCOMBE: Right. Mr Slark, unless there's any further we need to say about either tables or figures, you can put that to one side. Don't put it too far away; I suspect you may be taken back to it once or twice. But would you go, please, now to Able's exhibit 11, which is produced by Environmental Resources Management Limited for the purposes of this committee proceeding and to review the need case for AMEP. My Lord, may I make clear: in order, I hope, to save time, I am going to take Mr Slark to one or two points on this report where he could usefully make comment at

this stage. The mere fact that I don't take him to something and he's silent on the point doesn't mean to say he agrees with it. It's simply that the time to deal with that may occur in due course. I'm simply, hopefully, speeding the plough. We're looking at Able 11, thank you, Mr Bird, which is in the Able exhibits, not the ABP exhibits. That's in the blue bundle, my Lords and gentlemen, not the white bundle – the thin blue.

52. Now, in the first instance, please, Mr Slark, would you go to page 2, section 1.1, the second bullet there. Although we don't need to turn it up, it probably occurs again in the summary and conclusions at 1.6 at the back of the report. Let's just look at the second bullet there. It tells us, "The sections below describe, amongst other things, existing offshore wind installed capacity and how this is falling short of government targets, highlighting the need for more capacity." What comment do you wish to make on that, please?

53. MR SLARK: My observation would be that, whilst we see that the existing offshore wind capacity is indeed falling short of government targets at the moment, it doesn't follow at all that there is a likelihood of more capacity being brought forward as a result of that shortfall. Indeed, as the current shortfall is large as a result of funding constraints, it is highly likely, in my opinion, that those funding constraints will persist for a sustained period of time, and that therefore in all likelihood that shortfall will continue and may not be made up, or indeed could actually be a trend that maintains, and that future targets also fall short of expectations as well.

54. MR NEWCOMBE: And the second point to which I wish to take you, please, is on page 4 of this report. You see there are subheadings on this page. The first at the top refers to the wonderfully named Carbon Plan, and I want to direct your attention, please, to the heading 'The UK renewable energy roadmap update 2013', which you and Mr Whittaker discussed in part on Thursday. Would you explain, please, the points you wish to pick up here and what you wish to say about it?

55. MR SLARK: My simple observation here was that, in contrast to the ERM report, I find that the roadmap does make reference to specific targets for offshore wind and, as we discussed on Thursday, that those targets that it references of 16 gigawatts to 2020 and 39 gigawatts as a total deployed target in 2030 are clearly visible within that roadmap document and are sourced from the Electricity Market Reform Delivery Plan.

56. MR NEWCOMBE: Next point on page 5, please. It's the last bullet on the page, where somebody recognises, in that wonderful modern jargon, recognising challenges. What is the substance of the point you wish to pick up there and your response?

57. MR SLARK: My simple observation on this element is that the *Offshore wind industrial strategy* recognised a number of challenges – in other words, the obstacles which must be overcome for the successful deployment of an offshore wind strategy – and the first one of those which is identified is the “increasing visibility of the pipeline of future projects and the likely size and timing of future market demand, particularly past 2020”. I thought that it chimed particularly with myself, because that is the core element of my evidence to you: that we have not managed to address yet that uncertainty; that the market remains clearly lacking visibility; and that the likely size and timing of future projects remains far from clear.

58. MR NEWCOMBE: Over the page, if you would, please, and we see the heading ‘Electricity market reform’. Do you have that?

59. MR SLARK: Yes.

60. MR NEWCOMBE: Again, same form please: pick up the point made in ERM's report, and then provide your response or comment.

61. MR SLARK: The ERM report makes reference to the fact, as I did a couple of minutes ago, that an additional £80 million of funding has been brought forward in the 2 October budget for the first CFD allocation round, and I think I wanted to make clear my interpretation of that: that this is a case of bringing forward funding that has already been made available to the offshore sector or, to be more precise, to the less established renewable technologies sectors within the CFD, and that therefore, by bringing forward the first allocation round, it implies a reduction in the available funding for subsequent allocation rounds. It's not new money; it is just an allocation or reallocation of that funding. The total funding available to low-carbon technologies is capped out to 2020 under the levy control framework, which is a DECC–Treasury agreement which caps the total amount of funding available through a whole number of support mechanisms to service and support the low-carbon technology sector.

62. MR NEWCOMBE: We then need, I think, to go forward to page 10, where there's table 1.2. I think the limit of the point we need to make here is to invite members of the Committee to annotate or mark the Galloper entry there – the third one from the top – in the light of the comments you've made earlier drawing our attention to

the fact that the developers of this have said it will no longer proceed in its current form. Is there anything else we need to say about Galloper?

63. MR SLARK: I think that is sufficient. We discussed Galloper on Thursday and its current status, which is far from certain.

64. MR NEWCOMBE: On the same page, please, the last paragraph. “ERM assumes all projects will be granted development consent or Section 36 consent.” Forgive me, Mr Slark; let me just speak across you for a moment. I’m sure members of the Committee are already seized of this, but I’ll mention it anyway. Insofar as cut-offs are concerned, the move to the DCO process still left some procedures other the old Section 36 of the Electricity Act live, and those which had started under that procedure continued or are continuing under that. It’s a matter of interest, frankly, only to lawyers, but that’s the reference. Right, what point do you want to make in relation to that, please, Mr Slark?

65. MR SLARK: My point that I wanted to raise on this was that in the following sections of this document there is suggestion on a pipeline and a number of turbines that are required that is premised on this assumption, and I think the key point here was that this assumption is incredibly simplistic, in that assuming that all projects will go ahead, all will get consent and all will be constructed to their current timelines doesn’t reflect the experience to date in the offshore sector. And it’s worth noting that there are a number of projects that have not progressed as a result of either consenting issues, technical issues related to the particular site, funding constraints from their various parties, or a combination of these various factors. If it would be helpful, I would also perhaps suggest issues to do with the Argyll Array project, which was abandoned in December 2013, the Atlantic Array project and, earlier this year, the London Array – that’s phase 2 of that project – all of which fell away through a combination of consenting difficulties, whether that is the result of environmental studies discovering elements that were going to make that difficult to get through the consenting process, or technical constraints, which meant that site investigations had revealed difficulties with substrates or other elements to do with the sites, which means that the developers had decided these were either too difficult or not possible at all to take forward, either at the current time or, indeed, in some instances, potentially at any point in the future.

66. MR NEWCOMBE: And I’m in error, Mr Slark; I’m trying to hurry you on too quickly. Will you stay, please, at table 1.2 for a moment and look at the second block of “status”, which is “consent applied for”. Do you see that?

67. MR SLARK: I do.

68. MR NEWCOMBE: There are three schemes, Firth of Forth phase 1 and following. Do we need to make any amendment there?

69. MR SLARK: It's worth noting that since a report was compiled the Scottish Government has granted consent to those three projects, and that they would now be restated in the first box, as "consent received".

70. MR NEWCOMBE: I'm simply marking them with an arrow going up into the previous one. You can go on to page 11 and concentrate on the coloured histogram in the centre of the page – at least I hope it's coloured in people's copies. Your comments on this, which indicates ERM's prediction in this particular display form: number of turbines needed per year running, we see, from 2015 through to 2025. Your comments, please.

71. MR SLARK: There are two comments that I would draw from the histogram, one partly reflecting my earlier comments on the paragraph on page 10, which is that the total numbers that are represented in this histogram are somewhat beyond those that I would believe are likely to actually materialise, because they presume that all projects go ahead at their intended timescales.

72. The second point is one that picks up on a point you mentioned being discussed on Thursday, which is to do with the supply chain capability of delivering a peak at any one period: that given the cost pressures to reduce the average cost of wind turbines and, more specifically, the levelised cost of each offshore wind project, there is an incredible driver to deliver these projects as efficiently as possible. Now, that efficiency extends not just to project developers and to the financing sources but specifically to elements of the supply chain, and that can only be delivered if the deployment rate is at a sustained and consistent level. That would ensure that vessels are utilised for their design life, that cabling infrastructure can be delivered on a consistent basis, and we're able to make efficient use of supply chains both in terms of delivering a minimum efficient scale for them, but also a sustained year-on-year demand.

73. So, the histogram suggests that a very high peak in one year immediately raises concerns that that isn't consistent with an efficient use of resources within the supply chain to deliver that. The other element that it raises is not only on the supply side but also on the capability of the developers to raise and inject sufficient capital in the projects if you get a peak, as suggested, and that the funding will, of course, have to be

there at that level to continue to produce this increasing level of deployment as envisaged. So, those are my comments on the histogram itself. I do have a further comment on the paragraph that appears above it.

74. MR NEWCOMBE: Just before do that, though, please, give us a feel, please, for your take on figure 1.4. For those members of the Committee and members of the public who want a summation of what ERM consider it shows, you see the second paragraph on this page says, “Figure 1.4 therefore illustrates the likely scale of the principal UK market that will be accessible to AMEP over the initial 20 years.” Do you see that? In broad terms – and I recognise I’m inviting you to be a tad simplistic – do you regard figure 1.4 as realistic or unrealistic in terms of what it shows?

75. MR SLARK: I do not believe it represents a realistic view of the contestable market for AMEP.

76. MR NEWCOMBE: Thank you. Now, you wanted to take us to the paragraph which is immediately above the histogram, which starts “As previously noted”. Point us to the relevant portion of that paragraph, and then make your comment, please.

77. MR SLARK: The relevant element is the last two lines, and – in fact, actually it is the last sentence, which I will read out to make it easily... “It is anticipated that these schemes would fall to the latter end” – actually, maybe it would be worth – maybe I’ll pause. Maybe it would be worth reading the entirety of that paragraph. “As previously noted, some schemes have not been included as no information exists regarding their predicted construction period or, indeed, their planned capacity. It is anticipated that these schemes would fall to the end of the timescales shown in figure” –

78. MR NEWCOMBE: “The later end”, I think.

79. MR SLARK: Correct. So, “The later end of the timescales shown in figure 1.4, and therefore the peak shown in 2021 could reasonably be expected to be sustained.” I find no evidence at all in any of the numbers presented to suggest that that peak could be sustained. Whilst we recognise that there are unknown elements of projects that could be brought forward, as my evidence presented in the various tables we’ve been going through suggests, there is much less likelihood that all of these identified projects would come forward at all than there is that the peak could be sustained by simply looking at the number of projects that have been proposed and are being considered for development.

80. MR NEWCOMBE: Well, no – you indicate that you’re not aware of any evidence. No doubt, if Able think there is some, that will be put to you so you have a

fair opportunity to comment. On, if you would, please, to page 12, and we see a reference in the third complete paragraph on that page, which starts, “The European Wind Energy Association, EWEA, report *Wind in our sails*” – they always seem to have wonderful titles for these things – “2011”. Mr Slark, is that the latest word on the subject from the EWEA?

81. MR SLARK: No, it’s not. In July of this year EWEA published a new set of scenarios for its view on the deployment of offshore wind across the European markets, of which its key note was that it has substantially reduced the expectations it has for the deployment of offshore wind across the EU as a whole, the North Sea and the UK market by 2020.

82. MR NEWCOMBE: Thank you. On, if you would, please – there’s a section on page 14, section 1.5.3, ‘Competing port facilities’. I am not inviting you to comment on the detail of port facilities or other markets at the moment, but what general comment do you wish to make on this paragraph?

83. MR SLARK: On this paragraph and section, I just had a simple comment, which was that the preceding sections had discussed a potential market for the facilities, looking at the North Sea and European markets as potential markets as part of the need statements, but no other European ports are identified outside of the UK as competition for new facilities. And that, to me, seemed an inconsistency in the approach.

84. MR NEWCOMBE: Thank you. Now, that’s a quick canter through, Mr Slark.

85. CHAIRMAN: Mr Slark, Mr Whittaker would like –

86. MR NEWCOMBE: I do apologise.

87. MR WHITTAKER: No, that’s okay. Just to clarify, because you’ve talked about contestable markets, and particularly looking at ABP 8, which shows the 200-mile-out line of where those potentially are for AMEP. I notice in your figures you’ve used Holland and Belgium as well. Why haven’t you used Germany and Denmark as well, because there are quite a few – if you go to the world map of wind farms and proposed wind farms, there’s an awful lot of German ones that come within that 200-mile radius, and there are also some Danish ones as well. I just wondered why you haven’t added those into your figures as well, just for clarification.

88. MR SLARK: Absolutely. I think it’s a good question. It’s partly that most of the German and Danish wind farms are not within the 200-nautical-mile facility from the Humber. Those that are are on the edge of the development zones, so they are a long distance from any port facility. But the main reason for choosing to exclude Denmark

and German was that these two markets have highly established port facilities expertise already, and I considered they ought to be highly competitive.

89. MR WHITTAKER: So, are you saying we're not capable of competing against the Germans or the Danes? Is that what you're saying?

90. MR SLARK: I have taken the simplistic assumption that those –

91. MR WHITTAKER: I'm teasing – it's okay.

92. MR SLARK: I think the facilities will be closer to home ports that are likely to be highly competitive for reaching those particular markets.

93. MR WHITTAKER: Thank you.

94. MR NEWCOMBE: Mr Slark, unless I've managed to pass over something to which you wished to refer in evidence-in-chief, that concludes my examination of this witness, and I tender him for cross-examination. I'm grateful.

95. CHAIRMAN: Thank you, Mr Newcombe. Do members of the Committee have any questions to put to Mr Slark? No? Right. Mr Bird, I think it's your turn.

96. MR BIRD: Thank you very much, sir. Good afternoon, Mr Slark.

97. MR SLARK: Good afternoon.

98. MR BIRD: Could you just take up Able document 11, which you've just been referred to? Have that to hand. We just want to agree some general propositions which can be derived from government policy on offshore wind. We can agree, can't we, that it is to move to a more efficient low-carbon, sustainable economy, with less reliance on fossil fuel?

99. MR SLARK: It is, correct.

100. MR BIRD: Good. And that is in the context of a legal obligation to reduce greenhouse gas emissions by 80% by 2050, taking 1990 as the base.

101. MR SLARK: I believe so.

102. MR BIRD: Good. And that's likely to require, is it not, the electricity sector to be virtually decarbonised in the long term?

103. MR SLARK: That's my understanding.

104. MR BIRD: Good. We can also agree, if we go to page 4 of that Able 11, midway down the page there's a quotation from the Carbon Plan, isn't there?

105. MR SLARK: Yes.

106. MR BIRD: And a reference and a quotation from paragraph 18 of the Carbon Plan. And that has in the middle of that quotation the words, "It will also gain a long-term competitive advantage in sectors that play to our comparative strengths." That,

again, is one of the objectives of Government, isn't it: to seek to secure a long-term competitive advantage which plays to the strengths of the UK?

107. MR SLARK: Yes, that's my understanding.

108. MR BIRD: Good. And the reason why it seeks to achieve that objective is to secure the huge industrial benefits of offshore wind, isn't it? And that we can see – just the next paragraph down the page – the quotation from the UK Renewable Energy Roadmap Update 2013, the second paragraph of that section: "The Government is determined to secure the huge industrial benefit of offshore wind."

109. MR SLARK: I certainly believe that that is one of the driving forces for the Government support for offshore wind, yes.

110. MR BIRD: Yes. Is the Government wasting its time promulgating that as a policy, Mr Slark?

111. MR SLARK: I don't believe so. I believe that offshore wind has a very major contribution to add, and I tender my evidence has suggested a large offshore wind deployment for the UK market is entirely within the expectations I've presented.

112. MR BIRD: Well, perhaps we can come back to your expectations and see what you have and haven't taken on board in due course. It's also government policy, isn't it, to take action now to increase volumes of manufacturing in a way which reduces and provides cost reduction?

113. MR SLARK: I believe so, yes.

114. MR BIRD: Yes, and that's part of the *Offshore Wind Cost Reduction Task Force Report*, which is also referred to in Able's document 11, isn't it? Top of page 5.

115. MR SLARK: It is.

116. MR BIRD: And we see there, don't we, at the top of page 5 the objective, which is to seek to deliver a cost per kilowatt hour of less than £100?

117. MR SLARK: That's the target, yes.

118. MR BIRD: Yes. Good. Now, in terms of why the Government is keen to secure that cost reduction, if that cost reduction is secured, deployment increases, doesn't it, because you need less subsidy in order to roll out the offshore wind programme?

119. MR SLARK: Yes. For any given amount of subsidy, if you can bring costs down, you will get a greater capability of deploying a greater capacity as a result of that.

120. MR BIRD: Good. And in terms of the benefits of, as it were, greater capacity, that is how one has the potential to deliver the tens of thousands of long-term jobs which the Government is seeking, yes?

121. MR SLARK: Yes.

122. MR BIRD: A clear and sustainable pipeline of projects.

123. MR SLARK: That's a prerequisite for that.

124. MR BIRD: Yes. Major manufacturing facilities in the UK.

125. MR SLARK: Would be essential.

126. MR BIRD: And development of the competitive UK-based supply chain.

127. MR SLARK: Yes.

128. MR BIRD: It's not, is it, Government's policy and ambition simply to roll out the Round 3 wind farms in the North Sea? It has an objective for the UK to play a part in the global supply chain of offshore wind, doesn't it?

129. MR SLARK: It has an interest in doing that. I think what's not clear is the extent to which the UK can provide a substantial contribution on a global market for a market that is relatively local in its requirement for construction and delivery.

130. MR BIRD: Well, we'll come back to that point in a moment. But we know, don't we, that the Government is determined – “determined” is the word it uses – to enable the sector to succeed? That's paragraph 1.4.2 of the roadmap update.

131. MR SLARK: I believe – that is what it states. The ambiguity that we have to contest with here is that the funding that's been made available doesn't yet align itself with that ambition.

132. MR BIRD: Yes. The words “doesn't yet” are relevant, aren't they, from that answer, Mr Slark?

133. MR SLARK: Well, as in no identified funding, or no funding has yet been identified, to enable that pathway towards the cost reduction that you refer to.

134. MR BIRD: Yes, but we can agree this much, can't we? Whatever prediction you seek to make in terms of the number of turbines deployed and what they may be to 2020 or, indeed, 2030, we can agree, can't we, that there's no evidence that there would be any prospect of achieving the Government's objectives without taking steps now to prevent global competitors stealing a march on the UK manufacturers, and unless the UK provides opportunities to deliver the manufacturing basis to enable the growth to occur, can't we?

135. MR SLARK: I think we can agree that, yes.

136. MR BIRD: Good. And in terms of preventing competitors stealing a march, the issue is of some urgency, isn't it?

137. MR SLARK: Certainly given the current roll out of the Round 3 projects, any facility that is going to be developed and delivered needs to be up and running in the period to 2020, yes.

138. MR BIRD: Forgive me. In terms of preventing the competition stealing a march, the issue – and here I'm talking about European and global competition – that is an issue of some urgency, isn't it, given the assessment that we see, for example, in ABP's document 8? There we see a comparison of locations of competitor offshore wind supply ports. Did you prepare this?

139. MR SLARK: No, I didn't. No.

140. MR BIRD: Are you familiar with what's happening at these ports?

141. MR SLARK: I have a degree of familiarity with those, yes.

142. MR BIRD: Yes, good. So, you know that, for example, Esbjerg is taking steps to gear itself up in order to take advantage of the market which you say doesn't exist.

143. MR SLARK: I certainly have not said that any market doesn't exist. I've simply identified there are indeed those competitive ports and that, as you suggest, I would agree with the statement that, if the UK is to capture a large proportion of the developments within UK territorial waters, the UK will need to ensure that it has the facilities to service those markets.

144. MR BIRD: Yes, and can we just agree what those facilities need to have so that they can compete? They need to be, don't they, in optimal locations?

145. MR SLARK: Certainly, yes.

146. MR BIRD: They need to be designed to facilitate maximum efficiency, don't they?

147. MR SLARK: Certainly the – I'm not sure I – it's a very ambiguous statement. Would you have a particular –

148. MR BIRD: Well, Mr Slark, as far as the issue of delivery and deployment of offshore wind, one of the key constraints at present is its cost, isn't it?

149. MR SLARK: It is.

150. MR BIRD: Yes. One of the ways of reducing cost is to maximise efficiency in terms of the overall process, from manufacturing of components all the way through to deployment, isn't it?

151. MR SLARK: Yes.

152. MR BIRD: So, we can agree surely that one of the objectives of a location and a scheme must be to maximise efficiency in the interests of cost reduction, can't we?

153. MR SLARK: Yes, we can do that.

154. MR BIRD: Good. It must also be of a scale, mustn't it, to enable reduced costs?

155. MR SLARK: Certainly it needs to reach a minimum efficient scale to ensure that those costs can be reduced, yes.

156. MR BIRD: Yes. And it needs to be delivered to a timescale which demonstrates a clear commitment. You yourself referred to the visibility of the project pipeline, didn't you?

157. MR SLARK: I did, yes.

158. MR BIRD: Yes. What picture do you consider the fact that Able are unable at present to tell the market when its quays will be ready in order to deliver offshore wind from their scheme – what effect do you think that has on demonstrating the visibility of the pipeline of projects?

159. MR SLARK: I think you've slightly twisted the point about – the visibility of pipeline of projects is the capability of the projects to come forward. When each project comes forward, it will clearly need to be able to identify facilities that can service that need.

160. MR BIRD: Yes, but isn't that one of key derisking factors: to ensure that you have in place a facility which minimises risk, minimises costs, enables greater delivery? What effect do you think inability to identify when the Able quays might be ready, which arises from these proceedings, might be having on the market and its visibility?

161. MR SLARK: To be honest, I don't know. It can't be constructive.

162. MR BIRD: No. We can certainly agree that much. Now, in terms of your assessment of competition, we've touched on ABP 8 already. Can you just take up, please, within that context, your ABP document 13 as well? Because you were asked by Mr Whittaker about the absence of Germany and Denmark from your tables which we see on ABP 8. We'll come back to that in a moment, but if we just look at ABP 8 and look first at Immingham, we can agree, can't we, as far as Immingham is concerned, it would provide for the fastest access to the greatest number of Round 3 wind farms when compared to the alternatives, would it not?

163. MR SLARK: I think the – it will certainly provide the fastest access to a number of the Round 3 –

164. MR BIRD: Well, the greatest number, would it not, on comparison with competitors, when one compares the various overlaps?

165. MR SLARK: I'm not sure you can judge it simply on that. I mean, each project will be assessed on its individual sourcing.

166. MR BIRD: Feel free to add the rider that we can agree in terms of what it shows. It shows, does it not, that the greatest number of Round 3 projects fall within the 200 nautical miles of Immingham when compared to the competitors?

167. MR SLARK: Yes.

168. MR BIRD: Good.

169. MR SLARK: And I've identified that in identifying that 80% of UK market is contestable from the Humber.

170. MR BIRD: And we know, do we not, that in terms of national support for development within the Humber and for AMEP in particular, the present proposal has the consent from approval of the Secretary of State through the making of the Development Consent Order?

171. MR SLARK: That's my understanding, yes.

172. MR BIRD: It also has, does it not, the support of the Local Enterprise Partnership and local authority support, as is demonstrated in Able's documents 18A and 18B? Have you seen those?

173. MR SLARK: I had a chance to see those over the weekend. Yes, that would show that support.

174. MR BIRD: And political support at all levels and local support are important, are they not, in terms of delivering projects such as this?

175. MR SLARK: They are.

176. MR BIRD: It also has, has it not, access to a local supply chain, which includes Tata Steel at Scunthorpe, and for which AMEP would be a customer.

177. MR SLARK: I believe it has good access to that local supply chain. I couldn't say whether it would be a customer or not.

178. MR BIRD: And it has access to a skilled local work force.

179. MR SLARK: I believe so.

180. MR BIRD: Good. And the opportunities exist, do they not, for synergy with existing operations and maintenance at Grimsby and, indeed, at other ports on the Humber?

181. MR SLARK: I would believe so.

182. MR BIRD: Good. So, there is the potential here to establish a cluster of industry involved in the offshore wind provision, which again assists, does it not, in reducing costs and derisking the delivery of offshore wind?

183. MR SLARK: Yes.

184. MR BIRD: And you don't suggest, do you, that as far as the UK is concerned there is any better place, is there, than the Humber to deliver an offshore wind cluster?

185. MR SLARK: I have – I don't suggest that, no.

186. MR BIRD: Good. Now, as far as the challenges are concerned, if we go back to Able's document 11, page 5, those are recognised on that page, and over the top of page 6, drawn from the analysis which has been undertaken.

187. MR SLARK: Sorry, Mr Bird. Are you –

188. MR BIRD: Sorry – Able 11.

189. MR SLARK: Able 11.

190. MR BIRD: Yes. Page 5. This is from the *Offshore wind industrial strategy*, 2013, bottom of the page he would take you to, I think, and you looked at the various challenges – or some of the challenges. We can agree, can't we, that AMEP would assist in addressing and helping to address each of those challenges, can't we?

191. MR SLARK: Setting aside my earlier comment that the first challenge is about the pipeline of actual projects, not the facilities to support those projects, I don't think we can say AMEP as a facility or indeed any other facility necessarily improves the pipeline of actual projects.

192. MR BIRD: But it will, won't it, if it can demonstrate that it can reduce cost.

193. MR SLARK: Well, that's not my understanding of what that statement says, no.

194. MR BIRD: I've not asked you about that particular statement, but in terms of assisting future projects, if there is a facility which will assist in delivering that future project which can demonstrably deliver at less cost than currently, or less cost than the competitors, it will be influential in the investment decision, won't it?

195. MR SLARK: I'm sure, yes.

196. MR BIRD: Good. And then the other bullet point.

197. MR SLARK: I think with the exception of the penultimate bullet point on the cost of financing, certainly a further facility at AMEP would contribute to all the other aspects.

198. MR BIRD: Good – it would. Let's just see whether you can assist me a little bit further with the penultimate bullet point then. Insofar as the Able project has the

potential to, for example, reduce the costs of transportation of wind turbine components or the journey which would have to be made by offshore wind turbine components, it has the potential, does it not, to reduce risk by the risk of unforeseen cost?

199. MR SLARK: I would agree it would have the potential to reduce cost, and potentially risks around that aspect. I don't believe that's the point made by the bullet point though.

200. MR BIRD: Well, isn't it? Because those risks increase the cost of financing, don't they?

201. MR SLARK: The perceived risk around – I mean, in general the costs would affect the cost of financing. The risks associated with that are market-related risks, but in answer to your question, it's not obvious to me that AMEP reduces those costs.

202. MR BIRD: Right. It's not your evidence to the Committee, is it, that market-related risk is unrelated to the cost of delivery of offshore wind?

203. MR SLARK: There are a large number of sources of risk and uncertainty associated with offshore wind, but –

204. MR BIRD: Cost is the greatest, isn't it, at present?

205. MR SLARK: Certainly, yes, I think you could argue that it is the greatest risk facing the offshore sector in the long term.

206. MR BIRD: A step which helps to reduce cost will facilitate financing in the long term for the offshore wind market, won't it?

207. MR SLARK: I know I am drawing a subtle distinction here, but the cost of financing and the risk associated with that is around the risk and uncertainty with a particular project, not its overall absolute cost.

208. MR BIRD: Well, no. As far as any project is concerned, it'll have a contingency, won't it? The contingency will reflect risk. The size of the contingency will reflect funding, and whether or not it's achievable, won't it?

209. MR SLARK: I am sure it will.

210. MR BIRD: Yes. So, the two are not unrelated, are they?

211. MR SLARK: Yes. To the extent that you can reduce those risks and reduce that contingency, you can reduce the cost of financing.

212. MR BIRD: Good.

213. MR SLARK: I don't think we've established that there's a direct link there, but –

214. MR BIRD: Well, we will shortly, I hope. Now, as far as the cost is concerned, as far as the Government's objectives are concerned, it seeks, does it not, the effective use of Government subsidy – the most effective use of Government subsidy?

215. MR SLARK: You would hope so. I'm not actually sure that you can necessarily argue that with the renewal support mechanisms as they stand at the moment, but –

216. MR BIRD: That's its objective, and it also seeks, does it not, as part of, as it were, the giving of the subsidy something in return, which is the delivery of UK manufacturing?

217. MR SLARK: The reason for supporting renewable electricity is multifaceted, certainly one aspect of which is the ability to contribute to UK manufacturing and jobs, yes.

218. MR BIRD: Good. And we can agree certainly – back to the issue of cost – that reduced cost is key to delivery and deployment of the 41 gigawatts of offshore wind which is referred to in the Electricity Market Reform Delivery Plan for the period to 2030.

219. MR SLARK: Certainly the market reform plan makes absolutely critical that, without cost reduction, you cannot deliver –

220. MR BIRD: Yes, absolutely. What is cost that one has to reduce the megawatt hours to in order to secure that?

221. MR SLARK: I believe it's something in the region of a 33% reduction in cost to the target levelised cost of £100 per megawatt hour for projects receiving financial close around 2020.

222. MR BIRD: So, it's seeking to seek that or achieve the cost reduction to 100 megawatts hours, is it not?

223. MR SLARK: It is.

224. MR BIRD: Yes – £100 per megawatt hour. That is the level which was identified by the Government's Cost Reduction Task Force, wasn't it?

225. MR SLARK: It was, yes.

226. MR BIRD: Yes. And the offshore wind industrial strategy, which again is referred to in Able's document 11 and I think you've referred to, identifies that with a high level of innovation, costs can be reduced even further, doesn't it, down to £60 per megawatt hour by 2050?

227. MR SLARK: Yes. I think there is that reference in the document, although it's not an element I'm particularly familiar with – the mechanics of how that's to be achieved.

228. MR BIRD: Alright, but we can agree, can't we, that the largest potential to save costs is going to lie in the development or the making of the turbines, the making of the foundations, and installation?

229. MR SLARK: I think that's – yes, we can agree that.

230. MR BIRD: Good. And of course achieving that reduction requires, does it not, an understanding of where the costs lie in the overall deployment process, doesn't it?

231. MR SLARK: It would, yes.

232. MR BIRD: And how they might be minimised.

233. MR SLARK: Yes.

234. MR BIRD: I mean, what is your understanding as to where those costs lie and their scale in the overall process of wind turbine development?

235. MR SLARK: Off the top of my head, I'm not particularly familiar with what the relative cost ratios are or the percentage by which each of those cost elements might be reduced.

236. MR BIRD: I see. So, in terms of, for example, the comparative cost – and this is installed capacity cost per megawatt hour – of a megawatt of a four-megawatt turbine compared to an eight-megawatt turbine, do you have any knowledge of what that might be?

237. MR SLARK: I don't believe there's been an eight-megawatt turbine installed anywhere yet, so I don't think there is a figure for what an eight-megawatt turbine cost would be, but the expectation is that one of the reasons for seeking larger turbines is to seek to reduce cost.

238. MR BIRD: Substantially.

239. MR SLARK: Yes.

240. MR BIRD: Yes, and scale is going to be part of that reduction, isn't it?

241. MR SLARK: Yes.

242. MR BIRD: Good. And innovation is going to be part of that reduction, isn't it?

243. MR SLARK: It's going to have to be to meet that sort of target, yes.

244. MR BIRD: Good. And achieving the 2050 cost reduction, which we've just referred to, and indeed achieving Government's objectives are not going to be achieved by doing more of the same, are they?

245. MR SLARK: I am sure not, no.

246. MR BIRD: Good. And just in terms of cost more generally, what is your understanding of, as it were, the vessel charter rate for wind installation vessels per hour and per day?

247. MR SLARK: I wouldn't know that figure.

248. MR BIRD: And if we go back to your ABP 13 and go to the figures, which is on page 3 of the document, you've done a market share calculation, which effectively attributes to Green Port Hull 33% of the contestable Humber market, haven't you?

249. MR SLARK: I have.

250. MR BIRD: Yes. What allowance did you make in terms of that assessment for the additional costs which a wind installation vessel would incur having to go from Immingham further up the Humber to Green Port Hull?

251. MR SLARK: I've not considered that at all. My approach in making that allocation, as I recognised when I presented the tables, was simplistic. I looked at the envisaged capacity in the period to 2020 as somewhere in the region of 200 turbines for the Green Port Hull facility, which is my understanding of the Siemens capability, versus the 400 for AMEP, and used that ratio for dividing those numbers.

252. MR BIRD: So, it doesn't take account of cost –

253. MR SLARK: No.

254. MR BIRD: – in this highly cost-sensitive market?

255. MR SLARK: As I have made very clear, I was simply trying to make some assessment for the fact that some degree of competition is likely to mean that, for some of those projects, alternative port facilities were more likely to win than AMEP winning 100% of the entire contestable market for offshore wind.

256. MR BIRD: And we can agree, can't we, that in terms of minimising costs, that requires all avoidable delays to be avoided, doesn't it?

257. MR SLARK: Certainly I would imagine that reducing avoidable delays would be a contribution, but I'm not sure where it sits in the hierarchy of requirements.

258. MR BIRD: Well, I'm instructed that a typical daily rate for a wind installation vessel can be in the region of £190,000 a day – £8,000 an hour. Does that sound in the right ballpark, as far as you know?

259. MR SLARK: It's not an area I could comment on.

260. MR BIRD: So, you don't have any – okay. Within that context, the need to avoid delay is critical, is it not?

261. MR SLARK: Certainly the efficient use of a vessel, given that sort of order of magnitude of cost, would be an important contribution into the overall cost of the project, yes.

262. MR BIRD: Yes, and let's just see how costs might increase. If you queue for berths, costs are likely to increase, aren't they?

263. MR SLARK: Yes, I would imagine that's the case. I'm not a – I can't comment on efficient port operation.

264. MR BIRD: But you're here professing to give evidence in relation to the issue of need, and what the market is likely to be like in the future, and I need to ask you about how the market may be if efficient facilities are provided. We need to have some understanding of what factors affect cost, don't we?

265. MR SLARK: Well, I think we've identified that cost is a factor. To be clear, I mean the approach I have taken in this is very much starting from the policy side and the funding capability for this, rather than an approach which has started from a bottom-up cost comparative assessment of different facilities.

266. MR BIRD: I know what you've done. We'll come to the detail of what you've done in a moment, whilst we see to what extent there is an understanding of how the industry works behind what you've done. Now, also, waiting at a berth for the delivery of components increases costs, doesn't it?

267. MR SLARK: All other things being equal, I would imagine so, but, as I say, this is not an area of my expertise.

268. MR BIRD: But I'm sure you can agree, can't you, that in terms of reducing cost of deployment overall, the closer the industry can get to a just-in-time delivery process, the more costs are likely to be reduced?

269. MR SLARK: I would imagine that to be the case, yes.

270. MR BIRD: Good. And so there are in that context, are there not, advantages in establishing a manufacturing cluster in a single location?

271. MR SLARK: I would think – yes, I would understand that to be the case.

272. MR BIRD: Because that has the advantage of lower delivered cost for components, doesn't it?

273. MR SLARK: To the extent that's the case, yes.

274. MR BIRD: It also, does it not, minimises the movement, storage and lifting of wind turbine components?

275. MR SLARK: That's my understanding.

276. MR BIRD: And it avoids, does it not, as much as possible manufacturer-to-port transportation?

277. MR SLARK: Sorry, I didn't – could you restate the question for me?

278. MR BIRD: Yes. It avoids, as far as possible, manufacturer-to-port transportation.

279. MR SLARK: Yes, if you had that cluster. Yes.

280. MR BIRD: Can we take up the Able exhibits? And Able 17 I want to go to, which is the diagram showing the logistic schedule for the Alpha Ventus project in Germany. Have you got that?

281. MR SLARK: I have, yes.

282. MR BIRD: Does the Committee have that? It's a single sheet. It appears in the environmental statement as well, but this was just a more convenient place to refer to it. It's a single page which looks like that.

283. CHAIRMAN: Sorry, could you just give the –

284. MR BIRD: Yes. It's Able – I'm told you haven't got them yet. I do apologise for that. Perhaps I could ask for them to be added to your bundle. They are really exhibits 13 to 18C. I've already referred to two of them. It's the letters from the LEP and the North Lincolnshire Council. I apologise if you didn't have those. I thought you had them all. I'm told they're being produced. I'll have to do it a different way, if you don't mind, which is going to the environmental statement. We'll sort that out. I do apologise, my Lord. I'll find a different reference.

285. My Lord, if I could ask you to go, please, to core reference exhibit 12, which will be in the third of the big white file folders in front of you, which will be in various sections. It's an extract from the AMEP environmental statement, and I need to go to section 5, and the bottom of the page, middle of the page, the page referencing is five, followed by a hyphen, followed by the page number. So, if you can find within that section 5-36, so page 36 of section 5, you should, I hope, find figure 5.14, which will in due course be presented to you in a much more readily found document. This shows, Mr Slark, the logistics which were involved in the supply chain for the Alpha Ventus wind farm project, which was a five megawatt project just off the coast of Germany. Do you see that?

286. MR SLARK: I do. I believe it's a lot larger than five megawatts; I believe it's five-megawatt turbines.

287. MR BIRD: Yes, sorry. I beg your pardon. It is five-megawatt turbines, of which I think there were 12, so 60 turbines. But it shows, does it not, in order to construct that single project under present arrangements the extent of logistic movements, the distance, the numbers involved of those movements, which will all add to the overall cost of the scheme. Yes?

288. MR SLARK: I would believe so, yes.

289. MR BIRD: Yes. So, the objective in terms of achieving Government policy must be to seek to a) minimise the number of such movements, and b) minimise their length, mustn't it?

290. MR SLARK: Well, we certainly we have identified that the Government policy objective is to reduce the cost of offshore wind, and to the extent that reducing the number of component movements and the costs associated with each of those movements must clearly be a contribution to that objective, yes.

291. MR BIRD: Good. And unless and until facilities are in place to enable that to happen, the costs cannot reduce, can they?

292. MR SLARK: Certainly, yes. You can't reduce those cost whilst you're still reliant on a supply chain that has a higher cost distribution associated with it.

293. MR BIRD: Good. Can we also agree that a port which offers guaranteed availability of designated quays, as proposed at AMEP, has a significant advantage, does it not, in terms of the flexibility and avoiding delay, which the offshore wind industry is going to need?

294. MR SLARK: It's not something I can personally comment on. I'm not a port operator expert or that familiar with the use of quays for offshore wind.

295. MR BIRD: I'm not asking you to be an expert in port operations, but in terms of avoiding delays, a port which is able to offer guaranteed availability of a designated quay to, for example, an installer has the potential to minimise delay, does it not?

296. MR SLARK: I'm not sure how – I don't know is the answer to that.

297. MR BIRD: Right. Well, we've already agreed that, in terms of reducing of queuing for berths, that would be advantage of an appropriate port facility.

298. MR SLARK: That I can agree with, yes.

299. MR BIRD: Equally, a port which operates on the basis that an installer knows its likely costs, because for example it is charged for a rental for a quay as opposed to being charged for each and every piece of cargo which passes over that quay, again, is an advantage, is it not, to the delivery of offshore wind projects?

300. MR SLARK: It would seem to me that having complete certainty over what your offshore wind deliverable cost will be would certainly be a contributing factor –

301. MR BIRD: Well, a significant contributing factor, would it not, when the issue of risk and financing is so important?

302. MR SLARK: Yes.

303. MR BIRD: Good. Then back to ABP 13, if we could, and you can put away the big bundle of the core references, my Lord. As far as ABP 13 is concerned, what assumptions does it make in terms of the manufacturing of components for supply to the international market for offshore wind, as opposed to deployed turbines in the North Sea?

304. MR SLARK: I've made no assumptions at all in terms of that. This is purely looking at deployed wind farms in the North Sea.

305. MR BIRD: Yes. That would not, would it, be the only contestable market for AMEP, would it?

306. MR SLARK: Perhaps you would like to expand upon what the contestable market for AMEP facilities is.

307. MR BIRD: Well, again, I'm afraid the system is that you can't ask me questions, but I can answer your question with another question. In terms of AMEP, which would include manufacturing of blades, nacelles, turbines, towers, foundations potentially, those are all capable of being exported to the international market, aren't they?

308. MR SLARK: Yes.

309. MR BIRD: Yes. If AMEP allows those to be delivered at a cost which is competitive to the international market, there's no reason why – indeed there's every reason why – AMEP would be seen as a source for such products. Yes?

310. MR SLARK: Yes.

311. MR BIRD: Good. So, your assessment of the contestable market makes no allowance, does it, for any such market?

312. MR SLARK: My – no, it doesn't.

313. MR BIRD: No. Why not?

314. MR SLARK: Because, as we've just been discussing – or at least my interpretation of what we've just been discussing – one of the key advantages of the Humber facility was that it was bringing together the supply chain in one place. So, I had interpreted from the information available to me that production of 1,200 blades equated to 400 turbines, and that whilst I believe the quoted number of nacelles is a

surplus to that, essentially the environmental statement suggested that there was a capability of 400 wind turbines that could be produced at the facility.

315. MR BIRD: Well, we'll come to the 400 in a moment, but all your evidence is directed at showing that you won't achieve that 400 in the North Sea. That is not the only market which is potentially available to AMEP, is it, in terms of components?

316. MR SLARK: That's – yes.

317. MR BIRD: Right. So, your ABP 13 does not, does it, in fact address the potential market which AMEP is capable of serving? It addresses part of that market only, doesn't it?

318. MR SLARK: Yes.

319. MR BIRD: Good. What is the size of the other part of the market which you have failed to address?

320. MR SLARK: I don't know that that's been established as to what the –

321. MR BIRD: So, you don't know?

322. MR SLARK: No, I don't know what the potential, if any, there is to export the components that couldn't be competitively delivered to projects in the North Sea to elsewhere on the global market.

323. MR BIRD: What then is the objective of your evidence before this Committee, Mr Slark, given that you're only addressing part of the market? What are you saying the Joint Committee can reasonably draw from your evidence, given that you're not addressing, and have no knowledge as to, the other part of the potential market?

324. MR SLARK: What I have set out to do within my evidence was to illustrate the potential market for offshore wind turbines around the North Sea, with a view to looking at what the likely market for deploying offshore wind turbines would be from Humber facilities and from AMEP. That, my understanding is, is the primary permitted purpose for the facility.

325. MR BIRD: Well, forgive me, Mr Slark. You would expect, would you not, that if your projections – and we'll turn to those in a moment – prove to be realistic in terms of the North Sea, that those who seek to occupy AMEP would look to markets beyond and seek to compete, wouldn't you?

326. MR SLARK: Yes, if that's possible.

327. MR BIRD: Yes, so it would therefore be part of what you, as a responsible expert, should do – look to see to what extent there is potential for that, wouldn't it?

328. MR SLARK: What I've looked at is the principal markets that we've been able to

identify.

329. MR BIRD: Well, forgive me; have you looked at all at the market for components?

330. MR SLARK: No, I haven't.

331. MR BIRD: Right, thank you. Let's just look at what you have done.

332. MR NEWCOMBE: Forgive me, my Lord. If we're moving on, this is not ABP's understanding of the way the matter was put to the panel. If I'm wrong in that, I'll be corrected. The more important point is this: if Able is now asserting and thinks it asserted before the panel that there is some wider market here, then I'm sure Mr Bird – in fairness – is not going to be coy with the figures, the word I used on Thursday; he is actually going to tell this witness what that figure is so this witness has a fair opportunity to comment.

333. MR BIRD: Well, I'll put my case as I intended to put it before that interruption and it will touch on the point that Mr Newcombe has raised. Let's go back to ABP 13 because you start in table 1, don't you, with UK, Belgium and Netherlands. And as has already been pointed out to you, you ignore Germany. We'll come back to the figures in a moment in terms of Germany. You also proceed on the assumption, do you not, of 400 turbines as being what was proposed by AMEP. We can see that on page 2.

334. MR SLARK: I do.

335. MR BIRD: Whereas we go back to chapter 5 of the environmental statement – I don't think it is necessary for the Committee to take it up – back to chapter 5 of the environmental statement, paragraph 5.10.12 refers to 500 turbines. Have you got that?

336. MR SLARK: I'm sorry, can you give me the reference again?

337. MR BIRD: 5.10.12. It's at page 5-50, if that helps.

338. MR SLARK: Right. Thank you, yes.

339. MR BIRD: Penultimate sentence. See the reference to 500 complete turbines?

340. MR SLARK: I do, yes.

341. MR BIRD: And in terms of chapter 5 of the environmental statement, it is indicative, is it not – it does not pretend to set out in prescriptive form how the market would in due course operate, but provides an indication of the throughput of the scheme, which is effectively then translated into tonnages and then enables the assessment process to take place, doesn't it?

342. MR SLARK: I'm not an expert on the process, but I can tell you that I sourced – the 400 being my understanding of that – from what is paragraph 4.4.26 of the

environmental statement.

343. MR BIRD: Okay. Let's just focus on the European market for a moment. There are a variety of forecasts in terms of the European market for the post-2020 period, aren't there, for deployed offshore wind?

344. MR SLARK: For the period after 2020?

345. MR BIRD: Yes.

346. MR SLARK: Yes.

347. MR BIRD: One of which appears in the offshore wind industrial strategy, which identifies I think 55 gigawatts by 2030. Are you familiar with that figure?

348. MR SLARK: I have seen that figure.

349. MR BIRD: Yes. That is potentially contestable market for components for the AMEP scheme, isn't it?

350. MR SLARK: The residual capacity for... Yes.

351. MR BIRD: Yes.

352. MR SLARK: Over that period, yes.

353. MR BIRD: Well, we've seen the Alpha Ventus logistics map, which shows a wide range of, as it were, initial locations for the component supply, doesn't it?

354. MR SLARK: It does. I mean, it's probably worth commenting to the Committee that Alpha Ventus is not a typical offshore wind farm. It was an early stage test bed project, is my understanding, and that's one of the reasons why it's the first deployment of these large 5 megawatt turbines. I wouldn't want to suggest that that supply chain for Alpha Ventus is typical of a wind farm. But that said, I think we are agreed that that doesn't appear to be the efficient way –

355. MR BIRD: Absolutely. As the market innovates the objective must be to reduce the spread of the supply chain, mustn't it?

356. MR SLARK: It would seem to be a sensible way to reduce costs, yes.

357. MR BIRD: Good. Now, your assessment of the European market – and you're focusing here on deployed turbines – refers simply to Belgium and the Netherlands, doesn't it?

358. MR SLARK: It does.

359. MR BIRD: Right. And if we look at table 1, it's got the period of 4.1 in the period to 2020, which becomes a policy ambition in the period between 2020 and 2030 of 2.4.

360. MR SLARK: Yes.

361. MR BIRD: What is the source of the 4.1?

362. MR SLARK: The 4.1 is derived from the NREAP, the National Renewable Energy Action Plan for Belgium, and from the Energieakkoord, which is the latest Dutch policy statement on its ambition for renewables, with a stated figure for offshore wind.

363. MR BIRD: Okay. Because you referred in your evidence to the European Wind Energy Association report of July 2014, didn't you, and have used some of that material in your assessment. What does it predict for Belgium and the Netherlands on a central scenario to 2020?

364. MR SLARK: If you will forgive me while I refer to my notes, I can tell you exactly what that says. So the central scenario for Belgium is 1,500 megawatts, so 1.5 gigawatts, and for the Netherlands is 1.4 gigawatts. So a total of 2.9 gigawatts.

365. MR BIRD: Yes. And add in then also Germany.

366. MR SLARK: Germany under the central scenario would be 6.5 gigawatts.

367. MR BIRD: Yes, which would give you a total of 8 gigawatts. And that allows for installed capacity, already installed capacity. Agree with that?

368. MR SLARK: Sorry?

369. MR BIRD: Eight gigawatts, allowing for already installed capacity.

370. MR SLARK: That figure includes installed capacity, yes.

371. MR BIRD: Right. And if we input the German, Belgium and Netherlands figure from the Offshore Wind Energy Association into your table 1, what is the effect on the bottom line in terms of an annual build rate?

372. MR SLARK: I don't have the equivalent committed figure for your 6.5 gigawatts of German projects, to get to a residual –

373. MR BIRD: I think it's 520 megawatts, from the –

374. MR SLARK: From the EWA in 2013, that would be correct. That doesn't include – that's operational projects last year. That doesn't include the committed projects going forward, but –

375. MR BIRD: Well, here we're looking forward, aren't we? And therefore, in terms of the figure, do we need to add 6.5 to your policy ambition?

376. MR SLARK: It would be a little less than... We're adding it to the policy ambition, the residual capacity, if we were to include Germany within that overall market, would –

377. MR BIRD: Yes. Would be what?

378. MR SLARK: Well, shall we say eight?

379. MR BIRD: Right. And the annual build rate that would give rise to at 6 megawatts?

380. MR SLARK: Would be 1.25.

381. MR BIRD: I beg your pardon?

382. MR SLARK: 1.25, if my maths is correct.

383. MR BIRD: 1.25. And how many 6 megawatt turbines would that be? 208?

384. MR SLARK: Yes, I think it's of that order, isn't it?

385. MR BIRD: I think it's 208.

386. MR SLARK: Yes.

387. MR BIRD: 208, for which no allowance – and that's just looking at Germany alone – is made in your figures, isn't it?

388. MR SLARK: As we have established, I have not included Germany because I've considered that a market where the Germany infrastructure would compete heavily for those contracts.

389. MR BIRD: For deployed turbines.

390. MR SLARK: Yes.

391. MR BIRD: Now, just then back to table 1, and it's table 2 as well, there's reference to policy ambition. You've used that expression twice, haven't you?

392. MR SLARK: Sorry?

393. MR BIRD: Yes, the expression 'policy ambition' which you use in the first line of table 1 and 2. It's not, is it, an accurate description of the figures there set out. That's not a policy ambition; that is what can be delivered having regard to the level of public subsidy on certain cost assumptions, isn't it?

394. MR SLARK: No, I think that's the policy ambition.

395. MR BIRD: No, it is a modelled figure of what can be delivered on certain cost assumptions. Where, as a matter of policy, does the government set out that its ambition is limited to 16 gigawatts in the period to 2020?

396. MR SLARK: Well, I think the process that is set out is that government policy is very much derived around the affordability of those elements.

397. MR BIRD: We're agreed on affordability, but the issue is if you decrease costs further, the ambition goes up, doesn't it?

398. MR SLARK: In the current mechanism that we have, if you were able to decrease costs significantly, you would be able to fund a greater quantum of renewables.

399. MR BIRD: Yes.

400. MR SLARK: However, that number represents the upper end of that policy ambition, as stated in the roadmap.

401. MR BIRD: No, no, no. It's not a policy ambition. What I'm putting to you is that the figure you've included in the table is an output of a model, modelling undertaken by National Grid, on what can be achieved with certain levels of subsidy on certain cost assumptions. That's its source, isn't it?

402. MR SLARK: Its source is the roadmap and the National Grid analysis, yes.

403. MR BIRD: Yes. In terms of government policy, which is also enshrined as a matter of law, it's to achieve the 2050 requirement, isn't it?

404. MR SLARK: The 2050 policy ambition is, yes.

405. MR BIRD: Good.

406. MR SLARK: But I don't believe there's an offshore wind target for 2050.

407. MR BIRD: No, I'm not suggesting there is. But in terms of taking a long-term view, in terms of putting in place the projects to ensure delivery and achievement of targets, one looks beyond, doesn't one, 2020?

408. MR SLARK: Certainly one looks, in terms of low carbon targets, beyond 2050. But I'd come back to the description that there is not a policy ambition for offshore wind for 2050, but I believe that is a reasonable description of the state of the policy ambition to 2020.

409. MR BIRD: And therefore, in terms of those who are seeking to create a market or indeed to assist the market to expand, they have to form judgments as to the position post-2020, don't they?

410. MR SLARK: They do, yes.

411. MR BIRD: Yes. Which you've not actually sought to do at all, have you?

412. MR SLARK: I don't follow you.

413. MR BIRD: Well, where is your judgement as to what is likely to happen in the period from 2020 to 2050 in terms of, as it were, the encouragement and delivery of offshore wind across not only the UK but Europe?

414. MR SLARK: I haven't specifically considered the period after 2030. And in my experience, most investors when looking at projects will be looking at a timeline for the return on their investments in a period typically of 10 to 15 years. And therefore consideration of what might happen after 2030 is, in my experience, particularly in the offshore wind arena, a period where people wouldn't be placing much onus on that

particular market. I think far more relevant is the period to 2030.

415. MR BIRD: Yes. Well, you haven't even done that, have you? We got to your table 2, for example. Your policy ambition for Belgium and the Netherlands simply reflects 4.1 minus 1.7 from table 1 above, doesn't it? So it assumes that there's no revised policy ambition in Belgium and the Netherlands post-2020.

416. MR SLARK: I've identified that there is, yes, no clear statement of ambition from those markets.

417. MR BIRD: So you therefore don't form a judgment as to whether or not it is realistic to assume that Belgium and the Netherlands encourages offshore wind. You just assume it won't happen.

418. MR SLARK: I've taken the view that in the absence of a clear European driver that will set targets for 2030, you certainly cannot rely upon the fact there will be a large market for offshore wind in those countries that haven't stated a clear policy statement for that period.

419. MR BIRD: Mr Slark, do you plan to succeed or do you plan to fail, if you're going to accord with government policy?

420. MR SLARK: I'm not sure that's a question.

421. MR BIRD: It is. Do you plan to succeed or do you plan to fail if you wish to accord with government policy in terms of renewable energy?

422. MR SLARK: In which case, I don't understand the question, Mr Bird.

423. MR BIRD: In terms of putting in place infrastructure to service an industry in the long term, do you simply assume that nothing happens beyond the short term? Do you?

424. MR SLARK: I believe this goes back to the point we were discussing in the ERM report about the lack of a visible project pipeline is entirely the difficulty and the problem facing the sector.

425. MR BIRD: But doesn't that require someone to stand up and deliver a project of the scale of AMEP?

426. MR SLARK: Maybe I can phrase the question the other way around: to deliver a project of the size of AMEP requires somebody to take a punt on how that policy will develop over time.

427. MR BIRD: No, it doesn't require anybody to take a punt. We can agree, can't we, in terms of delivering on the government's objectives, it requires someone to take steps such as the delivery of AMEP, doesn't it?

428. MR SLARK: Yes. If we are to meet the UK government's broad targets in

relation to renewable energy and the development of that, then it will require people to invest in these port facilities to do so. Absolutely.

429. MR BIRD: Of the kind, the scale, the nature and scale of AMEP.

430. MR SLARK: Yes. Of a type like AMEP, yes.

431. MR BIRD: Good. Bespoke facilities.

432. MR SLARK: I'm not sure I follow the 'bespoke.'

433. MR BIRD: Well, we've been over the need to minimise costs. I'm not going to rehearse that again. But in terms of bespoke, that enables you to put that in place, doesn't it? Cost reduction measures.

434. MR SLARK: Appropriate facilities, yes.

435. MR BIRD: Good. Then if we could go to tables 5 and 6, again these assume that the sole European market available in the period to 2020 and beyond is 2.4 gigawatts, doesn't it?

436. MR SLARK: The contestable market from the Humber is, yes, 2.4.

437. MR BIRD: Yes. Well, it's not just the contestable market from the Humber. As I understand it, you say that's the contestable market full-stop, as far as Belgium and the Netherlands are concerned.

438. MR SLARK: The known market, yes.

439. MR BIRD: Yes. And if one adds in Germany to the market, that again increases the bottom line, bottom right-hand corner figure in both tables, doesn't it?

[Division bell rings]

440. THE CHAIR: I'm afraid that signals a division in the Lords. Therefore, I think that – unfortunately, this puts a break in the proceedings for voting. So can I suggest perhaps that we take a break here for 10 minutes? Thank you very much.

Sitting suspended at 15.51

On resuming at 16.04

441. THE CHAIR: Mr Bird, I apologise. You were rudely interrupted by the division bell. It's impossible to talk over it, so we had to break off rather in the middle of your sentence, I'm afraid. So perhaps you'll be kind enough to carry on.

442. MR BIRD: My Lord, yes, I'll start again – not with that particular sentence; I'll start with a different one, my Lord, if I may. Can we go please to figures 1 and 2 of ABP 13, which is on page 3 of that document, where you set out what you've described

as the output for the annual offshore wind turbine market for AMEP in the period to 2020 and then also in the period to 2030? And we see, in relation to Green Port Hull, we've agreed I think that effectively it assumes that of the contestable market, it attracts some 33% in both figures.

443. MR SLARK: That's the assumption I've used, yes.

444. MR BIRD: Yes. But unless and until a blade factory is constructed, as we understand it from Mr Cooper, at Poole, it is not, is it, a manufacturing facility for export.

445. MR SLARK: I'm not familiar with the facility in any detail, so I couldn't comment.

446. MR BIRD: I see. But your figure here allows for no foundations manufacturing or indeed components manufacturing for exportation, does it?

447. MR BIRD: That's correct.

448. MR BIRD: Consistent with your other tables. And of course each deployed turbine is going to require a foundation, isn't it?

449. MR SLARK: It will, yes.

450. MR BIRD: Yes. And again, that's not allowed for in your outlook, is it?

451. MR SLARK: No, it's not.

452. MR BIRD: No. And if we could just turn back briefly to ABP 12 – sorry, I think it's ABP 11, so two documents back in the bundle, ABP 11. I'm not going to ask you about the detail of quay lengths, but we see Green Port Hull – it's orange in my version – has a quay length of 600 metres and an expected load-out of 300 turbines per annum. Yes?

453. MR SLARK: Yes.

454. MR BIRD: That's Siemens' expectation, as I understand it.

455. MR SLARK: There were a number of figures, looking at Green Port Hull, over timeframes, which is why I think I've referred to 200 turbines and there are 300 here, but I think it's just the timeframe you look at as to when that –

456. MR BIRD: I beg your pardon?

457. MR SLARK: The 300 is a number that varies by timeframe for the facility, as I understand it. I use 200 in my calculation.

458. MR BIRD: Well, you say you use 200 in your calculation. If we go back to your figures 1 and 2, as far as figure 1 is concerned for the period to 2020, the contestable market is 177; the residual market, accounting for Green Port Hull, is 117; which

assumes that Green Port Hull deploys just 60 turbines, doesn't it?

459. MR SLARK: It would do, under that assessment.

460. MR BIRD: Yes. And figure 2: 260 is the contestable market; 173 the residual market; which would have, in the period to 2030, Green Port Hull installing just 87 turbines per annum, compared to their ABP 11 expectation of 300 turbines per annum, yes?

461. MR SLARK: That would be a correct interpretation of how these figures are derived.

462. MR BIRD: Yes. So as far as Siemens are concerned, they are foreseeing a market some five times your funding constrained market and 3.5 times your high-case market, aren't they?

463. MR SLARK: I am quite sure Siemens would argue that they will expect to capture a much higher proportion than I've allocated them to. As I was quite clear, I've made a simplistic assumption as to how we might allocate that capacity. I'm sure Siemens would have their own view as to what proportion of the market they would expect to capture.

464. MR BIRD: You see, that doesn't help you, does it, Mr Slark? Go back to your figures 1 and 2. The contestable market from the Humber is 177.

465. MR SLARK: It is, yes.

466. MR BIRD: Leave aside competition, that's all you say will be likely to be available to them in the period to 2020. And 260 in figure 2, all that would be available to them.

467. MR SLARK: That's correct.

468. MR BIRD: So Siemens take a different view of the likely market to you, don't they? Must do.

469. MR SLARK: I believe they – yes, it's likely that they have.

470. MR BIRD: Good. And a much more optimistic view of the market than your view.

471. MR SLARK: Certainly in terms of the capacity of the facility, yes.

472. MR BIRD: Yes. And if they are right, there's also – even on their assumptions for their facility, which no doubt also assume some competition – the need for some 300 foundations.

473. MR SLARK: There will be a need for the equivalent number of foundations to turbines, yes.

474. MR BIRD: Right. But if you are right, in terms of your assumptions, if we go back to figure 3...

475. MR SLARK: Sorry? Mr Bird –

476. MR BIRD: Figure 3 of your ABP 13, page 3.

477. MR SLARK: Sorry, I've got figure 1 or figure 2, I think.

478. MR BIRD: Sorry, it's page 3. I beg your pardon, that's my fault. Figure 1 and figure 2, page 3. In terms of figure 1, it assumes 60 turbines at Green Port Hull with a quay length of some 600 metres, doesn't it?

479. MR SLARK: Well, there is no assumption that I have made over the quay length or the utilisation, but the residual number for Green Port Hull if you extract it from that table would be that number, yes.

480. MR BIRD: Well, it would be 10 metres per turbine.

481. MR SLARK: Well, I'm not sure that's how you could define its design length, no.

482. MR BIRD: Well, forgive me; it's 60 turbines, on your assumption, and a quay length of 600 metres.

483. MR SLARK: It is 60 turbines on my assumption. That's as far as you can take that statement.

484. MR BIRD: Okay. And as far as figure 2 is concerned, it would be 6.89 metres per wind turbine, wouldn't it?

485. MR SLARK: Well, again I'm not sure that that follows.

486. MR BIRD: Well, that's the maths, isn't it?

487. MR SLARK: Well, if you divide a quay length by my assumption for their market capture here, that would be the case, but I'm not sure – all I've simply intended to do was demonstrate that there is some competition. I'm not passing judgment on Green Port Hull's element at all.

488. MR BIRD: Well, it follows from that simple calculation, either Siemens don't believe – if they were shown them, wouldn't believe – your forecasts, or Siemens take the view that they need far more quay per wind turbine installed than is presently being proposed at AMEP, don't they?

489. MR SLARK: Siemens may well take a very different view. I have simply provided an illustration that competition may mean that AMEP will not be able to capture the entirety of the contestable market. That's not intended to be a reflection on Siemens and I'm sure it's got nothing to do with the quay length that they will have

invested in.

490. MR BIRD: Good. Thank you very much, sir. My Lord, those are my questions.

491. THE CHAIR: Mr Whittaker.

492. MR WHITTAKER: Could I just ask you one very quick question? You mentioned earlier about that you weren't aware of any 8 megawatt turbines being installed, but Siemens last year did install two 6 megawatt turbines, compared to the normal – I believe it's 3.7, 3.8 megawatts. Do you have any idea of the economies of scale by scaling up from 3.7 to 6 megawatts?

493. MR SLARK: I don't have a detailed understanding of that. My high-level understanding of the issue is that when you look at the economies of scale on an individual turbine basis, the wind turbine cost remains very similar on a pound per megawatt basis. The economies of scale do not necessarily materialise in the wind turbine itself, but arise from savings in deployment and the fact that you are deploying less, a smaller number of turbines.

494. MR WHITTAKER: So on your assumption – sorry, on what you've just said then, does that mean that the economies of scale for the larger turbine would come down or stay the same?

495. MR SLARK: The economies of scale would potentially come down because of the greater energy capture you can get from a larger turbine.

496. MR WHITTAKER: Okay.

497. MR SLARK: So the fixed cost per megawatt of installed capacity will remain very similar. The pound per megawatt hour levelised cost, taking account of the generation in that facility, could be lower. And the rest of the construction deployment cost around installing those could be lower.

498. MR WHITTAKER: Okay. And do you have any idea of what the differential is? Is it 10%, 20%, 30%?

499. MR SLARK: I think this is a big question of just how much of these economies of scale and scope that can be delivered towards this cost reduction target, from costs around £150 a megawatt hour or more at present, down to this £100 a megawatt hour target, which is a very substantial reduction and I don't think we're going to get that just from the size of turbine.

500. MR WHITTAKER: So forgive me then for being a bit of a numpty, because I just want to take a very simplistic view on that. Why would turbine manufacturers invest heavily into bigger sized turbines if it's not going to drastically reduce the cost base?

501. MR SLARK: Because I think it will have a significant reduction in the cost base for delivered projects.

502. MR WHITTAKER: So on that basis then, do you have any idea or does the market have any idea of what that cost reduction is, whether it's 10, 20, 30, 40, 50%?

503. MR SLARK: I don't have a firm feeling for any specific reduction related to a particular movement in turbine size. The target we're aiming for is at least a 33% reduction to get down to where the contract for difference is set now to where it wants to be set. And that's –

504. MR WHITTAKER: In your view then, are they going to achieve that with the larger turbines?

505. MR SLARK: They're not going to achieve it without larger turbines.

506. MR WHITTAKER: So yes then.

507. MR SLARK: Larger turbines in and of themselves will not be sufficient an answer to get there.

508. MR WHITTAKER: Okay. Thank you.

509. THE CHAIR: Are there any more questions that the Committee would want to put to Mr Slark? Lord Plant.

510. LORD PLANT: I am still puzzled, following from Mr Whittaker's first question earlier on this afternoon as to why you've neglected Germany and Denmark. Because after all, there are quite lively forms of trading, particularly between the Humber and Denmark. I mean, there's even a Danish sort of fisherman's café in Grimsby, for example. And a lot of this trading is cars: Volkswagens coming in from Germany, Minis going over to Germany, and so on. What's so special about turbines that somehow this opportunity isn't one that it's worth adding into the pot?

511. MR SLARK: My Lord, I made a simplistic assumption rather than actually trying to get too sophisticated by arguing that there won't be – I'm not going to say there won't be any trade. I'm not saying that there won't be facilities that serve markets outside the waters. The key aspect, as I understood it, was how do we get a picture for the overall market from the Humber region? When we look at Denmark and we look at Germany, these are countries that have industrial-scale capability to deliver offshore wind already, are already doing so, and therefore are very highly competitive contestable markets. I'm not going to suggest for a minute that it's not possible that Humber facilities could serve those markets. I'm simply suggesting that in all likelihood the Dutch and Belgian markets are more contestable. But the reality—it might be one project in Germany

instead of a Belgian one—is I don't believe it's going to radically change the picture. The majority of German projects will be served from German ports; the majority of any Danish future developments will come from Danish facilities.

512. LORD PLANT: Could I ask another question? This may be terribly naïve; it's just that I'm puzzled by it and I don't know the answer to it. If you're trading, let's say with Germany, with these products, then given, as has been mentioned several times during the afternoon, there are significant subsidies to facilitate the development of the products and the market, if you like, coming from governments, are these levels of subsidy comparable, say, in Britain and Germany? I suppose Belgium and the Netherlands don't have the fabrication facilities anyway. What I'm trying to get at is: if there are different subsidies available in different countries for bringing this market on, how does this fit with European competition policy? As I say, it's a naïve question but I don't happen to know what the answer is to it.

513. MR SLARK: My Lord, I have to say: neither do I know the answer to that one. I think it's a very relevant question in terms of the degree of support outside of the renewable project support, which is very transparent as to what support is given to industrial facilities and it clearly does have to be consistent with the European legislation on that, but that's not an area I can comment on in detail.

514. CHAIRMAN: Mr Bird, does that throw up any questions you wish to ask?

515. MR BIRD: My Lord, no. I'm grateful.

516. CHAIRMAN: Then I turn to Mr Newcombe. Are there some questions you want to put now to Mr Slark?

517. MR NEWCOMBE: My Lord, I'm grateful, but there is a matter I need to grapple with before doing that. The headline for this is ABP and, in my submission, the Committee need to know what is the beast they are being asked to consider. Let me make that point good.

518. Could I invite the Committee, please, to the fat files of agreed documents—Volume 3, agreed document 12? This arises out of two matters put by Mr Bird. The first of these is dedicated quay length—berth length—which he first referred to, for the shorthand writer's note, at paragraph 428 on day 4, and he referred again to the figure of 279 metres today in cross-examination of my witness. The second point is today he identified and asserted that the AMEP proposal would have a capacity of producing 500 turbines, and you'll recall the criticism which was then levelled at my witness on that basis.

519. My witness, my Lords, has made abundantly clear his derivation of what he considered up to about 25 minutes ago to be the nature of the AMEP proposal, and he sets that out in ABP 13 in footnote 4. I'll read it out. It's on the tables to which Mr Slark has been referring. He refers to paragraph 4.4.26 of the environmental statement. Section 4 of the environmental statement is the project description. In other words, if one wants to know what Leviathan looks like and how big he is, Section 4 is the answer. Mr Bird, however, derived the figure from Section 5, which has nothing to do with how big Leviathan is but theorises as to what need might be. Now, I have before me a document from which I'm going to quote. So Mr Bird is not disadvantaged, I'm going to share it with him, but it's a document which his team already have, because it's a project specification expressly forming an annex to the environmental statement and prepared by ERM. For the transcript writer's note, I'm referring to paragraphs 1.1.14 and 1.1.15. I'll read the relevant quotes in reverse order. "The EIA is undertaken on the maximum"—my unashamed stress: "the maximum"—"development that could reasonably be built". And then paragraph 1.1.14 expressly directs one to finding Leviathan's vital statistics in Chapter 4.

520. If we then go to Chapter 4. My Lords, we're now on the fat volume, core document 12. The easiest way to do this is: the pagination is bottom centre; the number before the dash is the section number and the number after it is the page number. Thus if I could invite the Committee, please, to go to Section 4 in that and then, within Section 4, to page 4-8. We there find paragraph 4.4.26, immediately opposite, on 4-9, one of those cutaway diagrams which appears to have been extracted from one of my early boy's copies of the *Eagle*. We concentrate on 4.4.26, and we see there the vital statistics and what's going to be produced. If we look at the second bullet point, we see 400 towers, and in order to construct wind turbines that will take 400 of the nacelles, leaving 200 for export, and it will take all of the blades, because they're three-blade turbines. If that is now changed to 500 turbines, one's going to need an extra half of a nacelle factory to produce an extra 100 nacelles, leaving only 100 for export—again, another of Mr Bird's points—and will need another 300 blades—again, another half a blade factory.

521. I'm going to the panel report in a moment to make sure that we cross-reference with what they understood they were considering and thus the Secretary of State was considering. If I could invite the panel, please, to continue through Section 4. It goes up to page 4-45, and immediately following 4-45 there are two figures, and the relevant

one for present purposes is figure 4.1. This shows how the turbine and other manufacturing/assembly elements are to be laid out. For instance, if we look at the light-shaded green area at the bottom of the plan and go immediately north of that, across what is called the “operational buffer”—

522. MR BIRD: They are black and white.

523. MR NEWCOMBE: I thought they were in colour.

524. MR BIRD: No, I think they are in black and white.

525. MR NEWCOMBE: Sir, it is the second of those, not the first figure. Figure 4.2, not 4.1. In which case, my Lord, let me take it a different way. If we can go to ABP 5. That is coloured, I know. We now see the light-green mitigation area; the narrow operational buffer, in a sort of buff colour; and then, by way of example, we see there is a nacelles factory, number one of three, on the left immediately north of that, and immediately to the right of that there is the tower factory, number two.

526. I will, if I may, invite members of the Committee to keep ABP 5 open. I’m content to do this by reading it out—because in order to find out what the panel thought it was considering I’m going to cite from the panel report. For the transcript writer, this is core document 4 in fat volume number one. If the Committee wish to have it in front of them, I’ll pause. Fat volume number one; tab 4. Within tab 4, I would invite the Committee’s attention to pages 113 and 114.

527. If I could invite the Committee just to keep a finger in page 113 and 114 and go back to 112, the bold heading at the top of page 112 is relevant. What the committee is here doing is rehearsing what the applicant, Able, had told it. This is not the committee making arguably an error; they’re simply taking what Able told them as gospel. If we go on to 18.36, which is on 114, we can ignore the areas of present purposes, and if I pause for a moment the Committee will see the point I was making earlier: it’s simply carried forward virtually verbatim from the environmental statement. So, at the end of the process, the panel was still considering precisely what it had been told in the environmental statement and repeated at the end of the process by Able. Nary a mention of 500 turbines.

528. If we come back to 18.33 and 18.34, in 18.34 there is an estimate that the proposed berths—not the construction facilities but the proposed berths—would have the capacity to handle around 500 complete units per annum, which contrasts with what Able is telling you today: that they’re going to have difficulties. In 18.33—the figure

which plays Able's 279 dedicated berth—we see in fact they were still considering 200-metre berths.

529. The plan which I have invited the Committee to look at, which is ABP 5, apart from the tweaks—forgive the non-technical jargon—to show the triangle and where the compromise western deep-water jetty would go, is a colour version of the plan included in Section 4 of the environmental statement. Much more importantly, it is the plan which forms the first of those identified in the relevant requirement in the DCO. I'll read that out. Again, there is no requirement for the Committee to have that before them. Let me just turn that up. For the note, it's tab 2 of Volume 1, and it's requirement 6: "The authorised development must be carried out in accordance with the drawings listed below, unless otherwise approved by the relevant planning authority in accordance with paragraph 5 and the altered development falls within the Order limits and has no significant environmental effects beyond those assessed in the environmental statement". The first of the listed plans there is the application drawing, which is the same base as that. Now, my Lords, in those circumstances, what has been consented and what Able presently has the power to build is precisely what Mr Slark has assessed.

530. Now, there are a number of other tweaks here. I referred yesterday—I hope not rudely—to Able being coy with the figures. Some of the figures of how this is going to be configured and the areas required have, put graphically, been twanging around like a piece of errant knicker elastic. They have been going up and down. One of the difficulties which faced ABP before the panel was understanding precisely what was the target at which they were shooting. The Committee has now seen a further example of yet another Able finesse—or, in fact, two finesses—in relation both to the assertion that there will be dedicated berths and getting on for 50% longer than the berths assessed, or shown in the plans; and also in relation to the number of turbines which can be handled—i.e. the trade.

531. My Lord, that leads me to the position where I'm entirely content to examine Mr Slark on the basis of his evidence but I'm not aware of any environmental assessment or other assessment coming from Able to underpin 500 turbines, and if that is now seriously the scheme then I must reserve Mr Slark's position and those of others to consider whatever it is Able now tells us is the scheme.

532. My Lord, unless I can assist the Committee further on that—it took a little longer, but I hope the point I’m making is clear—it may be best if I pause first if there are any questions from the Committee and then it may be that Mr Bird has something to say.

533. CHAIRMAN: Thank you, Mr Newcombe. Are there any questions from the Committee? No. I think there are no questions, Mr Newcombe, thank you.

534. MR NEWCOMBE: My Lord, I’m grateful.

535. MR BIRD: My Lord, Mr Newcombe describes his point as clear. It’s also a bad point, my Lord. If I could take you back, please, to Chapter 4 of the AMEP environmental statement, which you were referred to first, and page 4-8. This is tab 12 of the Volume 3 bundle. And paragraph 4.4.26. You’ll note it starts: “The particular mix of manufacturing facilities that will locate to the site cannot be fixed prior to the application. The heavy component manufacturing site is based on the following indicative development proposal for the offshore wind sector.” It then sets out an indicative mix, but importantly—4.4.27 beneath that—“Based on this indicative mix, the gross weight of goods manufactured on the site would lie within the specified range” and that range allows for the effects of the scheme, despite the fact the manufacturing mix is not known, to be environmentally appraised, having regard to heavy goods vehicle traffic, shipping movements and other environmental effects. So, it’s an indicative mix. It was never fixed in that sense.

536. You were taken to the plan at the end of that section, which is the last page of Chapter 4, 4-45. There are the two plans. They are at A4 scale very small, but you’ll see in the legend at the bottom right-hand corner the word “preliminary” but also “Figure 4.2: Indicative master plan”. So, yes, it is a requirement the development takes place in accordance, but it is an indicative master plan. It is an indication of the likely layout of the scheme and we’re not in any sense resiling from that layout. It’s not inconsistent with the contention that 500 wind turbines could be produced at the site.

537. If you then go to the panel report, which is your core reference document 4—I think I would like you, if you might, to take it out. That would be in the first volume of the core reference documents. You were taken, really, to pages 112, 113 and 114, which are in the chapter which deals with the compulsory acquisition of land, Section 18. You will see, at paragraph 18.28, a reference to the project and that there should be several manufacturers operating on the main assembly site, and that because they’re operating to their own individual programmes it’s necessary to have a quay of a

size that permits them to be loading and unloading manufacturing components at the same time as other tenants, hence the need for the dedicated quays.

538. Go over the page to 113. The scale of the development. You'll note, at 18.33: "The Applicant assumes that the quay will be divided into six 200-metre berths and four of the quay berths"—the specialist berth—"will be used for construction quays for wind turbines; one quay berth will be used for turbine foundations; and one for general import and export if required if surplus". So, it's an assumption based on the indicative business which is anticipated.

539. Then again, at 18.34, you'll see that the applicant then estimates. It's the estimation based on that indicative mix which is addressed. No one was pretending before the panel that the scheme would be precisely as was set out in the indicative mix. Effectively what was being provided was an envelope of the project, which enabled the environmental assessment to take place. You'll see, in 18.34(a), a reference to the capacity of the quays to handle 500 complete units per annum.

540. So, in fact, there is no point here in terms of the scheme. My questions are entirely consistent with the environmental statement and the indicative nature of the scheme.

541. CHAIRMAN: Thank you, Mr Bird. I think we need to break again because there is a Division in the House of Commons. We will break.

Sitting suspended for a Division in the House of Commons.

On resuming—

542. CHAIRMAN: Mr Newcombe, I think we're ready to start again with your re-examination.

543. MR NEWCOMBE: My Lord, I'm very grateful. Two very quick points in relation to what Mr Bird says. As I identified in my opening submissions, the effect of going for 500 turbines is materially to increase the requirement for tyre factory manufacture and for blade factories, which was not environmentally assessed, and also changes the distribution of nacelles, more being required for completed wind turbines. All of those have downstream effects, or potential effects, in environmental terms which need to be assessed and which were not. Therefore, it is perhaps not surprising that the DCO, as recommended by the panel and as made in its present form by the Secretary of State, ties the development to the plan which I've identified. True it is that

there is a mechanism by which Able can come back and say, “Well, we now want to reconfigure it” and to give the relevant decision-maker—the local planning authority or whoever—the opportunity to consider whether or not there is a change then in the environmental envelope, but at present Able is tied to that.

544. I hope that’s helpful, my Lord. Forgive me for banging on about the point, and I’ll now proceed with my few questions for Mr Slark.

545. Mr Slark, you were asked a number of questions about Government policy, legal requirements and, in a memorable phrase, “planning to succeed rather than planning to fail”. Do you recall that?

546. MR SLARK: I do.

547. MR NEWCOMBE: The legal requirements and the policy requirements are matters of record. Remind us, please, what function funding applies here in circumstances where, as you identified in chief, offshore wind energy is not something which is commercially viable absent some form of Government financial or fiscal intervention.

548. MR SLARK: The key aspect here was that without additional Government support, offshore wind projects will not go ahead for the foreseeable future—certainly, it would appear, in the period towards 2030 or beyond—even with the cost reductions that have been discussed, if those are achievable. It is difficult to foresee a period yet where offshore wind will not require some form of direct public subsidy. The principal form of subsidy that is relevant for this case is the Contract for Difference, and we have insight now into the amount of funding that is available in that first round that will be auctioned later this year, and the available funding for that would appear to be somewhere around 700 megawatts to 800 megawatts of offshore wind if the entire portion of that funding that is available to less-established technologies is taken up by offshore wind and not by any competing technologies, which include, for example, some of the advanced conversion technologies in energy-from-waste projects and other areas of that ilk.

549. MR NEWCOMBE: My next question I will posit and if you feel it falls outwith your expert remit, please decline to answer it. Mr Bird put to you a proposition which, according to my note, suggested that infrastructure needs to be designed to promote maximum efficiency. Do you recall that?

550. MR SLARK: I do recall that, yes.

551. MR NEWCOMBE: If we posit a piece of infrastructure for the manufacture of widgets, to make this wholly non-contentious, and you have two facilities, one of which is proposing to acquire and construct a facility which is 100 hectares in size and one to produce exactly the same number of widgets to acquire and construct something which is precisely half that size—do you understand what I’m asking you to presume?

552. MR SLARK: Yes.

553. MR NEWCOMBE: In terms of efficiency—both general and commercial, having regard to fringe costs—which, in your view, is the more efficient?

554. MR SLARK: Certainly in terms of the land use the smaller facility would appear to be the more efficient in that example.

555. MR NEWCOMBE: Thank you very much indeed. I’m not going to ask you about vessels queuing for berths; we’ve already identified that the applicant’s case has changed on that. Just bear with me while I look through the various other matters. Yes. It was put to you—not in these words, but this is my summation of Mr Bird’s point—that AMEP was a brave initiative which was striving to succeed where others might fear to fail. Have you seen any evidence to show that Able will actually build this absent an identification that there is actually there the market demand—I deliberately use the noun “demand”—to make it profitable?

556. MR SLARK: I haven’t been presented with any evidence of that, no.

557. MR NEWCOMBE: Thank you. My Lord, that concludes my re-examination of this witness. I don’t know whether that’s prompted any further questions from the Committee.

558. CHAIRMAN: Are there any further questions from the Committee?

559. MR WHITTAKER: Lord Chair, can I just follow up on Lord Plant’s earlier question about subsidies from different countries within Europe? It would appear that actually the UK subsidies seem to be the highest in Europe, and in fact there’s a very strong lobby trying to get the UK Government to bring it into line with the rest of Europe. Doesn’t that knock some of the stuff you’re saying about pipeline and long-term viability on the head, because it is based on Government policy—I think is what you actually said?

560. MR SLARK: I’m not sure if I’ve fully understood your question.

561. MR WHITTAKER: Well, my understanding from what you were saying to us earlier was that Government policy plays a big part in what’s in the pipeline, and of course if a large proportion of that is UK Government subsidies to the wind turbine or

offshore wind industry, I thought that I understood part of your argument to be saying that if that was reduced then of course that reduces the pipeline. If you compare that to Germany, the Netherlands and Denmark in particular, who don't have subsidies, their evidence shows actually they can have a very strong market without those subsidies anyway. So, doesn't that really blow your argument out of the water?

562. MR SLARK: When we're considering offshore wind, the developments in Denmark, Netherlands and Germany are all reliant on support from Government.

563. MR WHITTAKER: They are, but not to the extent of the UK.

564. MR SLARK: The exact mechanics of exactly how much support there is—I don't have the figures in front of me, but I seem to recall that the Danish Government has paid more for an offshore wind farm than any other Government to date, in one particular example, albeit a poorly-run auction process. Certainly there are issues to do with how you compare wind farms. The mechanics by which you're actually comparing the cost of a particular project—who bears the cost of the transmission access; how that support is managed and borne—can all have a bearing on the comparative cost, so it doesn't necessarily follow that because the headline figure on the value of support is lower in Germany it's necessarily that the project cost is lower in Germany.

565. MR WHITTAKER: Are you saying to me, then, in a simplistic way, that we're comparing apples and pears rather than like for like?

566. MR SLARK: I think probably, certainly if you look at the cost of the CFD support, the mechanics there between the UK systems and others are more similar and easier to compare than they have been under the Renewables Obligation, particularly because the Renewables Obligation exposed projects to a variable power price and, as we were discussing earlier in terms of risk allocation, that increased some of the costs of developing a project. As the CFD is the more relevant measure here, looking at the period that we're interested in, there's much greater comparability. The Dutch system is a CFD system. The German system, with its new direct-marketing requirements, is to all intents and purposes a Contract for Difference scheme as well. So, the support schemes, in their design and therefore their inherent risk, are now very similar. There are still issues of how different costs are allocated either between the transmission network operator—in particular the offshore connection—and the particular project, which means that a wind farm in Germany might be legitimately cheaper in its headline cost—

567. MR WHITTAKER: You're starting to fly a little bit above my head now. If we're taking it back to simplistic terms, which I think is what you were trying to explain to us as a panel earlier on, are you therefore saying that the higher subsidies from the UK Government have no bearing on pipeline?

568. MR SLARK: I'm certainly saying that the total amount of subsidy that is available and the number of megawatts of installed capacity that can fund has a very big bearing on the overall pipeline. By restricting the amount of overall funding that's available, that certainly limits the extent of the foreseeable pipeline in terms of developments. If I've understood correctly, the point you're making is the extent to which we push down the costs of projects and the support required on each individual project—

569. MR WHITTAKER: That's not the point I was making. What I was trying to establish was: you were talking about the Government policy in regards to having an effect on the pipeline, and you said it was invariable, I presume because the subsidies in the UK have reduced and look set to reduce even further down the line. I understand that you can't compare like for like, but we also have things like enterprise zones, of which one is in Hull. I dare say you haven't costed those factors into the run-down costs either, but I'm talking about purely subsidies, because the EU has a real bone about the British level of subsidies to our renewable energies. I just wondered why, in light of the fact that we have the highest—or it appears as though we have the highest—in pure terms, and the Germans and Danes seem to have a much more consumer-focused model, they are better at it than us. That is what I'm trying to say. Why would you reduce that?

570. MR SLARK: I'm not sure when we're considering offshore wind that that's necessarily—

571. MR WHITTAKER: The case.

572. MR SLARK: The case. For onshore wind it may be slightly different.

573. MR WHITTAKER: Is that fact or is that your opinion?

574. MR SLARK: In my opinion, I don't think that case is made.

575. MR WHITTAKER: Fine.

576. CHAIRMAN: I'd like to thank you, Mr Slark, for your evidence to the Committee. You may stand down. Thank you very much.

577. MR SLARK: Thank you, my Lord.

578. CHAIRMAN: Now, Mr Newcombe, do you wish to introduce another witness?

579. MR NEWCOMBE: My Lord, yes please. Looking at the clock, I'm not sure we'll finish Mr Galbraith—who it will be—in chief, but he and I will make the best speed to assist.

580. CHAIRMAN: Good. Thank you.

581. MR NEWCOMBE: Just while Mr Galbraith is setting up, my Lord, can I mention two matters? One is, as members of the Committee may be able to see, Mr Galbraith wears hearing aids, which has obvious implications here. If, for whatever reason, I mumble and he has to ask me again, I apologise. I'm sure others will make a similar allowance. Second—this is far too much information, but I need to make the point—he has a slight kidney infection, which means he does have to keep drinking water, which does have an inevitable consequence. I suspect it won't trouble us today, but it may be that he asks for a short adjournment tomorrow.

582. CHAIRMAN: Quite understood.

583. MR NEWCOMBE: I'm very grateful, my Lord. Mr Galbraith, would you please state your full name?

584. MR GALBRAITH: Duncan Galbraith.

585. MR NEWCOMBE: You're an independent consultant, and what is your area of expertise, please?

586. MR GALBRAITH: It's in transport and logistics and feasibility studies for the wind industry.

587. MR NEWCOMBE: Look that way rather than at me. So far as your previous relevant experience is concerned with matters such as port operations and wind turbine manufacture, would you please give the Committee a sample of some of the things in which you have been involved and from which your expertise derives?

588. MR GALBRAITH: Yes. I've been a project manager with Vestas, one of the leading wind turbine manufacturers, and I built five wind farms with them. I was also Transport Manager of their Northern European Transport department. I've worked in 30 ports around Europe. In my last three years with Vestas I was with research and development. I worked for the Special Tools and Operations department, moving prototype wind turbines around the world: to Europe; to the United States; to Australia; and to Asia. I also worked on the five-year plan for a roadmap for the future development of wind turbine transport equipment for Vestas before I left them. I have also before that had involvement with ports in the USSR, as it was; in Africa; and in the

Middle East when I was the field service manager for Goodyear International Corporation, based in Brussels and based in Moscow.

589. MR NEWCOMBE: And you operate something called Transprojex Limited. Tell us about that, please.

590. MR GALBRAITH: I started my own company, Transprojex Limited, and I have done work for Vestas, I have done work for the Scottish Government, for Siemens, for a company called *Bobitron* and for Nordex, advising them on and conducting feasibility studies for ports and harbours and projects moving into ports in Europe, the United States and Africa.

591. MR NEWCOMBE: Thank you. Would you now please summarise what is the background to your involvement in this particular project, instructed by ABP, and what it is you've been asked to look at and consider?

592. MR GALBRAITH: Yes. They've engaged me to carry out an independent assessment of the need for a 1,279-metre quay at AMEP.

593. MR NEWCOMBE: Now, at this stage it's probably convenient if we go, please, to ABP 12. That's in the slimmer white volume, which is the ABP exhibits. Tab 12, which we've looked at briefly with Mr Cooper but have yet to consider in detail. Alright. Now, please, Mr Galbraith, look at ABP 12. We can see the scenarios listed down the left-hand side of the page, and we can see the first three all relate to the same level of trade, namely that identified in the panel report, amongst other things, at which we looked a few moment ago. Just, please, tell us in headline terms what it is you're looking at in scenarios one, two and three.

594. MR GALBRAITH: In first scenario, I'm looking at the AMEP proposal, which is for a 1,279-metre quay to move 400 wind turbines plus 200 nacelles for export and 100% imports.

595. MR NEWCOMBE: What is the significance of the assumption you've made that 100% imports will be wet?

596. MR GALBRAITH: In the environmental statement put out by AMEP and in their table 12.14, they have 100 vessels marked down for import of materials.

597. MR NEWCOMBE: Thank you. Now, if we look, then, at the sensitivity analysis, which is the stippled or slightly grey background—do you see that?

598. MR GALBRAITH: Yes.

599. MR NEWCOMBE: We see the level of trade descends, in each case, with a 995-metre quay. Do you see that?

600. MR GALBRAITH: Yes.

601. MR NEWCOMBE: Again, please, explain to us why it is and where you've derived the figures which lead to that diminution in trade.

602. MR GALBRAITH: These figures were taken from Pöyry's calculations, and the realistic one is the one at the bottom of 173 wind turbines plus 200 nacelles and 100% imports.

603. MR NEWCOMBE: And when you say Pöyry, that's, of course, Mr Slark's evidence, isn't it?

604. MR GALBRAITH: Mr Slark's evidence.

605. MR NEWCOMBE: I'm grateful. Now, Mr Cooper, when he was giving evidence, gave his definition of "quay utilisation" and the like. Could you please amplify that and explain your take on it within your area of expertise?

606. MR GALBRAITH: Yes. Quay utilisation is the amount of time that the quay—which is the landward side—is occupied by equipment and machinery to pre-assemble the towers and components for wind turbines. Principally the towers, because everything else is made and just carried forward and loaded onto the vessel. Shall I explain briefly the towers?

607. MR NEWCOMBE: If it's material at this stage, Mr Galbraith, you go on.

608. MR GALBRAITH: Yes. The towers are assembled in three parts, and it takes about three days to assemble each tower. They're built on what's called an eight-pack so that it's stable, and then four of these at a time are loaded onto a vessel. So, the whole time that that quay is occupied by the cranes and by the equipment and the components is the quay utilisation.

609. MR NEWCOMBE: Now, Mr Slark, for reasons which have already been explained to the Committee, has assumed six megawatt turbines before 2020 and eight megawatt turbines thereafter. Do you recall that?

610. MR GALBRAITH: That's right.

611. MR NEWCOMBE: Alright. In terms of loading out turbines of those two particular sizes—using those as exemplars—please amplify for the Committee precisely what's involved and matters like duration.

612. MR GALBRAITH: Six megawatt turbines we know consume about 48 hours to load and secure on the deck of a vessel. Eight megawatt turbines haven't been handled in that way yet, and I can only work on my own experience from working on Special Tools and Operations when I was involved in designing the equipment to load those

machines and to secure them on the deck. Again, it would take 48 hours to load four turbines.

613. MR NEWCOMBE: Now, I don't need to take you through the various assumptions you've derived from the environmental statement. I want now to come to berth occupation, please. Again, Mr Cooper has already touched on this. Would you now please amplify for the purposes of the Committee the relevance of berth occupation, particularly as a percentage, when it's related to your area of expertise?

614. MR GALBRAITH: Berth occupation is the amount of time that the vessel is against the quay either to discharge cargo or to be loaded before it sails away. In the case of installation vessels it would be 48 hours. That could be cut shorter—in fact, the project manager would endeavour to make it happen quicker—but we have to allow for certain contingencies.

615. MR NEWCOMBE: You've already indicated that you've taken as one of your starting points the conclusions which Mr Slark had reached, and then you've taken them on within your area of expertise and you've identified the level of what I call trade which you have assumed. So far as operating and that sort of trade over a 995-metre quay, is one tied to one particular configuration or might there be more than one configuration?

616. MR GALBRAITH: Of the layout of the quay?

617. MR NEWCOMBE: Yes.

618. MR GALBRAITH: No; there's more than one configuration, depending on how many vessels you want to bring in. Normally, for operational reasons, you would build eight towers along on one what's called an eight-pack on the side of the quay at a time. If you wanted to speed up the operation and if production from the factories could keep up with you, you could then put down two eight-packs parallel to each other and operate an extra crane and bring in one vessel for 48 hours, let it sail away, and then bring in another vessel and load that one out and let it sail away, and then you would just work on a rotation like that. But that would be unusual for turbines of this size.

619. MR NEWCOMBE: How could one ring the changes in terms of the number of berths provided and what they're actually used for?

620. MR GALBRAITH: How could one...?

621. MR NEWCOMBE: How could one ring the changes? Are there possible different configurations of how one orders the berths and the trade which goes on at that particular berth?

622. MR GALBRAITH: I'm sorry; I didn't follow you.

623. MR NEWCOMBE: No; it's entirely my fault. I'm putting the question badly. Within your configurations—the two configurations you've identified—do the berths along the quay edge remain the same? Are the berths basically used always for the same purposes or is there a variation between them?

624. MR GALBRAITH: Yes, they are. You wouldn't move equipment like this around.

625. MR NEWCOMBE: Thank you. Now, so far as the port of Esbjerg is concerned, which has already received more than one mention, does that have any relevance for our purposes at this stage?

626. MR GALBRAITH: Yes it does, because Esbjerg is the main port in Europe for moving wind turbines, and the two biggest manufacturers—who are MHI Vestas and Siemens—both operate quays there.

627. MR NEWCOMBE: Come now to weather, Mr Galbraith. Is there a requirement here to have some form of contingency or allowance for weather? If yes, how have you approached that matter?

628. MR GALBRAITH: I've allowed 15% weather contingency. This is based on my own experience. As a project manager operating on the quay, I would require a 10% contingency—that's the period when I can't use the cranes because of wind. For the vessel operating it's about a 15% contingency, so I used in my analysis a 15% contingency.

629. MR NEWCOMBE: Come now, please, to vessel range, again a matter on which Mr Slark has already touched. Please tell us the approach you have taken to considerations of vessel range and the assumptions you have made as a result of that.

630. MR GALBRAITH: Yes. New vessels which are now on the market have a top speed of between 12 knots and 13 knots, but in actual fact, when they are in transit going out to the wind farm site their average speed is only eight knots. They have to allow for the sea state and they have to allow for the windage with the large amount of cargo they're carrying, which is considerable. I've calculated that at eight knots, a modern vessel in 24 hours has a range of about 200 nautical miles. That's the practical operating range of an installation vessel.

631. MR NEWCOMBE: Thank you. If we come now to berth occupation and what I call—I'm sure inaccurately—dwell time, i.e. the length of time a vessel spends

alongside on a particular berth, again, Mr Galbraith, could you please identify how you have approached that matter?

632. MR GALBRAITH: Yes. The 48 hours is not entirely consumed by load-out to the vessel. You have to allow some time for bunkering and for fresh water and fresh supplies to be put in the vessel—I would say six hours. The rest of the time would be consumed loading and securing the equipment. Sorry, I'll just go back one step. When the vessel has been out once and comes back in, a certain amount of transport equipment has to come off again—frames, chassis, various bits of kit which are used to secure the load you've just carried out. **That will consume about another four hours. So, you're looking at 10 hours to 12 hours.** The rest of the time is consumed in loading the vessel and preparing her for sea.

633. MR NEWCOMBE: Alright. You've already touched in part on tower sections and X-frames and eight-packs and those matters. Would you now take us into a little more detail, please, as to how these components are brought forward together with any assembly as the immediate precursor to their being loaded on to the relevant vessel?

634. MR GALBRAITH: Yes. The eight-pack is made up of X-frames, which are large steel frames, secured together alongside the quay. Behind them is what we call a four-pack, and on the four-pack, which is basically the same construction, first of all they put on the switch gear, which can weigh up to 15 tons, and then they load the base tower on top of that and secure the two together. That's then transferred by heavy cranes onto the eight-pack. On top of this base tower assembly, they then assemble the middle section and then the top section. That takes about three days—not just to bolt them together, but to fit the platforms, to fit the lifts, to fit the lights, to fit the cables and all the safety equipment. When you've got eight assemblies and the vessel comes in, you load off the first four onto the vessel and then you start transferring the next base sections onto that tower. So, you always have four towers in hand. Does that explain it?

635. MR NEWCOMBE: If you then come to the nacelles, please.

636. MR GALBRAITH: Aye. The nacelles are already assembled, and they're assembled on a transport frame. They're carried forward with an SPMT—a self-propelled modular transport unit. That's various sets of axels which are powered which are bolted together. They drive underneath the nacelle; they lift it up; and then they move the nacelle forward to the quay and then the ship's crane picks it up and loads it onto the vessel. The blades are carried on purpose-built trailers. They have a tractor

unit at the front, and with these very long blades they have an independent unit at the back, and the actual blade acts as the chassis of the trailer, if you like. That's driven forward and then these blades are loaded onto a blade rack, which usually would carry 12, and the whole rack is lifted onto the vessel. On some occasions they might lift the blades on individually, but that takes even longer, so it's not really good practice.

637. MR NEWCOMBE: Thank you. Could you now, please, draw those strands together? So, we're bringing forward the components, putting them together, loading them onto the vessel. The vessel then steams out to the site, goes through the clever processes which are necessary to erect the wind turbine, and then steams back. Could you give us a feel, please, for the time elapse for a round trip in those terms?

638. MR GALBRAITH: A modern vessel can sail out to site within 24 hours. It then jacks down, which means it puts the legs down onto the sea bed and elevates the vessel above the height of the waves. Modern vessels can now operate in a sea state of 2.5-metre waves and with a windage of 20 metres per second, which is somewhere between Beaufort 8 and Beaufort 9. Depending on the vessel, they can jack up at a rate of about 2.5 metres per minute, which is quite considerable considering the weight. It would take approximately 24 hours to install and commission a turbine. They lift the tower sections onto the transition piece first, secure them, then they lift on the nacelle, which already has the hub fitted to it, and then they lift the blades on individually and secure them. The old practice of lifting rotors on, which was three blades on a hub, doesn't apply to these large machines.

639. MR NEWCOMBE: Thank you. While the installation vessel is at sea, there is presumably an empty berth or an opportunity to bring something else on.

640. MR GALBRAITH: Yes.

641. MR NEWCOMBE: How can one make use of the berth while that cycle is continuing and the installation vessel is at sea?

642. MR GALBRAITH: The quay is in use all the time, because the pre-assembly work is continuous, but when the berth is empty it's perfectly possible to bring in a coaster vessel to unload any equipment that's to be delivered to the site. This would not really apply to AMEP, because you've got the factories already there and the equipment's already there. It's not like a hub port—for instance, Belfast or somewhere like that. There are also support vessels coming in and out, which are smaller vessels, and they might come in for crew transfer or they might come in for supplies or spares to

be loaded to be taken back out to site, but in the Humber region they would probably go into Grimsby, where the main contractors are already established.

643. MR NEWCOMBE: Thank you. When you were describing the transit of the installation vessel out to sea, if I heard you correctly, you referred to Beaufort 8 to Beaufort 9. Did I hear that correctly?

644. MR GALBRAITH: That's correct, yes.

645. MR NEWCOMBE: In a previous existence I would have called that "blowing a hooligan". Could you give us a feel for it more accurately and less subjectively? What sort of wind are we talking about there?

646. MR GALBRAITH: "Strong breeze" I think it's classified as. I'm not quite sure. I work in metres per second, not Beaufort.

647. MR NEWCOMBE: Alright. In that case, would you please overnight check the equivalent of Beaufort 8 and 9 and report back?

648. MR GALBRAITH: I have checked that 20 metres per second is between 8 and 9, yes.

649. MR NEWCOMBE: Thank you very much indeed, but the Beaufort scale, you'll recall, has down the side of it some English descriptions of what's actually happening. Would you check that overnight and report back?

650. MR GALBRAITH: Yes.

651. MR NEWCOMBE: My Lord, I'm looking at the time. I could move on to a new topic and then stop at half-past, or it might be more convenient to keep that until tomorrow. I'm entirely in my Lord's hands.

652. CHAIRMAN: Which do you feel would be most advantageous to your witness?

653. MR NEWCOMBE: Why don't I put the question, my Lord, and see if we can get it in before the bewitching hour at half-past five?

654. CHAIRMAN: Thank you.

655. MR NEWCOMBE: We've heard that the size of wind turbine, not just in terms of megawattage but, parasitically on that, the actual physical size of the total wind turbine, is changing and increasing.

656. MR GALBRAITH: Yes.

657. MR NEWCOMBE: Alright. In terms of considering the handling of these, what allowances and what rules of thumb, if any, should the Committee bear in mind of the effect of increasing, for instance, from six megawatts to eight megawatts in terms of any impact on handling them?

658. MR GALBRAITH: There's no effect in handling them, really, because you just use bigger cranes. The physical dimensions have increased, and that's more obvious in the blades, because they've now made blades of 85 metres long and they will probably reach 95 metres long at some stage. The actual physical dimensions of the nacelle and the hub have increased, but probably no more than 20% to 25%. They will increase in weight, because they need a heavier hub to hold the bigger blades once it's on top of the tower, but that doesn't affect the handling as such; you just use more powerful cranes. The new vessels have got much greater capability than the ones when the environmental statement was drawn up.

659. MR NEWCOMBE: We've got about 25 seconds left. When we talk of the full-size Able scheme as being 1,279 metres or the ABP-proposed compromise scheme for them at 995 metres, is that an expression of the total berth length available, or do we need to bear in mind that there are right-angle berths as well?

660. MR GALBRAITH: Yes; the right-angle berths in what's classified in the documents as the specialist dock add one berth of 115 metres approximately and one of 165 metres approximately.

661. MR NEWCOMBE: My Lord, that would be an appropriate moment.

662. CHAIRMAN: Thank you, Mr Newcombe. Your timing is perfection.

663. MR NEWCOMBE: Mr Galbraith, not me, sir.

664. CHAIRMAN: When I adjourn the Committee, it will be to meet again at 11.30 tomorrow morning in this room. I close with the words that the meeting is now adjourned.

MINUTES OF ORAL EVIDENCE

taken before

**JOINT COMMITTEE ON THE ABLE MARINE ENERGY PARK
DEVELOPMENT CONSENT ORDER 2014**

Tuesday 21 October 2014

In Committee Room 4

PRESENT:

Viscount Ullswater (In the Chairman)
Mr Craig Whittaker MP
Dr Matthew Offord MP
Paul Blomfield MP
Lord Armstrong of Ilminster
Lord Plant of Highfield

IN ATTENDANCE

Mr Simon Bird QC, appeared as Counsel on behalf of Able Humber Ports Limited
The Applicant for the Order Mr Ian McCulloch (of Bircham Dyson Bell LLP) appeared
as agent for Able Humber Ports Limited
The Applicant for the Order Mr Andrew Newcombe QC, appeared as Counsel on behalf
of Associated British Ports (Petitioners 1 & 2)
Mr Paul Irving (of Winckworth Sherwood LLP) appeared as agent of Associated British
Ports (Petitioners 1 & 2)

Witnesses for the Petitioner:

Mr Duncan Galbraith, Transprojex Limited
Mr Peter Whitehead, ABPmer
Mr Andrew Baker, Baker Consultants
Mr Philip Rowell, Adams Hendry Consulting

IN PUBLIC SESSION

(UNCORRECTED)

INDEX

	Page
Mr Galbraith, examined by Mr Newcombe	3
Mr Galbraith, examined by by Mr Bird	17
Mr Galbraith, examined by Mr Newcombe	58
Mr Whitehead, examined by Mr Newcombe	63
Mr Whitehead, examined by Mr Bird	70
Mr Baker, examined by Mr Newcombe	79
Mr Baker, examined by Mr Bird	85
Mr Rowell, examined by Mr Newcombe	88

(At 11.30 a.m.)

1. CHAIRMAN: Good morning, everybody. In calling the Committee to order, I would like to remind everyone that this is a public session and I remind everyone to switch their mobile telephones to silent or to vibrate only. Mr Newcombe, you were examining Mr Galbraith.
2. MR NEWCOMBE: My lord, I was indeed, but I need to make a confession before that. I am very grateful to your learned clerk who has drawn to our attention an error in the Day 3 transcript. The responsibility of finding errors in the recording of my witnesses stops with me. Therefore, brickbats in my direction, please. I failed to pick it up. It is an agreed amendment, although, it appears to be substantial and, if my lord will forgive me, I will simply give the page reference and paragraph number. It is on page 124 on the transcript version that I have which is the original. I do not yet have the amended transcript. It is paragraph 573 on that page. I stress "on that page", because the paragraph numbering does duplicate itself. The relevant portion is where Mr Cooper was being asked about the IWDJ and the transcript says: "I think that we are in danger of confusing two things here. My view as Chief Executive is that IWDJ is, if consented, highly unlikely to go ahead". The error is obvious. I am also grateful to Mr Bird, whose note confirms that the chief executive did indeed say "likely" and those who sit behind me have double checked it with Mr Cooper. Again, my renewed apologies, (a) for missing it and (b) having to take up time on it now.
3. CHAIRMAN: You are content, Mr Bird, are you, with that amendment?
4. MR BIRD: Yes. That is my recollection of what Mr Cooper said to me in his answer.
5. CHAIRMAN: Thank you very much. Thank you for clearing that up, Mr Newcombe.
6. MR NEWCOMBE: Mr Galbraith, good morning. Just remember, please, to look at the Committee unless you need to me to look at me in order to hear what I am saying. We left the position where very hurriedly, or you under pressure from me and time, dealt briefly with the extent of berthing which a 1,270 metre quay would allow. Do you recall that?
7. MR GALBRAITH: Yes, I do.
8. MR NEWCOMBE: Would you go, please, in the ABP bundle - that is the slim white volume - to ABP5? If we look at that, we know that the Able scheme, as applied for, measures 1,279 along the quay face parallel to the ebb and flow of the tide. We can

see the effect of reducing the scheme in accordance with the ABP proposed compromise. Would you explain to the Committee, please - and take just a little more time over this to make sure that we are all on the same page - is 1,279 the figure at which we stop looking in terms of berths or do we also need to look at the right-angled berths?

9. MR GALBRAITH: We do have to look at the right-angled berths, which are designated as the specialist dock.

10. MR NEWCOMBE: Just pausing there, forgive me for interrupting, again for the absolute avoidance of doubt, we can see the incised area, both with the full AMEP scheme at the south eastern most tip and replicated at the southeast most tip of the AMEP compromise.

11. MR GALBRAITH: That is it.

12. MR NEWCOMBE: Forgive me, carry on.

13. MR GALBRAITH: 1,279 metres represents the complete solid quay frontage, which extends for 1,200 metres along the front and then there is a 79-metre wide specialist dock. In that specialist dock, there are two berths. One berth is 165 metres long and the other berth is 115 metres long. That gives a total of 280 metres. That gives an effective overall quay length of 1,480 metres, not 1,279 metres. If the ABP proposed reduction to 995 metres is applied, there will, in fact, be an effective quay length of 1,196 metres. It is 1,590 if we take into account the GBF quay length.

14. MR NEWCOMBE: Can you just say that figure again, please?

15. MR GALBRAITH: 1,196 metres.

16. MR NEWCOMBE: Thank you very much.

17. LORD ARMSTRONG: That figure replaces 1,279?

18. MR GALBRAITH: Yes, it replaces 1,279. No, 1,196 replaces 995. The figure that replaces 1,279 is 1,480 metres.

19. MR NEWCOMBE: My lord, I am hesitant ...

20. CHAIRMAN: Could we just clear this one up, because I am confused and I do not know whether other Members of the Committee are confused? I gathered that the compete quayside available in the original proposal was 1,480 metres. Is that correct?

21. MR GALBRAITH: My lord, yes, taking account of coming down ----

22. CHAIRMAN: The specialist dock.

23. MR GALBRAITH: - into the specialist dock and around, exactly so.

24. MR NEWCOMBE: What I gathered from Mr Galbraith in his last answer was that, if the compromise proposal was accepted, the total length of dock, including the specialist dock, was 1,196 metres. Is that correct? Have I that correct?

25. MR GALBRAITH: That is correct.

26. MR NEWCOMBE: Once more with emphasis, Mr Galbraith. 1,279 is the shorthand quay length for the full Able proposal, but, when one is looking at actual available berthing length and taking account of the right-angle berths, that is 1,480 (actual 1,475m) metres.

		1,279.0
	-	25.0
	-	34.0
	-	25.0
		165.0
		115.0
Actual net length of quay		1,475.0

This is very misleading, the actual quay frontage length (excluding the GBF quay) is 1,195 and the reduced quay length (excluding the GBF quay) as proposed by abp is 911m. see below.

As DCO

	Frontage	1,279.0
	Less GBF	- 25.0
	Less GBF	- 34.0
	Less GBF	- 25.0
Actual net length of quay		1,195.0

ABP Reduced

	Frontage	995
	Less GBF	- 25
	Less GBF	- 34
	Less GBF	- 25
Actual net length of quay		911.0

27. MR GALBRAITH: That is correct.

28. MR NEWCOMBE: All right. The shorthand quay length for the compromise is 995 metres.

29. MR GALBRAITH: That is correct.

30. MR NEWCOMBE: But, if we then take account of the specialist berths in that scheme, the figure is larger, albeit smaller, obviously, than the full scheme, at 1,196.

31. MR GALBRAITH: That is correct.

32. MR NEWCOMBE: Mr Galbraith, I succeeded in muddling you on the Beaufort Scale last night. You have gone away and double checked the point and you referred to Beaufort Scale 8 and 9. Would you please clarify for the Committee the result of your overnight research in terms both of crane sensitivity and vessel sensitivity?

33. MR GALBRAITH: It deserves some explanation. Modern vessels can operate at sea at 20 metres per second. That means that they can jack up at that wind speed. That is approximately 8 on the Beaufort Scale, which is classed as a fresh gale, and is between 39 and 46 miles per hour. However, the cranes on the vessel would not normally operate at more than 14 to 16 metres per second. That would be the same for the cranes operating in the harbour on pre-assembly work as well. That is Beaufort Scale 7, which is 32 to 38 miles per hour, which is classed as a moderate gale. When blades are being lifted, and blades for 6 and 8 megawatt turbines would be lifted singularly - they would be lifting one, not as a rotor - when they are being lifted, you would not exceed 10 metres per second, which is about 25 miles per hour. The blades are designed to fly in the wind and any wind over that speed starts to carry them away from the crane and makes it dangerous to operate.

34. MR NEWCOMBE: Mr Galbraith, I am proposing to move ...

35. MR WHITTAKER: Can I just clarify with you? You said yesterday that you dealt with a lot of prototypes in your time and I presume that at Vestas you dealt with the V164, which is new prototype. Can you clarify for me, because I think that what you said yesterday was that the loading times for these larger turbines and their relevant bits that go out to sea, in regards to cost, would produce economies of scale, because I think that you said to us that the load times, the turnaround times for the ships and the travelling times are about the same as the small ones. Is that correct?

36. MR GALBRAITH: Yes, we allow 48 hours.

37. MR WHITTAKER: That is whether it is the smaller or the larger ones; it is about the same?

38. MR GALBRAITH: Yes.

39. MR WHITTAKER: Would it be fair to say then that the economies of scale of building the larger ones would actually reduce the costs, the overall costs, of the logistics?

40. MR GALBRAITH: It would, yes.
41. MR WHITTAKER: In your professional expertise opinion, could you tell me or tell the Committee how much you think those cost reductions would be in a project term on the current costs, if you know?
42. MR GALBRAITH: If you are loading smaller turbines, you would be loading, on the vessels that we are using today, 3 megawatt or 3.6 megawatt or 4 megawatt, you would probably load five turbines, which would require an extra four to six hours, so a 20% reduction.
43. MR WHITTAKER: A 20% reduction?
44. MR GALBRAITH: Yes. We pay for crane time and labour. Those are the two things that a project manager can save money on.
45. MR WHITTAKER: In your expert opinion then, it would be a 20% reduction in costs for having the larger turbines over the smaller ones, is that correct?
46. MR GALBRAITH: Yes.
47. MR WHITTAKER: Thank you.
48. MR NEWCOMBE: Following on from Mr Whittaker's question, Mr Galbraith, I do not know whether it would be possible for you to do this, and I simply offer it to you - just say no if you cannot - I do not know whether Mr Whittaker would be assisted, forgive my posing a question, sir, but, if Mr Galbraith were able - and I stress if he were able - to translate 20% into an estimate of pounds, shillings and pence - or is 20% sufficient for your purposes?
49. MR WHITTAKER: 20% is fine, because the question that we were looking at yesterday was how much economies of scale would reduce the overall costs and, if 20% is the figure that is given, then that is adequate for me.
50. MR NEWCOMBE: Thank you very much. Right, Mr Galbraith, I am now moving on to vessel size.
51. LORD ARMSTRONG: I am sorry to interrupt. Could Mr Galbraith explain to me, at any rate, why the retention of the deepwater jetty and the triangle of land has to reduce the amount of berth space for AMEP? If you look at ABP5, it appears that that does not encroach in any way that is visible from the map on the berth space for AMEP. There appear to be five cranes along there, but they do not appear to be interfered with by either the jetty itself or the line that goes from the jetty to the triangle.

52. MR GALBRAITH: If I understand your question correctly, my lord, I maintain that to handle 400 wind turbines plus the import and export, that that length of quay which Able are proposing is not necessary.

53. LORD ARMSTRONG: It is not necessary?

54. MR GALBRAITH: No, it is not necessary. I say that that can be done over a much shorter quay.

55. LORD ARMSTRONG: Thank you.

56. MR NEWCOMBE: My lord, it may assist, this is perhaps a question more for Mr Cooper than Mr Galbraith. I will do my full best to summarise my understanding of Mr Cooper's evidence, but I will also ask Mr Cooper to provide a note to the Committee as soon as he can, a very short note, expressly addressing that question. As I understand Mr Cooper's evidence, if we look at ABP5, the pink area, what I will call concrete quay, is something which Able - we disagree - say they need for various purposes. It matters not what those purposes are here. That is physically inconsistent with the finger, which juts out, and the jetty. It may be that physically one could run the finger along over the top of the concrete, I know not, and that is something that I will ask Mr Cooper expressly to deal with. Clearly, there is no physical interference once one gets feet wet and out towards the jetty and the dolphins themselves. The difficulties are twofold. Firstly, so far as we have feet dry on what we are assuming is pink concrete, at moment, as shown here, that is a conflict of port uses. They are two incompatible uses going on together. So far as the jetty is concerned, that is to serve what are called Panama vessels - that is vessels which are up to the maximum which can pass through the Panama Canal - and then the vessels for AMEP, if the pink concrete were provided as well, would have to come in behind that, which, as I understand it, is in navigational terms "undesirable". I offer that on an expressly contingent basis, because I am a barrister and strictly I am not here to give evidence. I hope that that is a sufficient holding reply, but, as I say, I will ask Mr Cooper to prepare a note. He will read the transcript of what I have said and, if I have been speaking nonsense in any point, he will not be slow to say.

57. Mr Galbraith, can we now move ...

58. LORD ARMSTRONG: We will see when we get Mr Cooper's notes if there are any further questions that arise from it.

59. MR NEWCOMBE: My lord, I will have that circulated as soon as can be. Those who sit behind me have heard what I have said and will be actioning that already, I hope.

60. Size of vessel, please, now, Mr Galbraith. I want to talk about both what I call installation vessels, I hope correctly, and the vessels delivering imported material. First of all, assuming I have the correct term, what are the installation vessels?

61. MR GALBRAITH: An installation vessel is especially designed to carry wind turbines out to sea and pick up the tower and place it on the transition piece which sits on top of the foundation, which is on the seabed. Then it lifts off the nacelle which sits on top of the tower and then lifts the blades up to be fitted on to the rotor. They are especially designed for this purpose. They are highly manoeuvrable and very seaworthy today, whereas before they were really just large barges. They are no longer; they are specifically designed for the purpose. Is that sufficient?

62. MR NEWCOMBE: Thank you. Just pause when you finish, if there is a supplementary, I will ask it. In terms of the length overall - that is from sharp bit to blunt bit - give us a feel for the size.

63. MR GALBRAITH: At the moment, there are six major vessels operating in the region we are talking about. The two largest are Swire Blue Ocean's vessels Pacific Osprey and Pacific Orca. I have to refer to my notes to make sure that I get the figures correct. They are 160.9 metres long - that is length overall from stern to stern - and 49 metres in the beam - 49 metres wide. They have a deck space of 4,500 square metres and it can load out 6,000 tonnes. Those are the largest vessels operating at the moment. They are capable of installing wind turbines and foundations.

64. MR NEWCOMBE: In terms of draught, and by that I mean wet draught, not air draught - that is the amount of metal which, when the vessel is loaded, is below the water - give us a feel for how much water they draw?

65. MR GALBRAITH: As far as I know, Osprey and Orca draw six metres.

66. MR NEWCOMBE: Thank you. Give us a feel for speed in knots.

67. MR GALBRAITH: The top speed would be in the region of 13 knots and that would be on a flat calm and unloaded, but the transit speed is eight knots, average speed.

68. MR NEWCOMBE: Able in its Environmental Statement refer in a number of places to berths being 200 meters long. Do you recall that?

69. MR GALBRAITH: Yes.

70. MR NEWCOMBE: We know, as a matter of record, on Thursday of last week and yesterday, Mr Bird, on behalf of Able, made reference to a new figure of 279 metres. Do you recall that?

71. MR GALBRAITH: I do.

72. MR NEWCOMBE: And also added a further description of the berths, namely that they would be dedicated berths. Having regard to how much is required, firstly, how much berth length - that is to accommodate the actual length overall of the metal of the vessel, together with the requirement for moorings (i.e. bits of string at either end) - give us a feel, please, for what berth length is required in those terms.

73. MR GALBRAITH: It is 175 metres.

74. MR NEWCOMBE: Bearing in mind that we also need to consider the future proofing, do we need to go any further or will 175 metres continue to serve?

75. MR GALBRAITH: In my opinion, 175 metres would continue to serve. I do not think that the overall length of installation vessels will increase significantly. It is not the deck space that is required today; it is the carrying capacity. It is the load. Might I refer to Sea Challenger?

76. MR NEWCOMBE: You answer in whatever way suits you, Mr Galbraith?

77. MR GALBRAITH: A2Sea's vessel, the Sea Challenger, which is the last one, it has just been launched, was specifically designed to carry 5/6 megawatt turbines, and it was probably designed ten years ago, when the 6 megawatt turbines were first designed as well. However, you get a kind of mission creep when you are building something and the weight of the wind turbines began to increase to the point where, if they had been loaded out with five turbines, Sea Challenger would have been overloaded. There was another fact as well, which was, because the weight of the turbines had increased, they had to increase the strength and the weight of the crane, which also added to the weight. Now, you are looking at a situation where you want a vessel that will carry more weight rather than have more deck space. There is a vessel sailing at the moment, which is the Innovation, she is 147 metres, length overall, by 42 metres. She has got a draught of 7 metres, by the way. She is also a jack-up vessel. She has a very, very powerful crane and she can carry 8,000 tonnes, but she is principally used for installing foundations.

78. MR NEWCOMBE: You have used the term "mission creep", we are not moving to Iraq, we are talking about here. A "mission creep", as I understand it from your answer - please correct me if I am wrong - is mission creep in designing the turbines.

Able L2 22/10/2014 12:23

Comment [1]: This is not correct berthing a vessel 161m on a quay in between other vessels with a current circa 5knonts would need more than 14m (7 m each end to dock or depart safely. Also good practice is to moor ropes at 45° angle so from tehncenatr of rhe bow this woul extend forwards by half of the ship width say 25 m, the same at the stern would be an extr 50m = 210m.

79. MR GALBRAITH: Yes.
80. MR NEWCOMBE: All right.
81. MR WHITTAKER: In your opinion, are you saying that, therefore, in the future we will not need lengths but we will need the beam to increase on the boats, because of the weight?
82. MR GALBRAITH: That is the way that I think it would probably go, but I am sorry I am not a naval architect, so I cannot really comment on that.
83. MR WHITTAKER: So, in your opinion, that is the way?
84. MR GALBRAITH: That is the way that I would see it, yes.
85. LORD PLANT: Can I just ask for a little help, because I am having a job to see the figures on this ABP3? Given the sizes that you have been talking about, and in particular the width of these vessels, is there enough space in the two right-angled berths to accommodate these very large vessels? I ask because I just cannot see. There are obviously some numbers there, but I cannot see what they are.
86. MR GALBRAITH: One moment, please.
87. MR NEWCOMBE: Just while Mr Galbraith is looking, can I read the figures?
88. LORD PLANT: That would be useful.
89. MR NEWCOMBE: If we look at the grey area and the indented berths there - looking at the ABP compromise - the more westerly of the right-angled berths are measured at 165 metres. That is the figure given to the northwest of that first indent. If we move further to the south, there is a shorter stub, which is 34 metres in breadth - i.e. northwest to southeast - and 115 metres in length - northeast to southwest. I have read out the figures, Mr Galbraith, but the Committee will be more interested in your expert view, if you need to add anything in answer to my Lord Plant's question.
90. MR GALBRAITH: I see that there is a figure here, which says 5 metres, which indicates how wide the berth is. Is that what you are referring to?
91. LORD PLANT: It was all the figures really.
92. MR GALBRAITH: In that case, you could not get one of these installation vessels in there. It is not designed for that.
93. LORD PLANT: That is what I was thinking.
94. MR GALBRAITH: It seems to have been designed for special vessels, but you could bring a coaster in there.
95. MR NEWCOMBE: Mr Galbraith, would you go, please, to ABP11, in this context? I am deliberately passing from installation vessels at the moment on a slight

frolic sideways and then I am going to come back to the vessels used for the import of material, if any. If we look, this is something which we have already had a look at with Mr Cooper and he identified there that the third column is not to do with capacity, but expected load out. He confirmed, for example, that Green Port Hull, in terms of capacity, as opposed to expected load out, was 500 turbines. So far as expected load out is here concerned, please, would you make the comments that you feel appropriate in terms of what lessons you say the Committee can draw from these figures as possible comparables with the AMEP proposal?

96. MR GALBRAITH: Yes. The first line refers to Siemens' operation at Esbjerg and the second line refers to MHI Vestas operations at Esbjerg. Esbjerg is the biggest offshore port in Europe, wrong Rotterdam is the largest port in Europe. Siemens and MHI Vestas are the biggest manufactures of offshore wind turbines, so I have used them to get these figures. Both of them operate off quays, which are 175 metres long and 50 metres deep. Siemens have informed me that they expect to load out 200 turbines per year from that quay and Vestas, 160 turbines from their quay, possibly because they are going to load out the V154, which is the 8 megawatt turbine. It is slightly larger. If you very roughly average it out, it means that they have one linear metre per turbine of quay frontage, whereas Able are asking for 3.2 metres to do the same amount of work.

97. MR NEWCOMBE: Mr Galbraith, are there any further points you need to make in relation to ABP11? If not, I am now going to move on to look at the vessels used for importation of materials.

98. MR GALBRAITH: There are no further points, if that is clear to everyone.

99. MR NEWCOMBE: Thank you very much. Tell us, please, about the vital statistics and other relevant characteristics of the vessels used for import of materials in so far as materials are imported wet or by sea.

100. MR GALBRAITH: Vessels used in the North Sea, which is between Europe and the United Kingdom, are generally in the class 120 to 140 metres length overall. Vessels coming in from, say, Asia, if towers were to be imported from Vietnam or something like that, would probably be a lot larger. They could be 180 metres long. There is also a class of vessel, a roll-on/roll-off vessel - I am thinking particularly of the Rolldock, which is a very heavy-duty vessel - which could be used to move very heavy components. It operates rather like a ferry. It sails up to the ramp or on to a strengthened quay. It lowers a ramp and you drive the heavy equipment off.

101. MR NEWCOMBE: I want you to come back, please, to your table 12. I will invite you to make some summary comments about that table in so far as you have not already covered matters. If I ask you a question and you are satisfied that you have already dealt with it, please so indicate and I will move on. This is your opportunity to summarise various matters in relation to these figures.

102. Firstly, please, would you summarise for the Committee the lessons you invite them to draw from these figures of berth occupancy and quay utilisation on the various scenarios identified in the left-hand column. What is the overall message that you wish the Committee to draw?

103. MR GALBRAITH: Berth occupancy for AMEP's proposal of a 1,279-metre quay with 400 wind turbines and 200 nacelles, and I included 100% import as well, would not be higher than 20%, in my submission. The quay utilisation would only be 45%. If the amendment petitioned by ABP were adopted, those figures would rise to 31% and 73% for quay utilisation. On the proposed 995-metre compromise, the figures would be 24 and 54% for quay utilisation.

104. MR NEWCOMBE: Just pause there, Mr Galbraith. We can all read the figures, but, in terms of efficiency or lack of efficiency, what lessons do you invite the Committee to draw from those percentages?

105. MR GALBRAITH: Looking at the first line of AMEP's proposal 1,279, 45% quay utilisation I think is the most important figure, because it shows that for 65% of the time the quay would be empty. The harbour would not be used at all.

106. LORD ARMSTRONG: Should it not be 55%?

107. MR GALBRAITH: It is 55%; I beg your pardon. Can I go on?

108. MR NEWCOMBE: Only if you wish to make some more headline points. Mr Galbraith, I stress, I am not inviting you to take the Committee through all the figures, they have seen those. I simply want you to summarise. If you want to add anything now ...

109. MR GALBRAITH: Yes, I would just like to add one thing and that is to look at the realistic figure which we could expect to be moved per year over this quay, which is 173 turbines, which is taken from the evidence that Mr Slark gave yesterday. The quay utilisation would only be 25%, which means that the quays would be empty for 75% of the time, which shows that it is grossly under-utilised or far too big.

110. MR NEWCOMBE: The figure of 500 turbines per annum surfaced yesterday and there is an issue between the parties as to whether or not that has been environmentally

assessed. For my purposes it matters not whether it is correct or not, but the figure of 500 is in issue. If we assume, contrary to the evidence of Mr Slark, that there is indeed a demand and a market for 500 turbines per year, help the Committee, please, by giving them an indication of what length of key, in your view, would be needed to serve 500 turbines per annum.

111. MR GALBRAITH: In my view, 500 wind turbines could be handled over a 600-metre quay. That is only the turbines.

112. MR WHITTAKER: Could I get you to clarify also this? You said to us yesterday that you factored in a 15% downtime - I think that that is what you said - because of the weather.

113. MR GALBRAITH: For weather.

114. MR WHITTAKER: For weather. Esbjerg clearly is in a much different place than the Humber is, so I would imagine that you would have to factor in a larger downtime for Esbjerg, is that correct, because of the worst weather conditions?

115. MR GALBRAITH: If I could explain my involvement with Esbjerg, I worked at Esbjerg several times, but I worked on the landward side. I worked on the pre-assembly side. I did not have a lot to do with the marine operations. My estimations would be slightly different, perhaps, from theirs. On the landward side, I would work on 10%. I understand that the vessels work on 15%. They are pretty much at the same latitude as we are. Weather conditions are not very different.

116. MR WHITTAKER: So is New York to London, but the weather is very different quite often at various times of the year. Let me ask you then finally. Would, in your opinion, the longer quay size in the Humber give the Humber a much better commercial viability in the long run over those with shorter quays?

117. MR GALBRAITH: For the use of installation vessels? I am sorry, you mean the entire ...

118. MR WHITTAKER: I am talking about the entire production, because that is what we are talking about here. We are talking about a quay that has, obviously, factories there that are producing all these things. Would it be a much better long-term prospect for the Humber in regards to commercial viability and bearing in mind we are talking about driving then costs, would they be in a much better position in the long term over places like Esbjerg with the longer quays and facilities?

119. MR GALBRAITH: I would say that 600 metres would be sufficient.

Able L2 22/10/2014 12:35

Comment [2]: What is a turbine is it an OWT or just a nacelle

Able L2 22/10/2014 12:36

Comment [3]: Wrong and also have a longer distance to UK zones.

120. MR WHITTAKER: That is not the question that I asked. The question I asked is in the long term would the longer quays give the Humber a much more favourable commercial viability over those that have shorter quays?

121. MR GALBRAITH: No, I do not think so. I do not think that it would.

122. MR WHITTAKER: Can I ask why?

123. MR GALBRAITH: Because you have so much competition from other ports and because this market is not going to increase in volume of turbines. You are going to be moving less turbines, in fact, in the future, than we are moving today. Do you want me to explain that?

124. MR WHITTAKER: I think that you fairly well have when you talk about the larger capacity turbines, which is where I think you are going. Is that correct?

125. MR GALBRAITH: Today to produce 1 gigawatt, you would need 167 turbines. In five years time, I would estimate that you would only need 100 turbines, because you would be using 10 megawatt machines which should be ready for full production by that time.

126. MR WHITTAKER: Thank you.

127. MR NEWCOMBE: Mr Galbraith, in looking at ABP 12, is there anything further that you need to say about the way in which you have derived what you consider or what Mr Slark considers to be realistic estimates and then use them as your left-hand column for the scenario? If you have said everything that you need to about that, I am entirely content. I am just giving you the opportunity to add anything if you feel that you have missed it.

128. MR GALBRAITH: The only thing that I could add to this is that I have allowed for 100% import, but I do not believe there will be, because you have a massive supply chain park and local production, say from Tata Steel just up the road, and you also have two very large ports on either side of this facility, where there are regular services carrying containers, trailers, trucks, whatever, to bring materials in if they have to be imported. Although I have included them in here, that has been to Able's favour. In actual fact, in my estimation, you would not need to import anything like that and that would reduce these figures even more.

129. MR NEWCOMBE: In the scenarios down the left-hand side, you indicate that you have included 200 nacelles - i.e. those which are not fixed to turbines, as I understand it.

130. MR GALBRAITH: Yes.

Able L2 22/10/2014 12:45

Comment [4]: The industry will not all be installing 10mw in 5 years time, 6mw is just being installed it will more probably be in 10 yrs time.

131. MR NEWCOMBE: What is the effect of including those in these figures here?

132. MR GALBRAITH: It is very small. 200 nacelles would probably be exported on 20 different vessels. You would probably load ten at a time. I am assuming that they are going far afield so you would bring in a vessel. That vessel could be brought in when there is a vacant berth, tie up alongside, move the cranes into position and then bring the nacelles down one by one from the factory storage area and load them on to the vessel. It takes about an hour and a half to load a nacelle and secure it on deck, which gives adequate time for two SPMTs to run nacelles down, so they are not interfering with the quay utilisation at all.

133. MR NEWCOMBE: Just returning for a moment, please, Mr Galbraith, you have assumed 100% imports, but, in answer to my question and amplified to others, you have indicated why you think that that is an unrealistic assumption. If one were to look at a percentage of imports by sea, wet feet, are you able to give us a percentage to substitute for 100?

134. MR GALBRAITH: Yes, the only thing that I can think of that might have to be imported would be specialised forgings, which is the bed frame for certain nacelles, hubs and possibly some components for the drive train. The drive train is the part that connects to the hub, which has the rotor on, to the nacelle to generate them. Some of those parts currently are not made in the UK and have to be imported - or would have to be imported, I should say. I would say there is probably about 150,000 tonnes a year and that equates to 30% of the figure I gave here. However, some of those parts could also be brought in through the two ports that I have mentioned, Immingham and Killingholme. They do not have to come in over the AMEP quay.

135. MR NEWCOMBE: My final point, please, Mr Galbraith, I think, subject to any supplementary I need to ask, is this. Would you go to ABP8, which is comparing the locations of competitor offshore wind supply ports? This has already been touched on by Mr Slark and the heading of ABP8 is self-evident. Ignoring the 200 nautical miles radius drawn from a point on the Humber centred on AMEP, just ignore that for present purposes, and just look, in turn, at Esbjerg, Bremerhaven, Vlissingen and Forth, are there any particular points that you wish to draw to the Committee's attention in so far as their status as competitors for AMEP and, indeed, for Green Port Hull?

136. MR GALBRAITH: Esbjerg is already very well established and Denmark, being the centre of the wind farm industry at the moment, there is very, very strong political influence to keep Esbjerg running and anything that falls within that 200-mile radius, if

Able L2 22/10/2014 12:50

Comment [5]: This is WRONG the items would be stored on the quay ready for the vessel to arrive, this is conventional practice. – this allows better utilisation of the spmt and minimises the time taht the ship is at the port.you would never consider paying a vessel to be moored at the quay whilst you bring each item from the factory to it.,

it is produced by Siemens or produced, certainly, by MHI Vestas, there will be very strong pressure to push it out of Esbjerg. Bremerhaven is in competition with them and they are building up a massive amount of quay space, 50 metres at the moment, and they have plans to expand even on that. Bremerhaven has very, very strong support from the local - I am not sure what you call it in Germany - the local state, so they are very heavily subsidised. There is a lot of industry around there and, if we go to Vlissingen, I am not quite sure - I have not worked down there for a long time, but I know that they are also in competition and they also have state backing. They are also subsidised. The Forth ports are not developed, but they are ideally placed to handle anything off the east coast as far down as the Humber. There is a strong move, again, to develop a similar type of operation as AMEP up there either at Dundee or Leith or Methil is another place.

137. MR NEWCOMBE: If you have now finished, Mr Galbraith

138. MR WHITTAKER: You mentioned that Bremerhaven have a quay of 500 metres with plans to expand.

139. MR GALBRAITH: Yes.

140. MR WHITTAKER: Expand to what?

141. MR GALBRAITH: I am not sure what they are going to expand to. I know that they have about 500 meters at the moment and they are building a new quay of about 500 metres.

142. MR WHITTAKER: So similar to what is proposed at ...

143. MR GALBRAITH: Yes, it would be. Again, I have not been to Bremerhaven for some time, so I really cannot comment on what they have at the moment.

144. MR NEWCOMBE: Mr Galbraith, some homework for you. In response to Mr Whittaker's question, when you are released from giving evidence, would you please double check, in so far as you can, Bremerhaven and find out precisely what is the extent of the enhanced quay length and also what is the new expected capacity over that enhanced quay length and provide a very short note which can be submitted to the Committee, including Mr Whittaker.

145. MR GALBRAITH: Yes, I will do that.

146. MR NEWCOMBE: My lord, I am very grateful. That concludes Mr Galbraith's evidence in chief.

147. CHAIRMAN: Thank you, Mr Newcombe. Have the Committee any questions at this moment? [No] Mr Bird, do you wish to examine Mr Galbraith?

Able L2 22/10/2014 13:10

Comment [6]: Should be 500m

Able L2 22/10/2014 13:11

Comment [7]: No manufacturing it is only an installation port

Able L2 22/10/2014 13:12

Comment [8]: Not done yet

148. MR BIRD: If I may, thank you very much. Good afternoon, Mr Galbraith. As I understand it your evidence is directed at demonstrating that the objectives of AMEP can be met with a reduced quay length or the reduced quay length available at either of the ABP proposed amendments.

149. MR GALBRAITH: Yes.

150. MR BIRD: And the key to those objectives, the AMEP objectives, is to assist the industry in driving down costs, is it not?

151. MR GALBRAITH: Driving down costs?

152. MR BIRD: Yes. That is a very important part, is it not, of the future of offshore wind?

153. MR GALBRAITH: Yes.

154. MR BIRD: Good. You as a project manager will know the factors which give rise to increased costs in the installation process, will you not?

155. MR GALBRAITH: That gives an increase?

156. MR BIRD: Yes, you will know, as a project manager of wind farm installation schemes, what factors give rise to increased costs.

157. MR GALBRAITH: Yes.

158. MR BIRD: But, as I understand your evidence, you have principally been concerned, in your experience, with the landside activities as opposed to those which are taking place at the offshore wind farms themselves. Would that be fair?

159. MR GALBRAITH: For offshore, yes.

160. MR BIRD: Good. So far as round three is concerned, the round three wind farms off the coast of the UK, what assessment have you made there of, for example, the weather conditions and the wave conditions over the year which might affect installation rates?

161. MR GALBRAITH: I have not done that specifically, but, when I was working for Siemens, most recently, I was part of a much larger team where these things were discussed and, of course, they will have an effect on what is done on the pre-assembly site.

162. MR BIRD: We will come to some of that in a moment. Of course, your experience is to date in an industry which is not delivering offshore wind at a cost which would meet the Government's objectives.

163. MR GALBRAITH: That is correct.

164. MR BIRD: What this Committee will be interested in is the extent to which costs can be driven down and what is needed to drive costs down as opposed to replicating the industry which you to date have been involved in, will it not?

165. MR GALBRAITH: That is correct.

166. MR BIRD: Good. Your experience is not, as I understand it, concerned with the costs of components and what factors lead to increased costs of components ...

167. MR GALBRAITH: Not the cost of components, no.

168. MR BIRD: It is not concerned with the costs of, as it were, the offshore installation process. Your knowledge is confined to the costs of operating the quay, is it?

169. MR GALBRAITH: It concerns the cost of the vessel that is here, because you have a crew on board who you have to pay.

170. MR BIRD: It is not just the crew on board, you have the vessel to pay for as well.

171. MR GALBRAITH: Yes, the vessel to pay at £175,000 a day or something like that.

172. MR BIRD: That is just the vessel.

173. MR GALBRAITH: Yes.

174. MR BIRD: You then have to pay for the crew on top of that.

175. MR GALBRAITH: Your own crew, yes.

176. MR BIRD: Absolutely. Now, it is also right to say that, in terms of the issue of need, the future need for offshore wind, you have been informed or taken on board the advice of Mr Slark.

177. MR GALBRAITH: I have.

178. MR BIRD: You are not, are you, an expert yourself in the future need for offshore wind?

179. MR GALBRAITH: No, I am not an expert in it, but I know something about what the two main manufacturers would like to produce.

180. MR BIRD: Right. Those are, what, Siemens and Vestas?

181. MR GALBRAITH: Yes.

182. MR BIRD: We have some feel for what Siemens would like to produce from their proposal at Green Port Hull.

183. MR GALBRAITH: Yes.

184. MR BIRD: Have you been involved with the Green Port Hull?

185. MR GALBRAITH: Not directly.

186. MR BIRD: Indirectly?

187. MR GALBRAITH: Indirectly.

188. MR BIRD: So you have some knowledge of Green Port Hull.

189. MR GALBRAITH: I do.

190. MR BIRD: And you know the location of Green Port Hull, you have been there.

191. MR GALBRAITH: I have not been there, but I know the location.

192. MR BIRD: Right. If you would just take up the ABP documents again, which you were taken to, just go to ABP11, we can see under Green Port Hull, which is the orange line of the table in the ABP documents, the quay length is 600 metres, expected load out of 300. As far as the quay length is concerned, that in a sense is the quay adjacent to the Humber, is it not?

193. MR GALBRAITH: That is right.

194. MR BIRD: Yes. There is other quay available to Siemens at Green Port Hull, is there not, accessed through the lock?

195. MR GALBRAITH: Not for installation vessels.

196. MR BIRD: In terms of components?

197. MR GALBRAITH: Yes, but the components would be manufactured in the factory.

198. MR BIRD: There is no manufacturing at Green Port. Hull

199. MR GALBRAITH: Assembly.

200. MR BIRD: Yes. There is additional quay, is there not, available to Siemens at Green Port Hull, which is not included in this orange line?

201. MR GALBRAITH: That is true.

202. MR BIRD: And how much is that?

203. MR GALBRAITH: I don't know.

204. MR BIRD: Right. Would you be able to check how much additional quay?

205. MR GALBRAITH: I can do that.

206. MR BIRD: Because it is relevant, is it not, in terms of your assessment and comparative assessment of AMEP? Let us just then establish your expertise is logistics, transport and project delivery of the current generation of wind turbines - yes?

207. MR GALBRAITH: That is correct.

208. MR BIRD: Good. If we could take up the volume 3 of the core reference exhibits and go to chapter 5 of the AMEP Environmental Statement, it is in document

Able L2 22/10/2014 13:16

Comment [9]: Still outstanding

12, and within that chapter 5, I want to go first in that document to page 5-50. It is paragraph 5.10.12 on page 5-50. Do you see that?

209. MR GALBRAITH: I see it.

210. MR BIRD: You see reference in the first sentence to a reasonable annual installation rate having regard to the assumptions above, and we will come back to that point, of 70 to 110, depending on the particular zone. This would mean that between 7 and 10 installation vessels would be operating at any particular time around the British Isles requiring a commensurate number of quays. For AMEP to assemble the majority of its products on site, around 500 complete turbines, then between four and six construction quays are needed, each around 200 metres in length. Do you see that?

211. MR GALBRAITH: Yes.

212. MR BIRD: As far as the Environmental Statement is concerned, leave aside any arguments about the Environmental Statement, it does refer to 50 turbines, does it not?

213. MR GALBRAITH: This does.

214. MR BIRD: Yes, good. Now, as far as the reference to 200 metres of quay is concerned, can you just go back in the chapter, to 5-32 and paragraph 5.7.2, do you have that?

215. MR GALBRAITH: Yes.

216. MR BIRD: You will see the advice or guidance published by the Crown Estate in 2010 which provided a guide to an offshore wind farm, did it not?

217. MR GALBRAITH: It does.

218. MR BIRD: It also provided guidance in terms of the specification for construction port - note construction port - did it not?

219. MR GALBRAITH: Yes.

220. MR BIRD: We see the guidance there in terms of the requirements of what they typically are and they include, in terms of quayside length, 200 to 300 metres length with high load bearing capacity and adjacent access. That is for 100 3 megawatt turbines.

221. MR GALBRAITH: I see that.

222. MR BIRD: That was the Crown Estate's expectation of what would be required in the future having regard to the need to deliver offshore wind at reduced cost. Do you actually disagree with the quayside length of 200 to 300 metres?

223. MR GALBRAITH: I do.

224. MR BIRD: In terms of the average requirement - that is the way that I put it the other day - the average requirement of those interested in the AMEP scheme, it is 279 - sorry, 290. I said 279 the other day. It is 290 metres of quay. That is the average requirement of those interested in quay space at AMEP.

225. MR GALBRAITH: For one construction quay?

226. MR BIRD: Yes. That is the average requirement.

227. MR GALBRAITH: No, I don't agree with that.

228. MR BIRD: I have that wrong. Let me just get it right. I will put it absolutely clearly. The berth size is for 200 metres, but the average requirement is for additional berth space, which gives you the 290 metres, on average.

229. MR GALBRAITH: Can I point something out, please?

230. MR BIRD: Yes, do.

231. MR GALBRAITH: If you look across the page, at paragraph 5-33, and with the figure 5.12, which is a photograph of a port in Denmark, you will see there that there are rotors being assembled. The rotor being the hub with three blades on it. That consumes a very large amount of space. But that is no longer the practice, because they have moved away from that even for 3 megawatt turbines to single blade installation. Some manufactures might still do rotors, but certainly for 6 and 8 megawatt it is not practicable.

232. MR BIRD: So some do; and rotor-star assembly has not been, has it, ruled out even for the larger turbines to date?

233. MR GALBRAITH: No, I did not say that. Rotors will not be done for 6 and 8 megawatt turbines.

234. MR BIRD: At all?

235. MR GALBRAITH: You cannot get them on to the vessel for a start and you cannot lift them in wind at any practical speed. It is much easier to do it with single blade.

236. MR BIRD: That is one of the assumptions underlying your approach.

237. MR GALBRAITH: Yes.

238. MR BIRD: Right. Back to 5.7.2, we can see at the bottom bullet point also that sites with greater weather restrictions or for larger scale construction may require an additional lay down area of up to 30 hectares. Do you see that?

239. MR GALBRAITH: I see that.

240. MR BIRD: And that is to provide flexibility, is it not, or resilience?

Able L2 22/10/2014 13:20

Comment [10]: Check out I think it is still possible and siemens whee going to do it for WMR

Able L2 22/10/2014 13:20

Comment [11]: MPI to confirm taht you can

241. MR GALBRAITH: This is based on hub ports. It is not based on a port where you are drawing directly from the factory. This is based on a hub port where you have to import everything and store it and to assemble it to take it away.

242. MR BIRD: We will come back to that issue in a moment, but, as far as the construction port, which is how it describes itself, is concerned, it has identified a quay length of 200 to 300 metres in length. As far as wind installation vessels are concerned, if we go in the Environmental Statement to page 5-46, table 3-10 identifies what at that time were the principal dimensions of specific turbine import vessels and then in table 3-11, the dimensions of turbine installation or transport vessels - yes?

243. MR GALBRAITH: I see that.

244. MR BIRD: In terms of your evidence this morning, you have identified, I think, wind installation vessels currently go up to 160.9 metres in length?

245. MR GALBRAITH: 160.9 metres.

246. MR BIRD: And MPI have a ship, I think, under construction or planned for construction, the Endeavour, which would be 177 metres in length. Were you aware of that?

247. MR GALBRAITH: No.

248. MR BIRD: In terms of a 177-metre wind installation vessel, you were not aware of that, but, obviously, that has implications, does it not, for the length of berth required

249. MR GALBRAITH: It depends what they are going to use the Endeavour for. If she is going to be used to take out foundation sections, that is a different matter altogether.

250. MR BIRD: Well, as far as this AMEP scheme is concerned, it is likely to be used for foundations, is it not?

251. MR GALBRAITH: I don't know.

252. MR BIRD: It is likely, is it not, having regard to the need to service round three, that it will be used for foundations? It is, therefore, necessary, is it not, to ensure that it is designed so that it can accommodate vessels which will install foundations?

253. MR GALBRAITH: Yes, I see where you are reading.

254. MR BIRD: Have you taken any account of the need to service the foundation market in your evidence?

255. MR GALBRAITH: Yes, I have.

256. MR BIRD: Right. What allowance or what account did you take in terms of the berth requirement and the consequent effect on quay length?

257. MR GALBRAITH: 200 metres.

258. MR BIRD: For how many foundations?

259. MR GALBRAITH: I don't know what type of foundations you are talking about. In the Environmental Statement they say 50.

260. MR BIRD: Yes.

261. MR GALBRAITH: But there are several different types of foundations.

262. MR BIRD: Yes, there are. Obviously, the foundation market will depend on the foundation requirements which were established through the design of the various wind farms, will it not?

263. MR GALBRAITH: It will be.

264. MR BIRD: Unless and until that is known, the precise nature of the foundations will not be known, will it?

265. MR GALBRAITH: No.

266. MR BIRD: Therefore, AMEP needs to be designed to accommodate the eventual selection of foundations, does it not?

267. MR GALBRAITH: Yes, but I could not see them manufacturing 500 foundations in one port.

268. MR BIRD: Why not?

269. MR GALBRAITH: Time, space and competition, because there are about six or seven companies manufacturing foundations.

270. MR BIRD: But, of course, the issue here is manufacturing at a cost which will, as it were, achieve the Government's objectives, is it not?

271. MR GALBRAITH: I cannot comment on that.

272. MR BIRD: It may not be 500 foundations; it could be 250 turbines and 250 foundations, could it not?

273. MR GALBRAITH: It could be, but I don't think you would - well, it is very unlikely I would say.

274. MR BIRD: Sorry.

275. MR GALBRAITH: I say that it would be unlikely.

276. MR BIRD: You say that would be unlikely. Why?

277. MR GALBRAITH: To make 250 foundations in one port?

278. MR BIRD: Yes.

279. MR GALBRAITH: You would have to go to ABP8 to see what I am talking about. Most of the foundation manufactures are based in Europe and, if you look at

Bremerhaven and you look at Vlissingen and Esbjerg, you will see that very large proportions of these wind farms, which are proposed for round three, are within their range, so there would be quite stiff competition.

Able L2 22/10/2014 13:23

Comment [12]: None made there

280. MR BIRD: There will be competition. That in a sense is why there is a need to ensure that AMEP are able to deliver wind turbines at a cost which makes them competitive, is it not, including their foundation?

281. MR GALBRAITH: Well, you would hope that they would be competitive, certainly.

282. MR BIRD: In terms of, for example, transportation distances, AMEP has an advantage, does it not, in terms of the majority of the round three wind farms?

283. MR GALBRAITH: What advantage does it have that you refer to?

284. MR BIRD: In terms of the distance involved to the majority of the round three wind farms compared to the competition as a whole.

285. MR GALBRAITH: Not for the ones in the German Bank, it does not.

286. MR BIRD: As far as Esbjerg is concerned, we can see the round three, the top quadrant on the left in the brown colours, that only just catches or touches, does it not, one of the round three wind farms?

287. MR GALBRAITH: Yes.

288. MR BIRD: Bremerhaven does not or, perhaps, it just touches the very edge of 200, but it is largely beyond the 200 nautical miles - yes?

289. MR GALBRAITH: Bremerhaven, what, sorry?

290. MR BIRD: Looking at the right hand quadrant at the top, all of the round three are outside the 200 nautical mile radius.

291. MR GALBRAITH: Bremerhaven, I see that, yes.

292. MR BIRD: Good. It is Vlissingen, I think, rather than "Visingen", *the "S" is missing from the legend here. But in terms of that, again, two of them are within 200 nautical miles, but one of them is certainly much nearer to AMEP, is it not?

293. MR GALBRAITH: Yes, but these charts have been drawn up in respect of installation vessels installing wind turbines, not foundations. Foundations to my knowledge have been sailed all way around Britain to the Irish Sea from Europe in the past, so I have not calculated that.

294. MR BIRD: What does that do to the cost?

295. MR GALBRAITH: It would probably add to the cost, yes.

296. MR BIRD: It would not just probably add to the cost, it would inevitably add to the cost and substantially, would it not?

297. MR GALBRAITH: I have not worked out the cost, but, yes.

298. MR BIRD: Very substantially, would it not?

299. MR GALBRAITH: I don't know. It depends on what the cost is of manufacturing them in the port.

300. MR BIRD: Daily cost of the installation vessel for foundations?

301. MR GALBRAITH: It is not as high as installation turbines, but I don't know what it is.

302. MR BIRD: So you are not actually in a position to assist then, in terms of how much cost would be incurred, are you?

303. MR GALBRAITH: No.

304. MR BIRD: Back to the Environmental Statement, please, so we can just see what the AMEP proposal is actually for, and back to 5.50 and 5.51, if you would, 5.10.14, which is on 5-51, summarises the requirements of the scheme. It has five construction quays of 1,000 metres, so that is 200 metres each, overall length, and a dock capable of stern loading to enable future technologies to be accommodated. In addition to this, an import/export quay is required.

305. MR GALBRAITH: It says precisely that.

306. MR BIRD: That is the requirement. I just want to be quite sure what your position is. In terms of an import/export quay, it makes sense, does it not, for a scheme such as AMEP to have a dedicated import/export quay to ensure that the construction quays are not interfered with given the cost of wind installation?

307. MR GALBRAITH: No, I don't think so. I don't think you need an import/export quay.

308. MR BIRD: Forgive me, I will start again. In terms of the benefits of an import/export quay, they ensure, do they not, that, in terms of the construction quay, it is not interfered with in terms of the import/export traffic? It is kept free of the construction quays.

309. MR GALBRAITH: At the moment it is common practice to use the construction quay to import materials you need for the project.

310. MR BIRD: I know that that is the common practice at a cost which is not the Government objectives.

311. MR GALBRAITH: A dedicated import/export quay, which is hardly going to be used, would certainly add to the cost.

312. MR BIRD: We will come to hardly going to be used in a moment, but, as far as the costs of installation, a import/export at the construction quays reduces the risk of conflict, does it not, in terms of berth requirements?

313. MR GALBRAITH: That is a very simple matter of scheduling your vessels properly.

314. MR BIRD: We will come to scheduling. That is your answer, is it, in terms of the process? You don't need import/export quays because you can schedule your vessels to suit.

315. MR GALBRAITH: Yes, and I also would like to add to that that I don't see the need to import so much material anyway with a supply chain park which is sitting right behind the quays and two adjacent ports, which are already established and have lines established to the Continent if you have to bring anything in from the Continent.

316. MR BIRD: What are you anticipating bringing in to, for example, the existing Immingham Port for use at AMEP, given the evidence that Mr Cooper has given in terms of the utilisation of Immingham?

317. MR GALBRAITH: If you had to bring in steel plate, it could be brought into Immingham.

318. MR BIRD: Why should it not be brought into AMEP?

319. MR GALBRAITH: It could be brought into AMEP.

320. MR BIRD: Right.

321. MR GALBRAITH: But you don't need a dedicated quay to do that, you could land it across the construction quays. They are going to be empty for six days at a time.

322. MR BIRD: Let us examine that, shall we? In terms of the installation rates of turbines, in terms of your evidence that you gave yesterday, just so that I am clear, as I understand it, you said that it takes three days - that four towers take 12 days to build. It is three days a tower.

323. MR GALBRAITH: Yes, they are built in sequence, it is like a production line.

324. MR BIRD: Yes. So each tower takes three days to build.

325. MR GALBRAITH: Yes.

326. MR BIRD: Good. If, theoretically, you could do four towers every 12 days, then you would over a year be able to do a maximum of 136 towers, would you not?

327. MR GALBRAITH: I have not worked it out that way but ...

328. MR BIRD: Would you like to do the sum? That is right, is it not, it would give you 136 towers maximum over the quay?

329. MR GALBRAITH: Over each quay?

330. MR BIRD: Yes.

331. MR GALBRAITH: Unless you doubled up on the eight pack.

332. MR BIRD: We will come to, as it were, doubling up in a moment, but in terms of your figures it assumes maximum over the quay of 136 towers, does it not, per annum for each 200-metre length? That is 12 days to build four towers.

333. MR GALBRAITH: Yes.

334. MR BIRD: Of course, you cannot build and get four towers over the quay in 12 days because you have also got the loading time, have you not, of two days, which you told us about yesterday?

335. MR GALBRAITH: That is not quite the way I would put it.

336. MR BIRD: That is the way I am putting it to you, Mr Galbraith. You have got four towers every 14 days, which reduces your maximum capacity over the quay to 104, does it not, a year - 3.5 days per turbine? Would you like to check the maths?

337. MR NEWCOMBE: If it helps, I am perfectly prepared for Mr Galbraith to ...

338. MR GALBRAITH: I do not follow what you are saying.

339. MR BIRD: Assume that it is right and we can check in due course.

340. MR NEWCOMBE: It would be better for the witness to do the sum while the Committee is watching.

341. MR BIRD: As far as the sum is concerned, I think that it is a fairly straightforward sum but it comes out at 14 days for four turbines, you can do your 104 a year maximum over the quay allowing for loading.

342. MR GALBRAITH: Fourteen days for four turbine?

343. MR BIRD: Yes. That includes the loading time.

344. MR GALBRAITH: You are moving four turbines every eight days.

345. MR BIRD: It takes you three days to build four, each of them. That is 12 days to build them, so you cannot move ...

346. MR GALBRAITH: No, no, no,

347. MR BIRD: That is the evidence you gave yesterday, four turbines ...

348. MR GALBRAITH: Yes, but that is not the way that it works. While one tower is being worked on, you are working on the next one and the next one and the next one, it

Able L2 22/10/2014 13:29

Comment [13]:

is like a production line. You can for H & S reason have men and machines working in the vicinity of cranes lifting 200t sections up to 90 m high.

349. MR BIRD: Yes.

350. MR GALBRAITH: If you start off at D minus 12, you have one tower completely finished one day, on day two you have another tower finished and then day three you have another tower finished and so it goes on.

351. MR BIRD: Yes. It would take you 12 days to build those 12 towers in order to get them ready to put on a vessel.

352. MR GALBRAITH: Yes, but it does not take you 12 days to produce the next lot, because it is a production line. As soon as you have got four towers move off, you are building the next four. They are finished by the time the vessel comes in.

353. MR BIRD: Let us just look at it. It is not just a case of building the towers, you have to have a vessel to put them on, have you not?

354. MR GALBRAITH: Yes.

355. MR BIRD: So, in terms of your analysis, it comes down to the fact that in terms of four towers every 14 days, 104 a year, allowing for loading, on to the wind installation vessel. Whilst the wind installation is being loaded with towers, there are restrictions, are there not, on how the quay can be used? For example, you cannot simply carry on erecting towers because the quay is being used to crane the towers on to the wind installation vessel, is it not, and the handling requirements prevent that?

356. MR GALBRAITH: You can work on the inside of some of the towers and you can also work on the four pack behind them.

357. MR BIRD: But in terms of actually erecting completed towers, there are restrictions, are there not?

358. MR GALBRAITH: Very small restrictions.

359. MR BIRD: No, it is not a very small restriction, because it restricts the quayside in terms of the crane operation, does it not?

360. MR GALBRAITH: You only have a restriction while the crane is actually lifting.

361. MR BIRD: Yes, which is two days.

362. MR GALBRAITH: It is not for two days.

363. MR BIRD: That is the loading of the wind installation vessel. It takes two days.

364. MR GALBRAITH: I have allowed two days for it to load.

365. MR BIRD: Yes.

366. MR GALBRAITH: To load the towers off the eight pack would probably take 12 to 14 hours. Other operations can continue around that.

367. MR BIRD: What other operations can continue beyond that?

368. MR GALBRAITH: You can be working on the four pack which is assembling the base car on to the switch gear.

369. MR BIRD: Where is that happening?

370. MR GALBRAITH: That happens behind the eight pack.

371. MR BIRD: Right. Of course, that does not help you in terms of getting towers out over the quay to the wind installation vessel, because you can only get them over the quay if there is a wind installation vessel sitting there waiting to accommodate them, can you not?

372. MR GALBRAITH: Yes, the vessel must be there to load.

373. MR BIRD: And, in terms of utilisation rates of the vessels, what allowances have you made for those in your analysis?

374. MR GALBRAITH: In terms of what, sorry?

375. MR BIRD: The utilisation rate.

376. MR GALBRAITH: Please say that again.

377. MR BIRD: In terms of the installation rate of wind installation vessels, have you assumed that each and every day of the year the wind installation vessel will be able to load, leave port, and install at the offshore wind farm or have you built in an element of contingency to your analysis?

378. MR GALBRAITH: Yes, we have built in a contingency, 15%.

379. MR BIRD: Yes.,

380. MR GALBRAITH: We have allowed 48% to load up the vessel. It can be done quicker.

381. MR BIRD: You say that you have allowed 48% – 48% is what?

382. MR GALBRAITH: Excuse me.

383. MR BIRD: What does the 48% represent?

384. MR GALBRAITH: No, I have allowed 48 hours.

385. MR BIRD: Sorry, 48 hours, sorry, I thought you said per cent. That is my hearing, apologies. 48 hours.

386. MR GALBRAITH: Yes, I allowed 48 hours which is quite sufficient.

387. MR BIRD: In terms of the 15%, you are assuming that for 85% of the time, the wind installation vessel is able to install without any interruption throughout the day

and then return to port, pick up, go out again, install and back without any further interruption. You said a little earlier on that you had not, in terms of your analysis, taken any assessment of the weather and climate and wave conditions at the round three wind farms, did you not?

388. MR GALBRAITH: I did not study it in detail, no.

389. MR BIRD: If we go back to the Environmental Statement at 5.10.11, this is on page 5-50, we can see in the bullet points, and the fifth bullet point, that vessels are not used in months when the average significant wave height exceeds 2 metres or the average wind speed exceeds 8 metres per second. This translates into around 120 operational days at Dogger Bank or 180 operational days at Norfolk Bank. Do you see that?

390. MR GALBRAITH: But the modern vessels can. They have a much higher capacity. A wave height of 2.5 metres and they can jack up at 20 metres per second.

391. MR BIRD: Yes, they can jack up but they cannot, can they, install each of the turbine components at those wind speeds?

392. MR GALBRAITH: No, but wind speeds are not always constant.

393. MR BIRD: No, of course they are not. They vary, don't they? What is your analysis of the number of operational days at, for example, Dogger Bank or Norfolk Bank?

394. MR GALBRAITH: I don't have that information.

395. MR BIRD: Right.

396. MR GALBRAITH: I do know that when certain projects - and I have to be careful what I am saying because I am constricted by an MDA, but certain projects when they were discussed for the round three, the figure of an eight-day cycle was considered to be adequate by Siemens. That was devised by the marine operations department.

397. MR BIRD: What allowance did that make, for example, for downtime due to wind?

398. MR GALBRAITH: That is 15% for the vessel.

399. MR BIRD: So your downtime assumes that there is only a restriction of 15% due to weather and climate?

400. MR GALBRAITH: Due to weather and ...

401. MR BIRD: Well, climate, wave height ...

402. MR GALBRAITH: Yes, waves.

403. MR BIRD: In terms of the installation of the towers and the rotors, there is a difference, is there not, in terms of what can be done at different wind speeds?

404. MR GALBRAITH: There is.

405. MR BIRD: And, as far as the towers, what is your evidence in terms of the maximum wind speed for use of the cranes at the wind farm itself?

406. MR GALBRAITH: As far as I know, it is 14 to 16 metres per second for towers.

407. MR BIRD: What is it for blades?

408. MR GALBRAITH: For blades I think that it is 10 metres per second, which is 25 miles per hour.

409. MR BIRD: You think that it is 10 metres per second. What is that based on?

410. MR GALBRAITH: That is based on some work I did with a new blade installation tool which Siemens have developed to lift blades on to their 6 megawatt turbines. I was working on that last year.

411. MR BIRD: Is that a prototype? Has it actually been rolled out or is that, as it were, a modelled position?

412. MR GALBRAITH: Is that?

413. MR BIRD: Is that actually experience?

414. MR GALBRAITH: That is based on experience with other equipment, yes. This equipment has only just been put into use in the last three months.

415. MR BIRD: So has there been any recent evidence from its use as to the maximum wind speed for blade installation?

416. MR GALBRAITH: Not that I am aware of. I have not seen anything, but I have not heard anything to say that it cannot operate at those speeds either. It is a very sophisticated tool. It weighs 11 tonnes and in the old days when they lifted blades up they had to control them with tag lines, whereas this machine has a hydraulic unit in it and the crane lifts it up and it is stabilised and it can then manipulate the blade to counteract the force of the wind to put it on to the rotor.

417. MR BIRD: Then, if we go back in the Environmental Statement to page 5-48 and 5-49, there is an assessment of the wind and wave frequency distribution for both Dogger Bank and for Norfolk Bank.

418. MR GALBRAITH: Yes, there is.

419. MR BIRD: Which demonstrates that certainly at certain times of the year, even at those higher wind speeds that you identify, installation would not be possible, does it not?

420. MR GALBRAITH: It does. But Duggan which is going to be built next year is going to operate in some of these periods. In fact, the project is only going to start in the autumn and it will run right through the winter. That will be using a c installer, I think.

421. MR BIRD: That does not necessarily mean that it will be able to install each and every day, does it?

422. MR GALBRAITH: No.

423. MR BIRD: There will be downtime within that period.

424. MR GALBRAITH: But it does indicate that the weather constraints are less than they were probably when this was written.

425. MR BIRD: In terms of your tower installation rate over the quay, there will be an impact in terms of the weather, will there not, both on the landside and also the knock-on effect from delays at sea?

426. MR GALBRAITH: Yes, and that has been calculated into my figures already.

427. MR BIRD: You say "calculated", that is your 15%.

428. MR GALBRAITH: Yes.

429. MR BIRD: What is the effect of building in a higher percentage in terms of the downtime, if we can call it that, in terms of your figures?

430. MR GALBRAITH: What is the effect of?

431. MR BIRD: Yes, how sensitive are your calculations to the extent of downtime, so the inability to load and then the inability to install when at sea.

432. MR GALBRAITH: Well, it is 10% on the quay and 15% at sea. So we use 15% throughout.

433. MR BIRD: If we go back to your starting point, which is, effectively, the 104 towers capable of being put on a wind installation vessel a year, and reduce it by 10%, you get to 94 towers, don't you?

434. MR GALBRAITH: I did not say that you could only fit 104 towers on a vessel in a year.

435. MR BIRD: Well, how do you get more?

436. MR GALBRAITH: When you were referring to 104 towers, you were talking about the production rate of towers.

437. MR BIRD: Yes. How do you get more over the quay at your rate of construction/erection?

438. MR GALBRAITH: If you had to, you would bring in two vessels, if you needed to build them that quickly.

439. MR BIRD: That adds to the cost, does it not?

440. MR GALBRAITH: That would add to the cost, yes.

441. MR BIRD: Without adding to that cost, you are effectively restricting a 200-metre berth and 200-metre length of quay to about 104 wind turbines a year, aren't you?

442. MR GALBRAITH: Let me work something out for the moment, please.

443. MR BIRD: Well, just answer that question and then you can work out whatever you like. Without incurring the additional costs of additional wind installation vessels, you are limiting the capacity of a 200-metre length of quay to approximately 104 turbines per annum, aren't you?

444. MR GALBRAITH: 104 turbines in a year, you say is the maximum we can load?

445. MR BIRD: On one vessel.

446. MR GALBRAITH: On one vessel?

447. MR BIRD: Yes.

448. MR GALBRAITH: That is 25 calls in 27 weeks.

449. MR BIRD: Yes.

450. MR GALBRAITH: That is not 50 weeks. You are making it sound as though you can only load 104 towers in 50 weeks, in a year, that is not right. It is actually 25 - well, allow 27 weeks.

451. MR BIRD: How have you done that sum?

452. MR GALBRAITH: Because you are taking out four at a time.

453. MR BIRD: Yes.

454. MR GALBRAITH: On an eight-day cycle. Let's call it a week. If you multiply it by 25, that gives you 100 towers.

455. MR BIRD: And in terms of what is the erection rate on the quay to deliver that extent?

456. MR GALBRAITH: If you work on an eight-day cycle you can keep up with it.

457. MR BIRD: What is the extent of delivery on the quay?

458. MR GALBRAITH: What do you mean the delivery on the quay?

459. MR BIRD: What is the throughput on the quay to ensure that you can keep up with that rate, in terms of the erection of towers throughout the year?

460. MR GALBRAITH: You finish one tower every day.

Able L2 22/10/2014 14:29

Comment [14]: Siemens wanted ASP 220m exclusive & access to another 150

461. MR BIRD: You finish one tower every day, but it takes you three days to erect each tower, does it not?

462. MR GALBRAITH: Yes, it takes three days to erect one tower and, while that is being done, two days have been spent on the next tower and then one day on the third tower.

463. MR BIRD: Then you have a fourth tower.

464. MR GALBRAITH: The fourth tower has already been built and it just carries on. It is just a production line.

465. MR BIRD: And then you have to load, which restricts activity on the quay.

466. MR GALBRAITH: As I have explained before, the activity on the quay is not restricted for two days. The actual pre-assembly area does not need to measure any more than 80 metres by 80 metres.

467. MR BIRD: And throughout all of this period, Mr Galbraith, the quay is occupied by people erecting towers, is it not?

468. MR GALBRAITH: Occupied by?

469. MR BIRD: Occupied by gangs erecting towers.

470. MR GALBRAITH: Erecting towers, yes.

471. MR BIRD: Yes. If we go back to your ABP documents and ABP12, how do you arrive at a quay utilisation for a construction quay or for the construction quays of 45%?

472. MR GALBRAITH: How did I arrive at it?

473. MR BIRD: Yes, given that there will be at all times tower erection going on?

474. MR GALBRAITH: If I can refer to my notes for the moment ... To work out key utilisation, first of all, you have to have a demand plan and the demand plan is for 400 turbines per year. We already know what the loading time allowance is, which is 48 hours, and what is the installation time at sea, which is allowing 24 hours per turbine. I must point out that it can be done a lot quicker than that, but that is making allowances for sea state, wind, etc. Then you drop a shipping schedule over 360 days. That is allowing for five statutory holidays. Then you have to see how many days the quay is occupied and how many days the berth is occupied. You divide the number of days available in to the number of days that the quay is occupied and that would give you the percentage.

475. MR BIRD: In terms of your construction quays, how do you achieve a percentage of less than 100% given your installation rate over what I understand to be over two 200-metre quays?

476. MR GALBRAITH: Two 200-metre quays?

477. MR BIRD: Well, to do 400 wind turbines. You are not saying that you can do that with one 200-metre, quay, are you?

478. MR GALBRAITH: We are not trying to take 400 turbines over one quay.

479. MR BIRD: No. That is why I said to you two.

480. MR GALBRAITH: I would take them over four quays.

481. MR BIRD: How many quays are you taking them over?

482. MR GALBRAITH: Four.

483. MR BIRD: Four. So it does need four quays, does it, to do 400 wind turbines?

484. MR GALBRAITH: Yes. They do not have to be 200 metres.

485. MR BIRD: In terms of 200 metres, in terms of the wind installation vessels themselves, they need to be, do they not, on present evidence, 160 going up to 170 odd metres, plus manoeuvring space for the vessels?

486. MR GALBRAITH: Yes, they need manoeuvring space, but they do not need space to tie up because they stand on their jacks next to the key.

487. MR BIRD: Yes, but we are not concerned with just standing on jacks by the quay. They have to get in and out of the quay without damaging the quay, without damaging the estuarine habitat, have they not?

488. MR GALBRAITH: They do that all the time.

489. MR BIRD: Yes.

490. MR GALBRAITH: On a 175-metre quay.

491. MR BIRD: What did we say the MPI Endeavour was? 177 metres.

492. MR GALBRAITH: Yes, 177 metres.

493. MR BIRD: That is not going to be able to do it in the quay length that you have, is it?

494. MR GALBRAITH: I would not try to bring that in on a 175-metre quay, no.

495. MR BIRD: You would need 200 metres, would you not, at least 200 metres?

496. MR GALBRAITH: It would need 20 metres, but I don't know much about this vessel, the Endeavour. It is not on the database that I use, which is 4C. Is it being built or is it only a concept vessel?

497. MR BIRD: As I understand it, it is in construction or being constructed.

498. MR GALBRAITH: It is being constructed.

499. MR BIRD: Being. I don't think that it has been yet. It is being constructed.

500. MR GALBRAITH: Okay, I don't have it on my database.

501. MR BIRD: Therefore, four quays are agreed to be required for 400 wind turbines; 500 wind turbines, again, would affect, would they not, the number of quays required?

502. MR GALBRAITH: No, because if you are taking 100 off each quay, then you are only using up 27 weeks. Once those quays are empty, you could take the other 200 off the other quays.

503. MR BIRD: Yes, but that, of course, assumes no weather delays, no delays in delivery of components or raw materials or any other delays in terms of handling, does it not?

504. MR GALBRAITH: Well, I have made some allowances for that.

505. MR BIRD: Yes. In terms of the desire of the industry for exclusive quays, you must be aware of that.

506. MR GALBRAITH: For exclusive quays?

507. MR BIRD: Yes, exclusive use.

508. MR GALBRAITH: While the project is operating, yes, but you would not want to hire a quay for 12 months if you are only going to use it for 27 weeks.

509. MR BIRD: As far as, therefore, the installation is concerned, you accept that there is an advantage in the exclusive use of quays - yes?

510. MR GALBRAITH: I don't think there is.

511. MR BIRD: Forgive me; I thought that your answer a few moments ago was that you understood that that was sought by the industry whilst the installation was going on.

512. MR GALBRAITH: Whilst the installation is going on, yes, but you would not hire it for 12 months.

513. MR BIRD: I beg your pardon.

514. MR GALBRAITH: You would not hire or lease it for 12 months.

515. MR BIRD: It depends on the length of the project, does it not?

516. MR GALBRAITH: Yes. If it was 100 turbines, then it would be 27 weeks or 30 weeks.

517. MR BIRD: It is not just 100 turbines, we are talking, are we not, about large offshore wind projects here, even ...

518. MR GALBRAITH: For the length of the project.

519. MR BIRD: Yes, exactly. During the length of the project, you would expect to have, would you not, if you are going to drive costs down, exclusive use of the quay?

520. MR GALBRAITH: You would want exclusive use of the quay, yes.

521. MR BIRD: So we can agree, therefore, in terms of 400 wind turbines, on your evidence, it needs four quays, that is what you told me a few moments ago. Those keys need to be capable of accommodating the largest vessels likely to use them, which we are agreed now exceeds 170 metres, and we are agreed that they need to be available for exclusive use for the length of the project. That is all agreed, is it not?

522. MR GALBRAITH: I don't agree with you.

523. MR BIRD: Which of those do you not agree with?

524. MR GALBRAITH: I said four quays and mentioned 100 turbines off each quay and you said that that is not necessarily the case. If you are only taking 30 off one and 170 off another, if you follow me, depending on the size of the project - not all the projects are going to be 100, that is obvious - but without a demand plan of what the projects are, I have to just assume that you are going to take 400 off the construction quay and that you are going to use roughly four vessels to do it.

525. MR BIRD: Why would you make that assumption given the nature of the known proposals offshore in round three, which are different sizes, different lengths of projects and will have different requirements?

526. MR GALBRAITH: If one project was 200 turbines and you had exclusive use of that quay, of a quay, for that project, then that would consume about 50 weeks of the year.

527. MR BIRD: You have also got to address the issue ...

528. MR GALBRAITH: The other two ...

529. MR NEWCOMBE: Let him finish.

530. MR BIRD: I thought that he had. Carry on; I thought that you had finished.

531. MR GALBRAITH: If the other two projects, say, one is 70 and one is 130, then you are only going to use three quays, you are not going to use four quays.

532. MR BIRD: Subject to weather and other considerations. If you are seeking to de-risk the project, then there is an advantage, is there not, in having exclusive use of a quay over the entire period?

533. MR GALBRAITH: Only over the period of the project. But, if you are only going to install 20 turbines, you are not going to hire a quay for a year.

534. MR BIRD: Well, the period of the project will not always be known or fixed, will it?

535. MR GALBRAITH: Say that again, please.

536. MR BIRD: The period of the project will not always be known or fixed given the nature of the variables involved, for example, the weather and the sea conditions.

537. MR GALBRAITH: Yes, but you have to plan for that.

538. MR BIRD: Yes, and any scheme needs to accommodate that flexibility, does it not, in terms of, for example, a project such as AMEP?

539. MR GALBRAITH: It what, sorry?

540. MR BIRD: Any scheme such as AMEP has to be built to accommodate that flexibility, does it not?

541. MR GALBRAITH: Well, that is a commercial consideration for AMEP, yes.

542. MR BIRD: You would expect that ...

543. MR GALBRAITH: It is not what the development would require.

544. MR BIRD: You would expect that flexibility to be built in, would you not?

545. MR GALBRAITH: AMEP would probably want to build it in, but the developer would not because, if he could not use AMEP's port, he would go elsewhere.

546. MR BIRD: Subject to the issue of cost.

547. MR GALBRAITH: I don't know what the costs are for AMEP.

548. MR BIRD: Then back to ABP12, if we could, in terms of the AMEP scheme, which assumes a berth occupancy or your assessment of it is a berth occupancy of 20% on the construction and import berths. Do you see that?

549. MR GALBRAITH: Yes.

550. MR BIRD: So you have assumed across each of the construction and import berths simply 20%.

551. MR GALBRAITH: I looked at the overall picture, which was 20%, yes.

552. MR BIRD: So the overall picture. How have you derived your 20%? What is the split between construction and import in terms of your 20%?

553. MR GALBRAITH: The actual import vessels - this is taken from AMEP's operational phased movements assessment.

554. MR BIRD: Where are you looking? You have your table 12.

555. MR GALBRAITH: I was just going to explain how we arrived at those figures.

556. MR BIRD: What is the berth occupancy for the construction quays?

557. MR GALBRAITH: The installation vessels would be 100 calls, it is not 100 vessels, but 100 calls. One vessel coming back multiple times. And allowing 200 days for those vessels to load out.

558. MR BIRD: In terms of quay utilisation, we see that that is at 45%. That obviously has an impact on how the berth can be used, does it not?

559. MR GALBRAITH: How the berth can be used?

560. MR BIRD: Yes.

561. MR GALBRAITH: Yes, when the berth is free, it can be used for other purposes?

562. MR BIRD: Well, when the quay is not free, the berth may likewise be restricted in terms of how it may be used.

563. MR GALBRAITH: Do you mean when pre-assembly is ongoing?

564. MR BIRD: Yes.

565. MR GALBRAITH: Yes.

566. MR BIRD: Good.

567. MR GALBRAITH: There are very few restrictions because the type of equipment you would be using to bring in and over the quay is very small.

568. MR BIRD: In terms of the construction quays.

569. MR GALBRAITH: The entire construction quay is not used for pre-assembly.

570. MR BIRD: What area of the quay are you assuming is used?

571. MR GALBRAITH: One moment and I will tell you. Please give me a moment to look at my notes. I made a particular note of this. I am sorry, please excuse me I just have to look at this. You are using an area of 6,400 square metres.

572. MR BIRD: Based on what?

573. MR GALBRAITH: That your pre-assembly exclusion zone, which is 80 metre by 80 metres, where the towers are being assembled.

574. MR BIRD: Is that the sole pre-assembly that you have allowed for?

575. MR GALBRAITH: That is the only pre-assembly that is necessary.

576. MR BIRD: What other use of the quay might restrict quay utilisation and berth occupancy?

577. MR GALBRAITH: The area of the quay that is required on 175 metres is 8,750 square metres. Outside the exclusion zone is where you would move your blades down and move your nacelles down to load on to the vessel.

578. MR BIRD: We are here dealing with not just the 6 megawatt but also 8 megawatt turbines and 10 megawatt turbines in due course.

579. MR GALBRAITH: Yes.

580. MR BIRD: Good. And what allowance have you made over time for that area to increase, given the size of the ...

581. MR GALBRAITH: I have worked it on those figures.

582. MR BIRD: Which figures?

583. MR BIRD: 10 megawatt.

584. MR BIRD: 10 megawatt?

585. MR GALBRAITH: Yes.

586. MR BIRD: Therefore, that area is sensitive to what assumptions; so what inputs have led to that area being identified?

587. MR GALBRAITH: What is?

588. MR BIRD: How have you identified that area, having regard to the 10 megawatt turbine?

589. MR GALBRAITH: By the size of the eight packs and the area that the crane needs to move around them.

590. MR BIRD: What areas have you assumed for the crane?

591. MR GALBRAITH: On one track 20 metres wide.

592. MR BIRD: That is one track.

593. MR GALBRAITH: You would run a train down - it is difficult to explain, because you would run a train down one side and a crane running across between the four pack and the eight pack and the other crane runs up and down towards the vessel. Those cranes work in conjunction with each other. There might be a smaller tailing crane working at the back as well.

594. MR BIRD: In terms of the activity going on within that area, again, what assumptions have been used? How have you calculated that?

595. MR GALBRAITH: What have I calculated?

596. MR BIRD: How have you calculated it? What is the sum that you have performed in order to identify that area?

597. MR GALBRAITH: I don't follow your question. Please say that again.

598. MR BIRD: Yes. You have told us, in terms of the area that you have identified, the 8,750 square metres of quay required. How have you generated that requirement, having regard to the component of a 10 megawatt turbine which requires to be loaded.

599. MR GALBRAITH: I based that on my experience at Esbjerg, but I must point out that Esbjerg quay is only 50 metres deep inland and that applies to Siemens and to Vestas, whereas, if you look at the AMEP drawing, you will see that their quay space

available to them is well over 100 metres deep. In fact, it is difficult to scale up from here, but you would have available to you something like 150 metres by 175 metres, which gives you about 25/26,000 square metres, which is three times what is being used at the moment.

600. MR BIRD: And, in terms of the cost differential, you were not able to assist, were you, in terms of the cost differential between what is happening at the moment and what is anticipated to happen with the larger turbines?

601. MR GALBRAITH: No, I don't know the cost. Able have not produced any costs.

602. MR BIRD: In terms of foundations, has any allowance been made in that 8,750 square metre figure for the foundation business?

603. MR GALBRAITH: No, because that is a separate issue and it has been treated as a separate issue in this.

604. MR BIRD: What would be required in terms of foundations?

605. MR GALBRAITH: Can you, please, tell me what kind of foundations we are talking about? If it is monopiles, it is completely different from jacket foundations.

606. MR BIRD: It could be a variety, could it not? What allowances have you made and how would they differ?

607. MR GALBRAITH: The allowance I made was for a 2,300-metre quay frontage.

608. MR BIRD: For foundations?

609. MR GALBRAITH: For foundations, yes.

610. MR BIRD: What about the quayside itself, the use of the quay and the requirement there?

611. MR GALBRAITH: You would only be exporting, you would be taking them out.

612. MR BIRD: And how long does it take to load, for example, jacket foundations?

613. MR GALBRAITH: I would estimate 48 hours, but I have not done a lot of work with foundations.

614. MR BIRD: 48 hours for what?

615. MR GALBRAITH: To load it out and to sail away.

616. MR BIRD: How many?

617. MR GALBRAITH: It depends on the type of foundation.

618. MR BIRD: Yes, but, in terms of jacket foundations, for example?

619. MR GALBRAITH: I think two. I think that it is two or possibly four.

620. MR BIRD: So you don't know. If we could go back in the ABP documents, please, to document 10, this sets out, does it not ... Is this your table, did you produce this?

621. MR GALBRAITH: No.

622. MR BIRD: But we can see, can we not, in terms of as petitioned and as later proposed to Able the extent of the reductions proposed, can we not?

623. MR GALBRAITH: Yes.

624. MR BIRD: As far as the as petitioned, the reduction in the length of the quay is 515 metres and it is effectively reduced to 764.

625. MR GALBRAITH: Yes.

626. MR BIRD: That is a 40% reduction, is it not?

627. MR GALBRAITH: Yes.

628. MR BIRD: We see at the bottom of that column just before the IWDJ entries, reduction in cargo throughput potential, nil; reduction in employment potential, nil. If and in so far as the industry is seeking exclusive use of quays, the reduction to 764 metres will reduce the potential, will it not, to offer quays of 200 metres in length to the industry?

629. MR GALBRAITH: It will do, yes.

630. MR BIRD: Yes. That will have, will it not, an effect on the employment potential of the site?

631. MR GALBRAITH: No, it will not.

632. MR BIRD: Forgive me, if you cannot attract a potential occupier, that is going to affect the potential employment, is it not?

633. MR GALBRAITH: If you operate off 175-metre or 200-metre quays, you still need the same amount of men.

634. MR BIRD: Forgive me, you have got to attract the people to employ those men, have you not? If their requirement is for an exclusive use quay and you cannot operate that exclusive use quay, because you do not have enough of them, that is a loss of employment, is it not?

635. MR GALBRAITH: The crew working on your pre-assembly quay will be employed by the developer. Do you agree with me?

636. MR BIRD: You cannot ask me questions, I am afraid.

637. MR GALBRAITH: Then I am sorry you will have to rephrase the question for me to answer it.

638. MR GALBRAITH: In so far as the reduction in quay length to 764 metres reduces the number of 200-metre quays which can be delivered ----

639. MR GALBRAITH: Right, yes.

640. MR BIRD: -- if the market is seeking exclusive use of such quays, it reduces the attraction of the scheme to the market, does it not?

641. MR GALBRAITH: On this particular facility, yes.

642. MR BIRD: Yes. That will have an impact on employment potential on this particular facility, will it not?

643. MR GALBRAITH: Yes - for the stevedoring are you talking about?

644. MR BIRD: Across the board.

645. MR GALBRAITH: Well, it would not for the projects department, because, if they were operating from another facility, they would still employ the same amount of men.

646. MR BIRD: But in terms of this scheme in the UK here, the employment potential is reduced, is it not?

647. MR GALBRAITH: Very small, yes.

648. MR BIRD: Well, it will not necessarily be very small. It depends. In terms of the quay length reduction; you are going to lose, are you not, here, effectively over two 200-metre quays?

649. MR GALBRAITH: You are going to lose the two quays, that is true, but, if those quays are not fully occupied, anyway, any other projects coming in would ride on the back when the quay is empty, it would move on to something else.

650. MR BIRD: In terms of exclusive use, they will not, because that is the advantage of exclusive use, is it not, and that is why people want exclusive use, they know that they will be there and ready to be used as required?

651. MR GALBRAITH: But when they have finished using it at the end of their project, the quay is free for someone else to use.

652. MR BIRD: Well, here we are dealing with, are we not, a construction port?

653. MR GALBRAITH: Yes.

654. MR BIRD: There will be manufacturing and assembly facilities as part of the port, will there not?

655. MR GALBRAITH: Yes.

656. MR BIRD: In terms of designated quay use, in terms of manufacture and assembly to tenants on the site, they would be looking for a long-term commitment, will they not?

657. MR GALBRAITH: I cannot speak for developers, I am sorry. If I was a project manager, I would only hire the quay for as long as I needed it. I would not hire it for any time longer than that.

658. MR BIRD: But that is the difference, is it not, between you and AMEP, you are speaking, as it were, as an individual project manager of schemes which will not achieve Government objectives, whereas AMEP is seeking to deliver a long-term project for manufacturers and assemblers at a cost which achieves Government policy?

659. MR GALBRAITH: If they can attract those developers, yes.

660. MR BIRD: Good. I have a few more questions, which will not last for more for five or ten minutes, I am in your hands.

661. CHAIRMAN: I think that the possibility of going further than five or ten minutes is probably considerable, is it not, Mr Bird?

662. MR BIRD: I suspect that it is.

663. CHAIRMAN: I am not trying to put words into your mouth.

664. MR BIRD: No, it is perfectly fair.

665. CHAIRMAN: If we have arrived at a sort of natural break, then perhaps I should say to the Committee that it will adjourn until 2.30. Thank you very much.

Sitting suspended

On resuming—

666. CHAIRMAN: I call the Committee to order, and ask Mr Bird if he'd like to continue with his cross-examination of Mr Galbraith.

667. MR BIRD: Mr Galbraith, could we just quickly go back to ABP/12?

668. CHAIRMAN: I'm sorry to interrupt, but I just wanted to make certain that both parties are content with the fact that Mr Whittaker is going to leave the Committee at half past four. We will still be quorate. I think this has already been mentioned to you, but I just wanted to make certain that that was on the record.

669. MR BIRD: My Lord, yes, we're aware of that.

670. CHAIRMAN: I'm grateful. Sorry, Mr Bird.

671. MR BIRD: Not at all. I was going back to ABP/12 in the ABP Exhibits, which is

the berth occupancy and quay utilisation assessment undertaken by you, Mr Galbraith. As far as the 20% berth occupancy, as proposed with AMEP, that is the same as and consistent with, is it not, that proposed by Siemens at Green Port Hull, with which you have been indirectly concerned.

672. MR GALBRAITH: Are you asking me if it's the same berth occupancy?

673. MR BIRD: Yes. They have assumed in their environmental statement, as I understand it, that in fact they will have one turbine for two days, every 10 days they will be loading turbines, which is a 20% berth occupancy. Were you aware of that?

674. MR GALBRAITH: I haven't seen the environmental statement.

675. MR BIRD: I see. Are you actually aware, Mr Galbraith of any currently proposed offshore wind turbine quays which are being planned or developed with key utilisation and berth occupancy of the sorts of levels that you are proposing in terms of your assessment with AMEP reduced?

676. MR GALBRAITH: I didn't calculate any, no.

677. MR BIRD: Right.

678. MR GALBRAITH: I can do.

679. MR BIRD: In terms of those being proposed?

680. MR GALBRAITH: Mmm.

681. MR BIRD: Right.

682. MR GALBRAITH: If you want to name them, I'll work on them.

683. MR BIRD: Well no, I'm asking you, are you aware of any where it exceeds the 20% utilisation rate?

684. MR GALBRAITH: I can't answer in terms of the berth utilisation because I would have to look at each one and work them out.

685. MR BIRD: Right, so you haven't?

686. MR GALBRAITH: No.

687. MR BIRD: Good. It's also right to say, isn't it, that in terms of, for example, the Siemens Quay at Green Port Hull, with a berth occupancy of 20% it is by definition a low utilisation quay, that is the nature of the beast, isn't it, a construction quay?

688. MR GALBRAITH: I'm sorry, Mr Bird, you'll have to speak up a bit, please.

689. MR BIRD: Sorry. In terms of berth occupancy of construction quays, they are by their nature, if they are to deliver as it were just in time wind turbines at reduced cost, low utilisation quays, aren't they?

690. MR GALBRAITH: Low utilisation?

691. MR BIRD: Yes.

692. MR GALBRAITH: No, they're high utilisation, they're fully occupied.

693. MR BIRD: Well forgive me, in terms of Green Port Hull proposing 20% berth occupancy.

694. MR GALBRAITH: Well I don't know what that is because I haven't worked it out.

695. MR BIRD: But assume that is right, that it's a 20% berth occupancy, it is being planned to be low utilisation on that basis, isn't it?

696. MR GALBRAITH: That's berth occupancy is 20%. I don't know what the quay utilisation would be because I don't know how many turbines are going onto each project.

697. MR BIRD: Well at Green Port Hull we do know, don't we? If we go back in the ABP documents to 11, it's 300 out over the 600 metre quay, so two metres per turbine.

698. MR GALBRAITH: Right, yes.

699. MR BIRD: Yes. Whereas you're saying they could do it on far less, aren't you?

700. MR GALBRAITH: Yes, but Green Port Hull in Hereford is such a long quay, or it wasn't designed that way, I understand, by Siemens. They built over something that already existed.

701. MR BIRD: Yes, but you were explaining earlier today that in terms of those who are constructing wind farms, they won't take more than they need. You're not seriously suggesting, are you, that Siemens would be proposing a scheme at Green Port Hull that exceeded their operational requirements, because that would be to build in unnecessary cost, wouldn't it?

702. MR GALBRAITH: Well I wasn't privy to any of Siemen's commercial dealings at Green Port Hull.

703. MR BIRD: What do you say that they could achieve over their quays at Green Port Hull?

704. MR GALBRAITH: Over 600 metres.

705. MR BIRD: Yes.

706. MR GALBRAITH: 800 turbines.

707. MR BIRD: Yes. Whereas Mr Cooper's evidence to the Joint Committee is that they have capacity for up to 500.

708. MR GALBRAITH: Yes, that's capacity for assembly.

709. MR BIRD: Then if we could go back, please, to ABP/10, which is the reductions

in terms of length of quay as petitioned and as later proposed to Able. If we looked at the 'As petitioned', in terms of as proposed to Able, that would be a reduction of 284 metres, wouldn't it?

710. MR GALBRAITH: Yes.

711. MR BIRD: And that effectively allows for how many construction quays?

712. MR GALBRAITH: That would be four construction quays.

713. MR BIRD: Any import/export quay?

714. MR GALBRAITH: Not a dedicated one, no. I didn't draw this table up.

715. MR BIRD: No, well I'm asking you what the effects would be. So there would be no dedicated import/export quay.

716. MR GALBRAITH: No, because I don't believe one is necessary.

717. MR BIRD: And part of the reason you don't believe one is necessary is because you've got Immingham next door, which could be used.

718. MR GALBRAITH: And you've got Killingholme to the north, and you've got a massive supply chain for it, and a railway line running in as well.

719. MR BIRD: Now tell me this, Mr Galbraith, were I, for example, a nacelle manufacturer at the AMEP Scheme, how would it export those nacelles via Immingham or Killingholme or elsewhere?

720. MR GALBRAITH: How would they export them?

721. MR BIRD: Yes, via Immingham and Killingholme. How do they get them to the port to be exported?

722. MR GALBRAITH: Are we talking six and eight megawatt?

723. MR BIRD: Yes.

724. MR GALBRAITH: Right. Then I wouldn't take them to Killingholme. They could go to Immingham.

725. MR BIRD: How?

726. MR GALBRAITH: They could be transported there.

727. MR BIRD: How?

728. MR GALBRAITH: But I wouldn't take them there because there's bridges to be crossed, so I would take them off over one of the construction quays.

729. MR BIRD: Yes. So you effectively would have to export from AMEP, wouldn't you—

730. MR GALBRAITH: Yes.

731. MR BIRD: —in regard to the fact that they're not capable of being readily

transported by road.

732. MR GALBRAITH: Yes.

733. MR BIRD: Right. And there is therefore an advantage in having an import/export quay, which the reduction prevents, doesn't it?

734. MR GALBRAITH: Not if it's only going to be used for 20 to 40 days a year.

735. MR BIRD: Well that's just the nacelles, isn't it?

736. MR GALBRAITH: Yes.

737. MR BIRD: Yes. What other allowance for exports have you made?

738. MR GALBRAITH: None, because there were none in the environmental statement.

739. MR BIRD: So you have assumed no export of components, be they towers, blades?

740. MR GALBRAITH: I didn't put into my calculations, but even if there were, it would have very small impact on the figures that I've produced in ABP/12.

741. MR BIRD: Well that's because—how are you distributing the import/exports that you have assumed? In terms of your ABP/12, do you spread them across all of the quays?

742. MR GALBRAITH: Well I can only work to a demand plan, and if you pull figures out of the air I can't answer your question just like that. I'm sorry, I would have to go away and calculate that.

743. MR BIRD: Well I'm asking what assumptions you have used in terms of your ABP/12.

744. MR GALBRAITH: Only 200 nacelles.

745. MR BIRD: Right. No, but you've also assumed 100% imports.

746. MR GALBRAITH: Yes.

747. MR BIRD: Right. And so you'd assume that all of the imports are concerned with the wind turbines and the nacelles.

748. MR GALBRAITH: Those imports are 50 vessels, 50 days a year, 24 hours to discharge each vessel.

749. MR BIRD: And how have you distributed them across the quays in terms of your quay utilisation?

750. MR GALBRAITH: They don't affect quay utilisation because once the vessel is unloaded with components of, well I assume this size, they are loaded straight onto the transport frames and then they're taken immediately to the first place of rest, which is

the factory that they're destined for. They only cross the quay; they don't park on the quay at all. There's no storage or anything like that.

751. MR BIRD: They do, though, affect berth occupancy because there'll have to be a vessel to service that export and import.

752. MR GALBRAITH: Yes, and I calculated that at 50 days.

753. MR BIRD: And in terms of the foundations and a foundation quay, your reduction would not permit for that, would it, either?

754. MR GALBRAITH: My figure, sorry?

755. MR BIRD: Your reduction, if we go back to ABP/10.

756. MR GALBRAITH: Yes.

757. MR BIRD: In terms of the construction quays, you've not allowed, have you, for a dedicated foundation quay?

758. MR GALBRAITH: Until this week our calculations were based on 50 foundations going out, as per the specialist doc, because that's what's in the environmental statement. That's what seems to be implied in the environmental statement.

759. MR BIRD: It's one of the indicative scenarios in the environmental statement, but it may be different. Have you allowed for the foundation quay?

760. MR GALBRAITH: If it was monopiles, yes. If it's jacket foundations, then you could have a 200 metre quay instead of using an import/export quay.

761. MR BIRD: Well you haven't got either, so effectively you lose the import/export quay and you lose the foundation quay unless you are prepared to, as it were, surrender construction quays, don't you?

762. MR GALBRAITH: I would ideally reduce the construction quays to 175 metres in quay length. That is along the waterfront. How deep they are depends on how much land AMEP was going to allocate. You could have up to 150 metres deep, and then a 200 metre quay allocated to foundations.

763. MR BIRD: Yes, but then you are reducing the quay length for the construction quays beneath the size of the largest vessel, which is already known, aren't you?

764. MR GALBRAITH: I didn't know that at the time.

765. MR BIRD: Well now you do.

766. MR GALBRAITH: But now I do.

767. MR BIRD: Yes. And that would not, would it, be a sensible course in terms of building in resilience to a port project, would it?

768. MR GALBRAITH: No, but talking about 400 turbines...

769. MR BIRD: Sorry, did you answer the question?

770. MR GALBRAITH: Sorry?

771. MR BIRD: I didn't hear whether you answered that question. It would not, would it, be a sensible course to take in terms of building in resilience to a port project to construct quays which you know now are too small to accommodate the largest known vessel.

772. MR GALBRAITH: Well then if you had four 200 metre construction quays you could allocate three of them to taking out wind turbines and one of them to taking out foundations, because at 400 wind turbines, they're not going to be fully occupied anyway.

773. MR BIRD: Then you lose the import/export quay, don't you?

774. MR GALBRAITH: Yes, which I say you don't need.

775. MR BIRD: Then can I just turn to the specialist berth. I wasn't quite sure of the figures that you gave this morning just when you resumed your evidence-in-chief this morning. I think you told us that as far as the specialist berth is concerned, as shown in the AMEP Scheme, it's comprised of two berths, one 165 metres and one 155 metres, which is 280.

776. MR GALBRAITH: Yes.

777. MR BIRD: Yes? You then said that in terms of the 995 metre ABP proposal, that with a 280 metre specialist berth tacked onto that you would have 1,196 metres.

778. MR GALBRAITH: Of berth space?

779. MR BIRD: Yes. I just want to clarify the facts here; 995 plus 280 is not 1,196. I think it's 1,275. Is that right?

780. MR GALBRAITH: I'm afraid it is, yes.

781. MR BIRD: And if we go—

782. CHAIRMAN: Perhaps I could also ask; I think Mr Galbraith said on the original quay length, 1,279. I think he said that there was to be available 1,480 metres. And again, if you're working on the same calculations, I don't believe that adds up either.

783. MR BIRD: No.

784. CHAIRMAN: I thought there were some margin which was being deducted from both of those calculations, but maybe I got that wrong.

785. MR BIRD: Mr Newcombe says you have to knock off the 79, which may be the simple answer, is it, Mr Galbraith?

786. MR GALBRAITH: You have to knock off the 79?

787. MR BIRD: Yes. So there's 1,279 in the scheme as it is, 79 metres of which reflects the specialist berth.

788. MR GALBRAITH: That's the entrance to the dock.

789. MR BIRD: So that's the shade in your reasoning that you didn't set out, I think, Mr Galbraith. I'm not being critical, but that explains the difference between them. I just wanted to clarify what that was.

790. Then can we go to chapter 5 of the environmental statement, the AMEP Environmental Statement, which is document 12 in volume 3 of the core document volume. And go within that, please, to 5.10.13. 5-50 is the page number at the bottom. And 5.10.13 deals with the specialist berth, and refers to the Strabag vessel we see in the figure 5.18 on that page.

791. MR GALBRAITH: That's right.

792. MR BIRD: And we can see at the bottom of page 5-50, just the last few words: "The vessel is expected to install 80 complete turbines per year on the specialist berth."

793. MR GALBRAITH: Yes.

794. MR BIRD: If we look at ABP/12, you've got berth occupancy on 4% of the specialist berth. How do you get to 4% from the 80 complete turbines per year?

795. MR GALBRAITH: I didn't calculate these 80 turbines. I didn't take them off this berth at all, I only used that for foundations, because this is not a proven system and I don't think it's going to work actually.

796. MR BIRD: Well, as far as the environmental statement is concerned then, and with 80 complete turbines per year, the berth occupancy would be greater, wouldn't it?

797. MR GALBRAITH: Yes, it would be.

798. MR BIRD: Yes. I mean what would it be?

799. MR GALBRAITH: 80 turbines per year? One moment. Well it would require 80 vessel calls, and I don't have a calculator, but as I had worked on 50 for the other ones, it would probably put it up – perhaps it's 8 to 10%, but I can't calculate it immediately, I would have to go back to a table.

800. MR BIRD: Well on what figure do you put the 80 over in terms of calculating your berth occupancy?

801. MR GALBRAITH: I'm sorry, please speak up, Mr Bird.

802. MR BIRD: Sorry, I beg your pardon. What figure do you put the 80 over in terms of calculating your berth occupancy? Is it number of days per annum?

803. MR GALBRAITH: Well 360 days, yes.

804. MR BIRD: Right. So 80 divided by 360 would give us the berth occupancy.

805. MR GALBRAITH: Yes. I'm not quite sure what that is.

806. MR BIRD: 22%.

807. MR GALBRAITH: How much, sorry?

808. MR BIRD: 22%.

809. MR GALBRAITH: 22%, okay.

810. MR BIRD: Which is significantly higher than your 4, isn't it?

811. MR GALBRAITH: Yes, it is.

812. MR BIRD: And that assumes that that berth is, as it were, free of all import/export activity.

813. MR GALBRAITH: The only thing you could bring in there would be small coasters.

814. MR BIRD: Right. Well you've been a project manager on an installation of wind farms; there's a variety of vessel sizes used, aren't there?

815. MR GALBRAITH: There's a lot of smaller vessels.

816. MR BIRD: Yes.

817. MR GALBRAITH: But they don't affect the quay utilisation.

818. MR BIRD: And in terms of the specialist quay, it is not, is it, capable of accommodating wind installation vessels at the size required for 6, 8 or 10 megawatt installations?

819. MR GALBRAITH: No, it can't be used for that. It's not designed for that.

820. MR BIRD: And in terms of foundations, you referred to wind installation vessels being used for the installation of foundations. Again, it would not, would it, be suitable for vessels involved in the installation of foundations? Jacket foundations, for example.

821. MR GALBRAITH: Jacket foundations, no.

822. MR BIRD: No. Now, Mr Galbraith, it's fair to say then, isn't it, as far as a summary of ABP's position, that it's your case and ABP's case that in terms of their reduced quay length, it can deliver 400 wind turbines over 400 metres of quay per annum.

823. MR GALBRAITH: Yes.

824. MR BIRD: Based on that. It's also based, is it not, or assumes that wind installation vessels do not increase in size—

825. MR GALBRAITH: No, sorry, excuse me, not over 400 metres of quay.

826. MR BIRD: Right. What do you say is the quay length over which that could be delivered?

827. MR GALBRAITH: We're talking about the first line?

828. MR BIRD: No, I'm just asking you; 400 wind turbines. What your evidence is in terms of the number of quays of 200 metres required to deliver 400 wind turbines.

829. MR GALBRAITH: Well that would be 800 metres, four times 200.

830. MR BIRD: So it's four quays.

831. MR GALBRAITH: Yes. It could also be done on three quays.

832. MR BIRD: No, that's why I'm asking you what your evidence is. Is it your evidence to the Joint Committee that it is a reasonable requirement for a scheme wishing to deliver 400 turbines that it should have four quays of 200 metres?

833. MR GALBRAITH: Yes.

834. MR BIRD: Good. It would follow then a reasonable requirement for a scheme delivering 500 wind turbines would be five quays of 200 metres.

835. MR GALBRAITH: No.

836. MR BIRD: Well, why not?

837. MR GALBRAITH: Because 400 wind turbines going out is only occupying 50% most of the time. So you've got 50% of the year to carry on with the rest of the project.

838. MR BIRD: Well what's the percentage in terms of 400 wind turbines over 800 metres of quay?

839. MR GALBRAITH: The percentage?

840. MR BIRD: Yes.

841. MR GALBRAITH: It's here, 45% quay utilisation.

842. MR BIRD: Yes, and what is it with 500 over five quays?

843. MR GALBRAITH: I haven't worked that out. 500 has only just come up at this table.

844. MR BIRD: Pardon?

845. MR GALBRAITH: I said 500 wasn't even mentioned when—

846. MR BIRD: No, but I'm asking you now. What is the percentage, because we've reached the position where you accept it's a reasonable requirement for a scheme with it wishing to deliver 400 turbines a year that it has four quays of 200 metres, which gives you a quay utilisation rate of 45%, a berth occupancy of 20%.

847. MR GALBRAITH: Yes.

848. MR BIRD: So what would it be for 500 wind turbines?

849. MR GALBRAITH: You're going to have 20%.

850. MR BIRD: But you've got another quay.

851. MR GALBRAITH: You don't need another quay.

852. MR BIRD: No, that wasn't the point. If you need, and you've accepted it's a reasonable requirement to get 400 turbines over four quays, why is it not a reasonable requirement to get 500 over five quays? It's the same ratio of turbines to quay, isn't it?

853. MR GALBRAITH: Because if you have five quays it means instead of having four quays empty for half the year you'll have five quays empty for half the year. It doesn't make economic sense.

854. MR BIRD: Well in terms of four quays, why are they more empty than five quays given the same ratio? And why is one acceptable and not the other? Why is one a reasonable requirement and not the other?

855. MR GALBRAITH: I didn't say the first one was acceptable. I wouldn't accept it.

856. MR BIRD: No, you agreed with me that in terms of 400 wind turbines, it was a reasonable requirement to have four quays of 200 metres. What I'm putting to you; if the requirement goes up to 500 wind turbines, why is it unreasonable to have a requirement for effectively 200 metres for each and therefore 1,000 metres?

857. MR GALBRAITH: Because I don't think it's necessary, it would just be extra cost.

858. MR BIRD: But if it's necessary for 400, why is not necessary for 500? It's the same cost ratio.

859. MR GALBRAITH: It's not absolutely necessary for 400.

860. MR BIRD: Well, you said it was a reasonable requirement.

861. MR GALBRAITH: It would be reasonable, yes.

862. MR BIRD: Yes. It doesn't cease to be unreasonable as a ratio, does it, if you increase to 500 wind turbines?

863. MR GALBRAITH: It doesn't seem reasonable to me to build an extra quay for 100 turbines.

864. MR BIRD: Well you're building an extra quay to deliver the same benefit per quay of all the others. Why is that suddenly unreasonable other than the fact that it involves your client's land?

865. MR GALBRAITH: I can't answer it like that.

866. MR BIRD: No, so you don't have an answer.

867. MR GALBRAITH: I don't have an answer for that question.

868. MR BIRD: No, good. Thank you very much. Thank you, My Lord.

869. CHAIRMAN: Does the Committee have any questions for Mr Galbraith? Mr Whittaker.

870. MR WHITTAKER: Thank you, Mr Galbraith. We mentioned this morning about the German Port of Bremerhaven, which on doing a bit of research, it's a very similar type of port to what's being proposed, that is it's a manufacturing port. I will get to my question, but just to answer the question you couldn't answer this morning, they currently have 1,132 metres, and they're expanding it by an extra 500 metres, albeit an offshore port, which will give them a total of 1,632 metres with an extra three quays for the 500.

871. We saw yesterday a great deal of hype around the 200 nautical mile limit that we could service from Britain out into the fields, but interestingly enough, the Germans don't seem to see it like that. They talk on their website about the vast potential of offshore wind and markets in Britain, the Netherlands and Belgium, and how they need to ready to meet the demands of these new markets as well as future expansion processes for their port. What would your view be on the 200 mile limit, seeing that the Germans seem to disagree with the evidence we've had so far?

872. MR GALBRAITH: You're taking it from Bremerhaven's website?

873. MR WHITTAKER: Yes.

874. MR GALBRAITH: That would probably differ from what the developer wanted to do. But if they're going down the Dutch coast then they're sailing very close to the coast, so they might want to go into Dutch waters.

875. MR WHITTAKER: Okay, so my question to you would be that the Germans seem to be readily making themselves available to enter British waters so there's British wind farms, Dutch wind farms and Belgium wind farms. However, the evidence we have heard so far would only suggest that our Humber Port could only service British wind farms. Is that a fair comparison, do you think?

876. MR GALBRAITH: Can we just look at ABP/8 for a second? I just want to refer to something, make sure I've got clear what you're saying. Yes, certainly the Netherlands' ones are within range of Bremerhaven, and the British ones are just on the fringe of it, but it's not up to the port to decide who goes where; it's up to the developer to decide which port he wants to use to his economic and operational advantage.

877. MR WHITTAKER: I understand that point, but what was trying to be said to us as a Committee yesterday was that from a port point of view we would only be able to

service 200 nautical miles out from the Humber. My point to you is that the Germans are very clearly ignoring that 200 mile limit and saying that they are gearing their port up to servicing those new emerging British, Dutch and Belgium markets. Why would they take that attitude? Because we spoke also about competition and how they're going to be ready to compete in that market, and yet the consensus so far seems to be that we shouldn't be putting ourselves in that position to compete in the Dutch, German and Danish markets.

878. MR GALBRAITH: Yes. I can't speak for the developers, but I certainly don't see a major developer like DONG wanting to bring its vessel out to Bremerhaven to reach something that's within range of AMEP, because it would take longer to build the wind farm and cost more money.

879. MR WHITTAKER: So why would the Germans invest vast amounts, and we're not talking millions here, we're talking billions of pounds of investment in an infrastructure to service other markets apart from their own, and yet we don't seem to be putting ourselves in the position to do just that either?

880. MR GALBRAITH: Bremerhaven has 1,100 something metres of—

881. MR WHITTAKER: 1,132 metres already, and they're expanding—

882. MR GALBRAITH: Yes, and they're building 500, which I know about.

883. MR WHITTAKER: Yes, a further 500, which will give them a total of 1,632 metres.

884. MR GALBRAITH: Yes, but only the 500 metres that they're building is suitable for these modern vessels because Bremerhaven is up a river, just like the Humber is, and a lot of their stuff is behind locks. It's not accessible for this type of work. It might be accessible for monopolies, going up in smaller vessels, or taking out foundations on barges, but it is not the ideal port. It's certainly not ideal to sail right across the North Sea from there. And on their website it's advertising.

885. MR WHITTAKER: So your view would be very different then to the German Government's, and indeed the German Port of Bremerhaven?

886. MR GALBRAITH: The German State around Bremerhaven, I think they call it a state in Germany, is very heavily involved in promoting and subsidising the port. I met with people from Bremerhaven in June and discussed this with them, the new quay. That's how I knew about it.

887. MR WHITTAKER: Okay, thank you.

888. CHAIRMAN: I just think I ought to draw attention to the fact that the Committee

can only consider the evidence put forward in front of it, and I perhaps think that Mr Whittaker might have strayed a little bit by introducing material that couldn't be considered as evidence. I mean I think it's interesting what Mr Galbraith has to say, but perhaps from Mr Bird and Mr Newcombe's side, maybe we're straying from evidence put in front of the Committee by the process that we're undertaking.

889. MR NEWCOMBE: Speaking personally, My Lord, if it helps, and I'll confirm this on instructions, we don't have any difficulty with this if it assists the Committee. I entirely understand and support the basic points you make, but equally I understand—I even have an iPad now, then my wife tells me I can't use it—the sole aim of Mr Bird and me is to assist the Committee in their understanding, so it doesn't cause me a problem. But it's a matter for the Committee, not for me.

890. MR BIRD: Nor me, My Lord. We're quite content.

891. CHAIRMAN: It was just a steer that I had from my right. Any other questions for Mr Galbraith? Lord Plant.

892. LORD PLANT: Yes, I wonder if you could just sort of elaborate slightly on a comment you made about something in the environmental statement, and that was that there's a picture, figure 5.1.8, of a new offshore vessel. And I think you said that we could ignore that because it's not going to work, and this is the vessel that erects the whole of the turbine in one go. So I'd be interested to know why you don't think it will work, but also if it did work it would have quite drastic implications for the nature of the fabrication of the wind turbine onshore, wherever it was going to be, because you're making the whole thing and fitting it all together and then putting it on the vessel, presumably in its fully ready state. Is that right? And you don't think it can work?

893. MR GALBRAITH: I don't think the way it's portrayed here would work. I know that a lot of people are working. There's about nine companies working on this at the moment. And ideally, if you could take the whole thing out together and put it down in one, you've got a massive cost saving.

894. LORD PLANT: Yes, that's right.

895. MR GALBRAITH: That is true. But I don't think, and from what I do know from other experience and knowledge I have, that this system is going to work the way it's portrayed here.

896. LORD PLANT: Right, okay. This is a different point, isn't it, from the discussion we had at the same sort of time about this ship called *The Endeavour*, which is very much longer than the standard vessels. First of all, this is quite different. This

vessel I'm talking about is quite different from *The Endeavour*, only with *The Endeavour* is that it's very long, isn't it? This one is about the feasibility of erecting the whole pilot, as it were. There's no reason why *The Endeavour* ship couldn't work, is there? I mean it's just a lot longer.

897. MR GALBRAITH: I don't know anything about *The Endeavour*.

898. LORD PLANT: I just wanted to clear up whether I was conflating two things or not.

899. MR GALBRAITH: From what Mr Bird has told me, it sounds like she is a very large installation vessel, and she might be in the same class as one of the others that's particularly designed for foundation work.

900. LORD PLANT: Right, okay. Thank you very much.

901. CHAIRMAN: There are no more questions from the Committee. Mr Newcombe, to return to Mr Galbraith.

902. MR NEWCOMBE: My Lord, I'm grateful. Mr Galbraith, if you need a slug of water, now's the time to take it. All right, let's take this in stages. I'm going to go roughly backwards through it because I'm a perverse sort of chap. Numbers; I want you to identify some basic building bricks. In-chief, I asked you what was the quay meterage that you considered necessary to build out 500 wind turbines per year. Do you recall that?

903. MR GALBRAITH: Yes.

904. MR NEWCOMBE: Remind us what the figure was that you gave.

905. MR GALBRAITH: I gave you a figure that to build out 500 wind turbines, the minimum you would need would be a 600 metre quay.

906. MR NEWCOMBE: Thank you. Right, now consider a 200 metre berth, and I don't mind where in the world it is, and we want to offload 100 turbines. By offload, I mean assemble, get them on the vessel and away, all right?

907. MR GALBRAITH: To be installed at sea?

908. MR NEWCOMBE: Well, inevitably to be installed at sea, but I just want to know how long the whole process takes. 100 turbines if you've got 200 metres of quay, how long in weeks/months/years or whatever it is, is that going to take? If that's all you've got to do you've just got to offload 100 wind turbines.

909. MR GALBRAITH: Are we talking about just the nacelles or the entire turbine?

910. MR NEWCOMBE: No, the wind turbines for installation.

911. MR GALBRAITH: Right, I would estimate it at 27 weeks.

912. MR NEWCOMBE: 27 weeks. Well that's the figure you gave earlier, all right. Now coming on from there, would you take the core document 12. Forgive me, when I say core document 12, I mean the common reference, which we find in volume 3 of what I inelegantly but accurately refer to as the fat bundles.

913. MR GALBRAITH: 12, yes, I have that.

914. MR NEWCOMBE: Go in that to section 4, page 4-23.

915. MR GALBRAITH: Yes.

916. MR NEWCOMBE: Look at paragraph 4.8.4, and before you read it I want to direct your attention. You were asked a number of questions, which I noted down as dual use of berths, that is bringing import vessels on at the time when they're not being used for installation vessels.

917. MR GALBRAITH: Mmm-hmm.

918. MR NEWCOMBE: All right. Now I want you to look, please, in the light of the way Mr Bird put it to you, look at what the AMEP ES actually said. I'm going to read it out, and you follow my words as I do so: "A number of berths will be designated along the quay and allocated for use by different tenants. Each berth will be around 200 metres." I'm not fussed at the moment, but 279, 290, 3,557, whatever is Able's figure of the day, put that on one side at the moment. "Whilst the berths will be primarily," my deliberate emphasis, "designated for installation craft, this does not exclude their use by other vessels delivering raw materials and other products either related to Marine Energy or otherwise." Do you see that?

919. MR GALBRAITH: I see that.

920. MR NEWCOMBE: All right. Now, does that accord or conflict with your view?

921. MR GALBRAITH: It's in accordance with my view, yes. I agree with it.

922. MR NEWCOMBE: Thank you very much. Bear with me as I cross off the points as I go. Some considerable mention has been made of foundations. I just want to identify what it is. Would you stay with core document 12, and go in that, please, to section 4. Within section 4, go to page 4-7. Do you see the title at the bottom: "Heavy component manufacturing site"?

923. MR GALBRAITH: Yes.

924. MR NEWCOMBE: 4.4.24: "The principle components are nacelles, routers, tyres, blades, steel foundations." What is a steel foundation?

925. MR GALBRAITH: A steel foundation could be either a monopile, which is like a large tube that is driven in with a piling hammer. Or a steel foundation could also refer

to a tripod configuration, which is three legs, and that sits on piles that have already been driven into the seabed. Or it could be what's called a jacket foundation, which is virtually four legs with a latticework holding the four legs together, and that's placed on the seabed. Those are steel foundations.

926. MR NEWCOMBE: Thank you very much indeed. Go over the page, 4.4.26, we see the only list in section 4, and I say again, the only list in section 4, the project description of the project mix to be assessed. I don't need to read it out because I went through it yesterday. Do you have that?

927. MR GALBRAITH: Yes.

928. MR NEWCOMBE: And we see 50 units per year, last line, one foundation factory.

929. MR GALBRAITH: Yes.

930. MR NEWCOMBE: Now, as a matter of fact, the exercise has been carried out. We're not going to do it now, but the exercise has been carried out that the 600 units of nacelles have been multiplied by the weight we get from the previous page, and so on. And that's all been sound, and we see the result of that in 4.4.27. Do you have that?

931. MR GALBRAITH: Yes.

932. MR NEWCOMBE: All right. So that's what the project description tells us. I now want to go on to section 5, which is the part of the ES to which Able have been making considerable reference, which is dealing not with project description, but if we go to 5-1 in passing, do you have that?

933. MR GALBRAITH: 5-1?

934. MR NEWCOMBE: Yes.

935. MR GALBRAITH: One moment, please. Yes, I have that.

936. MR NEWCOMBE: We see it's the need for the development. Go on in that document, please, and I've just written down the paragraph number so just let me go ahead of you so I can get the page number as well. Yes, go to page 5-42, pagination bottom centre.

937. MR GALBRAITH: Yes.

938. MR NEWCOMBE: Paragraph 5.9.11 tells us the description of some indicative scenarios for the purposes of examining need. Do you see those, and there IS Alpha and IS Bravo.

939. MR GALBRAITH: Yes.

940. MR NEWCOMBE: Let's look at IS Alpha. We can see various matters listed by

bullet point at the top of page 5.43. We note those, but I don't need to go through them. And then 5.9.14: "Companies supplying all the quay components, and components are represented on the site, but it is assumed that every supply company exports a share in its capacity to customers elsewhere. A turbine manufacturer dual sources all components using imported units to supplement onsite production. Insofar as foundations are concerned, monopile production takes place at a combined tower foundation facility, but no next generation foundation production has been included, and it is assumed that if required they're manufactured elsewhere and delivered directly to the wind farm sites." Do you see that?

941. MR GALBRAITH: Yes.

942. MR NEWCOMBE: All right. What do you understand to be intended by the reference "next generation foundation production"? Insofar as you can judge, what is it that the author of this is referring to?

943. MR GALBRAITH: I would say that they're referring to either tripod or jacket foundations.

944. MR NEWCOMBE: All right. So far as jacket foundations are concerned—and if you don't know, please say—give us a feel for the sort of weight we're looking at there.

945. MR GALBRAITH: Yes, as they said earlier on in their document, anything up to 600 tonnes.

946. MR NEWCOMBE: Okay.

947. MR GALBRAITH: It depends on the depth of the water, of course.

948. MR NEWCOMBE: Stay with page 5-43, the only other scenario here, and this is 700 nacelles, the scenario that at the moment Able does not apparently propose. Look at paragraph 5.9.18, and go down that, please. Do we find any reference there to foundations in the various bullet points of 5.9.18? Just check it over to yourself.

949. MR GALBRAITH: No.

MR NEWCOMBE: Thank you. Now if we look at, please, ABP. Just keep that core document beside you. Put it to one side and take the thin volume of ABP Exhibits, and go to ABP/5, which we've already looked at more than once. Now ignore the fact that it's annotated with the deletions proposed for the ABP compromise, apart from that as the base plan which is referred to in the relevant requirement of the DCO, would you look please at the front part, i.e. the part closest to the water of the Able grey area and go to the southeast where we see a section divided off with a yellow factory building or external storage and on the yellow building is written 'foundations'.

288. MR GALBRAITH: Yes, I see that.

289. MR NEWCOMBE: Alright, we see if we go up from there, it says 'plot F1', presuming the foundation one, do you see that?

290. MR GALBRAITH: Yes.

291. MR NEWCOMBE: And I'm going to show off because I can read these, it's 17.4 hectares.

292. MR GALBRAITH: Yes.

293. MR NEWCOMBE: Now, the Panel was subsequently told – we looked at this yesterday, I'm not going to go to it – but actually that 17.4 hectares had risen to 20 hectares and then Mr Bird told Mr Cooper last week that that had actually risen to 30 hectares. Help me with this please. Did Mr. Bird at any stage explain how this plan is going to be reconfigured to accommodate the additional area which they now say they need for foundations?

294. MR GALBRAITH: Did he explain it?

295. MR NEWCOMBE: Yes, did he explain it to you?

296. MR GALBRAITH: No.

297. MR NEWCOMBE: Have you seen a plan which shows how it's to be done?

298. MR GALBRAITH: No.

299. MR NEWCOMBE: Thank you. Let's pause there please. My Lord, forgive me, I'm going to very rudely turn my back on the committee for 30 seconds because those behind me will then hit me and tell me what I've forgotten. I'm told that for once I haven't forgotten, my Lord. Mr Galbraith, just stay there though, there may be further committee questions.

300. THE CHAIRMAN: Are there any further questions the committee would like to put to Mr Galbraith? In which case Mr Galbraith may I thank you very much indeed for the evidence that you've put before the committee and you may stand down.

301. MR GALBRAITH: Thank you my Lord.

302. MR NEWCOMBE: This is Mr Peter Whitehead. If you'll forgive me, I'm just deliberating pausing for a moment to allow the witness to get organised. Just get settled Mr Whitehead, within reason get settled and tell me when you're ready.

303. MR WHITEHEAD: Peter Whitehead.

304. MR NEWCOMBE: Alright, I'm going to take you to your qualifications to a little more detail in a moment but just explain to the committee in simple but hopefully not simplistic terms, what is it you do and what is your area of expertise?

305. MR WHITEHEAD: I'm employed for 35 years with ABPmer as an applied marine environmental scientist. My main work area is understanding coastal processes, which is the interaction of tides, winds and waves and how they course change in terms of erosion and accretion of the sea bed and estuary and the way that changes in the area over time. It also includes how sediments move within the estuaries and then how that leads to, for instance, accretion in berths, erosion of mudflats and also how, when for instance a development is put into an estuary or dredging occurs, what the impact that is likely to have on that particular estuary in terms of its environmental impact and that leads into environmental impact assessment for a particular development and in terms of ports it works in terms of calculating maintenance dredge figures and management of dredge channels.

306. MR NEWCOMBE: Thank you. Let's deal with your qualifications. You tell us you have a BS in Geography and you're a chartered geographer and a chartered member of the Institute of Water and Environmental Management. You're already referred to the firm in which you work, ABPmer, and as I understand it you have 34 years of experience as an applied marine and environmental scientist.

307. MR WHITEHEAD: It's now 35 but that's correct.

308. MR NEWCOMBE: And you tell us that you've worked on most marine development assessments on the Humber Estuary since 1979. Just give us an example of some of those.

309. MR WHITEHEAD: Yes, I was involved in the physical modelling of the original gas jetty that we've been talking about. I'm involved in the environmental impact assessment modelling, both numerical and physical, for the Humber National Terminal, both 1 and 2, the dredging of the Immingham Outer Harbour back in 2000. I've also worked on the environment impact assessment processes for the CRO jetty, which is not ABP, and also the marine side for Green Port Hull and HRBT.

310. MR NEWCOMBE: At the risk of asking you an invidious question, are you aware of anybody within your area of expertise who's got a similar level of knowledge of the Humber?

311. MR WHITEHEAD: I would say not of the Humber.

312. MR NEWCOMBE: My Lord, just breaking aside for a moment, as I indicated in opening and I make clear again now, this witness and the next one which I call on for ecological matters, neither of these goes to the primary questions which we've submitted for the committee to deal with. They go to the downstream consideration if

an amendment is to be proposed of whether or not further environmental information might be required and if so, how that should be approached. I'll get Mr Whitehead to explain his conclusion in a moment. We've heard if the full Abel scheme – or let's concentrate on the compromise concerned – if the Abel compromise is built, it will involve a measure of what you people call land reclamation of the pouring of concrete and other intrusion, both into the intertidal and the sub tidal – have I understood that correctly?

313. MR WHITEHEAD: That's correct.

314. MR NEWCOMBE: Now, we also know and we don't need to go through the detail of it that these matters are doubly important or triply important here, whatever the relevant multiplier is because there are relevant impacts on what are called European sites. Again, have I understood that correctly?

315. MR WHITEHEAD: That is correct. The estuary is designated as both a SAC and a SPA – Special Protection Area and a Special Area of Conservation. With the SPA, effectively the intertidal and the SAC the sub tidal, although there is some overlap.

316. MR NEWCOMBE: Alright, now you've already identified that your work looks as such intrusions and models, I assume by computer, the sort of process changes in terms of flows, erosion, deposition, sediment transport and the like and sediment suspension in the water column. Again, have I understood that correctly?

317. MR WHITEHEAD: That is correct but we also use the technique of expert opinion using field data and literature reviews from previous work – directly measured field data in the area as well as the modelling. Modelling is only a tool.

318. MR NEWCOMBE: Alright, and the modelling starts, I assume, with a number of assumptions and inputs which you or whoever is doing it decides upon. Correct?

319. MR WHITEHEAD: Yes. The modelling would be set up with the assumptions for instance with the symmetry of the time, the date of that and it would then have the flow measurements which would be taken at that time so we see that snapshot in time and the model would be calibrated to that information, ie. the tides, waves, flows and sediments as best as possible.

320. MR NEWCOMBE: Alright, and the model tells you at the end of its machinations that the answer is 42 or whatever the answer is. Again, as I understand it, your expertise comes in to interpret and apply and putting context; is that correct?

321. MR WHITEHEAD: That is correct. The answer that comes from the model as I said is a tool and it's a piece of the jigsaw in effect and because of the assumptions and

the modelling algorithms that have to be put in place then that information has to be interpreted using the understanding of the estuary and naturally what is going on there from the field measurements. So, it's not just a model as such.

322. MR NEWCOMBE: Forgive me, two other matters. Are you able to assist the committee insofar as waterborne noise where one is piling in the marine environment?

323. MR WHITEHEAD: Only on a very basic level in terms of being able to say whether a noise is going to be less for say a smaller development or a bigger development, not in the fine detail of the actual acoustics.

324. MR NEWCOMBE: Understood. Secondly, as I understand it, one of the conclusions you reach is for instance to the effect of intertidals. We'll hear from Mr Baker in due course about everything macrophytes and other wonderful creatures and I understand it then, Mr Baker or the relevant expert takes it from you insofar as that's a food resource for say, birds.

325. MR WHITEHEAD: That is correct. I personally don't deal with the actual animals that live in the mud but obviously when a development or something occurs which changes the sedimentation rates or the erosion in that particular area then obviously that affects the animals that live in the mud. So obviously if they're eroded they get eroded away and therefore they're potentially not available for say, birds further up the chain. Likewise, sediments could accrete in the area and smother those – in other words, it gets deeper in there and then they also become inaccessible for birds, etc, to feed on, so it's important to understand the movement of the sediments and the way that they change because that effectively changes how the benthos grow and feed within the mudflats, and from that point of view it is based on the supply of food for example, birds up the chain.

326. MR NEWCOMBE: Alright, the question you've been called to deal with, I just want you to explain it in overview terms. My Lord, for my purposes I don't need to take this witness to the detail of it. Comparing the full ANET proposal with the reduction or the reduced ANET proposal which is inherent in the compromise, what conclusions do you reach as to the material errors of change if any and second, as to whether or not in your opinion in your area of expertise, further environmental information is required?

327. MR WHITEHEAD: In terms of the compromise, the compromise solution effectively has approximately a 20% reduction – it's 22 actually – and has 7.3 hectares less reclamation, and that's predominantly over the tidal area, which means that

7.3 hectares of the SAC-mud that we were talking about earlier would remain in the estuary as opposed to being fully reclaimed in Mr Newcombe's terms in concrete from that respect. So, there is a change with that area. That area that is no longer going to be covered by the full reclamation will be affected by that scheme because the pattern will change the flow patterns within that particular area and sedimentation is likely to occur and as I've just said, that affects the benthos and the changes so that mudflat will still be there but it will be modified relative to the full AMEC scheme. In terms of the overall assessment, I think maybe if we could look at perhaps ABP5, I think that's the one we've been looking at.

328. MR NEWCOMBE: Which one is this – ABP5, slim white bundle?

329. MR WHITEHEAD: Yes, I think just to try and explain. Yes, I think on that one we can see that the red stippled area is the area that will no longer be reclaimed in there but what we can see relative to that – the quay line and dredge berth, that's the grey area that comes right out to the waterfront with the hatched berth at the upstream end are not affected in terms of their extent and as Mr Newcombe has talked about before, the flows going up the estuary effectively running parallel to the shoreline – they don't exactly but near enough – means there'll be the same amount of overall blockage to flow in the estuary cross-section which goes fully across the section, therefore up estuary of the scheme, the effects will be almost exactly the same with the compromised scheme as to the full scheme within that area. The flows will be changed as I said over that stippled area. With the original AMEC there is older modelling that indicates there is accretion in the intertidal mudflat area which would be downstream of that stippled area within. But if we now imagine that we don't reclaim that, what effectively we have is that accretion area moving if you like upriver to join the new end of the reclamation within that area. So, there will be a change from the new AMEC scheme but it will all be moved up estuary slightly within there but the overall magnitudes of change in that area will not be different, it will just be redistributed to a slightly different area within that and there will be some subtle changes but those will be very small. The overall impact as I said up estuary is so negligible that no model would be able to show it – the difference and down estuary there is no impacts or likely to be beyond the HIT terminal, which means that in terms of existing facilities, like for instance, the CRO jetty to the north, the impacts around the intakes and outfalls for Centrica and E.ON, which are to the north, and I think for those it is the first time they've been mentioned.

330. MR NEWCOMBE: You mentioned the CRO jetty, by all means keep a finger in

ABP5 but just flip back to ABP2 and orientate us as to what you're talking about with CRO.

331. MR WHITEHEAD: I think it's 203, I think it's probably better or clearer to look at ABP3. If we see on the top left under the word, 'ports', there is a complicated structure, should we say, in there in black. It's labelled "Killingholme ports, CRO ports" – that is the CRO jetty. I mentioned the Centrica and E.ON intakes and outfalls and those are marked with the blue cross and the yellow cross just below that in that particular area. So, in those particular areas and indeed the rest of the estuary, there would be no material difference in the marine processes that would occur in the estuary and therefore there will be no effects or no difference in effects should we say, between the full AMEC and the compromised AMEC with that structure. The only real changes will occur as I said within that stippled area that you see on ABP5. Down estuary, in terms of the Immingham port facilities and the HIT facilities, there will be no changes of any significance from that AMEC assessment. So, in effect the compromise scheme will be within the assessment's aim for the full AMEC scheme. In other words, there will be no worse or no new environmental impacts due to the reduction in the jetty itself. That is talking about the difference for what I call the compromised AMEC. At the moment I'm not talking about the other component, which is IWDJ jetty.

332. MR NEWCOMBE: Hold that thought, trust me, we are coming to that. But just before we leave AMEC though, as far as dredging and disposal is concerned, people in your area of expertise and master mariners use the terms 'capital and maintenance of dredging'. Now, I suspect several members of the committee will know what that means but just on the off chance that there are, either in the committee or elsewhere in the room, those who don't, explain to us please the difference between capital dredging and maintenance dredging.

333. MR WHITEHEAD: Okay, in simplistic terms, capital dredging is dredging into an area which has not been dredged before. In other words, it's a natural area which is being deepened from say, the natural bed of the estuary, which is the case for the AMEC dredge berths in that particular area.

334. MR NEWCOMBE: Just pause there, if you've already got a dredge channel to a depth of, say -11 metres below, and you then want to ensure that it will increase the clearance and take it down to say, 15 metres to allow for what I used to call, Post-Panamax vessels, and then maintain it to that level, is that still capital dredging or is that something different?

335. MR WHITEHEAD: That would be capital dredging, so you're deepening from a recognised level as well. The maintenance dredging part is to, for instance, if we've capital dredged to down, say 15 metres as Mr Newcombe has indicated, obviously the channel then has the chance to silt up with sedimentation and obviously it's been dredged to 15 to allow clearance to get the vessels in, so it needs to be maintained at 15 from the siltation, so then you'd send in the dredger to take out that material above the level of 15 for instance. But if for some reason you go below, ships got bigger and you needed to go deeper, from 15 down to 16 or wherever then that would be a capital dredging.

336. MR NEWCOMBE: Harbour or port authorities tend to talk about campaigns of maintenance dredging and look at the frequency at which it needs to be done. On the Humber, given its characteristics, is that an area which needs a lot of or not very much maintenance dredging?

337. MR WHITEHEAD: The Humber is a highly sediment-rich estuary and most terminals need a considerable amount of dredging, which for the port facilities, giving it at least monthly, sometimes fortnightly. The main channel which the big vessels will use to get to the terminal within there – has been dredged in the past, weekly but it is highly variable within the estuary within different areas. I say it's been dredged weekly and that was back in 96, and they never managed to maintain it with their dredges and it built up at that time. To show their variability, back for the last five years except for the last year, no material needed to be dredged at all for nearly five years. It's now silted up again, it's starting to silt, and dredging is required – that shows the variability that can occur within the estuary.

338. MR NEWCOMBE: Take the full AMEC proposal as your starting point, if instead of implementing and constructing that, one constructed the lesser pouring or concrete, in my terms, involved in the compromise – would that increase, reduce or leave unaltered the quantum of capital dredging and maintenance dredging required?

339. MR WHITEHEAD: It would reduce the amount of capital dredging and so almost but not quite pro-rata with the length of the reduction in the berths and I think the calculation for that reduction would be 20% less capital dredging for the quay. It's not exactly pro-rata because the depths are different along the quay length; it's a thicker amount to take out towards the north as it is to the south.

340. MR NEWCOMBE: Pulling the strands together, does that lead you to conclude that there is or is not a requirement for additional or further or supplementary

environmental information here to remedy any lacuna in the original environment statement if one were to go with the compromise?

341. MR WHITEHEAD: If we go with compromise, the amount of dredging that was assessed in the original AMECES would cover that required for the compromise. In other words, the AMECES would in respect to the dredging and the effects of the dredging would in effect be a worst case scenario.

342. MR NEWCOMBE: Now, assume against yourself please, that you're wrong or that somebody else takes a different view, i.e. that some further environmental information is required or is sought in any event, just assume that, would there be a requirement to pause and acquire further data by surveys or by sampling or whatever it be or would it be a case of taking the data which are already available and carrying out a desk exercise to review on the basis of that data, the change in the scheme?

343. MR WHITEHEAD: In my opinion, given the modelling that's already been done for this scheme and the IWDJ scheme, which is important because the work has been done on that, and the information that's been provided, I would say that a desk exercise probably is necessary. In other words, I don't believe any new environmental information is needed in order to make that assessment.

344. MR NEWCOMBE: Alright, final question please. You are anxious to go to IWDJ, do that now please. The IWDJ, which I want you to look please, is not the full IWDJ which we know is inconsistent for reasons we've already identified and you needn't trouble us with the full AMEC scheme. Tell us what we need to know in your area of expertise about the cumulative effects and the compromised IWDJ reduced version and the compromised AMEC scheme. What does this committee need to know about that?

345. MR WHITEHEAD: I think the first thing compared with the full IWDJ, I think we've already talked about, there will be no coastal berth; it will just be one single Panamax berth compared with the original. The fact that there is no coastal berth means that the approach dredging and turning area is considerably reduced because the vessels don't have to go upstream and then turn downstream to access the vessel or to access the coastal berth with that area. Therefore, the amount of capital dredging and the area to maintain for the compromised IWDJ is considerably less than the full assessment. If we were to look at the modelling and the assessments for the full AMEC and the full IWDJ, you will see that the extent of effects from the two schemes are essentially the same, they are different but they cover the same particular area within. So, combining the two

at a smaller scale from those, I don't see any reason why the changes would not be within the footprint from the full AMEC development or within there because the IWDJ effects were generally within those from the full AMEC scheme. The main impacts, I think as I said earlier, would be in AP5 – that stippled area, but if you look on that drawing where the IWDJ jetty is, that cuts through that particular area and therefore the effects of the jetty are in exactly the same area as being, shall we say, less impacted by the reduced AMEC scheme. So, in that respect the full AMEC EIA, again is at worst, the worst case scenario for the combined compromise scheme within there. There will be changes which are of equal magnitude but no worse than what was assessed for the full AMEC and one of the reasons for that is the fact that the AMEC covers a considerably large area – the reclamation for instance, creates a far greater blockage than the open-piled jetty structure for those and the fact that the dredging for the Immingham deepwater jetty does not extend hugely in front of the berthing line for the AMEC scheme.

346. MR NEWCOMBE: Thank you Mr Whitehead. That concludes examination-in-chief.

347. THE CHAIRMAN: Okay, it may be convenient for the committee if we just had a short break at this point. I note that it's 3.55, if we should have a break for perhaps ten minutes, it may be convenient for the committee and everyone else.

Sitting suspended

On resuming—

348. MR BIRD: Mr Whitehead, you didn't in your evidence-in-chief use the words, 'appropriate assessment', did you?

349. MR WHITEHEAD: No.

350. MR BIRD: Can we just for the committee's benefit just explore what the implications of the IWDJ site being within a European site are in terms of the approach required? We can agree, can't we, and I'm sure you'll agree from your experience in terms of dealing with proposals in the Humber that if a project is likely to have significant effects on a European site, the competent authority must carry out an appropriate assessment of the implications of the proposal on that for that site.

351. MR WHITEHEAD: That is correct.

[Division bell rings]

Sitting suspended

On resuming—

352. MR BIRD: Yes. So, Mr Whitehead, we just agreed that if a project is likely to have significant effects on a European site then the competent authority must carry out an appropriate assessment of the implications of the proposal on that site and that's broken down into stages, isn't it, the first stage is effectively a screening assessment to determine whether or not a proposal is likely to have significant effects.

950. MR WHITEHEAD: That is correct.

951. MR BIRD: And at that stage, the threshold is a very low one isn't it?

952. MR WHITEHEAD: It is.

953. MR BIRD: And the test is that if the possibility of a project undermining the conservation objectives of a European site, cannot be ruled out, on the basis of objective information, then an assessment is required, isn't it?

954. MR WHITEHEAD: And it's required, yes.

955. MR BIRD: I think you'll probably need to speak up so the Committee can hear you. Given an appropriate assessment is required, then in carrying out that assessment, the question then, for the competent authority, and it would be the Secretary of State, wouldn't it?

956. MR WHITEHEAD: Not necessarily, it could be the MMO.

957. MR BIRD: Well, here, it would be the Secretary of State.

958. MR WHITEHEAD: Oh here, for this project, it could be, but not in all projects.

959. MR BIRD: And the question at that stage is whether the project has an adverse effect on the integrity of the European site.

960. MR WHITEHEAD: That's correct.

961. MR BIRD: Good. And the competent authority, in this case the Secretary of State, can only grant consent, or authorisation to a plan or project, if they are convinced that it won't adversely affect the integrity of the site concerned, so that's a very high test, isn't it?

962. MR WHITEHEAD: Yes it is.

963. MR BIRD: And if there's any doubt remaining as to the absence of adverse effects, then the competent authority has to refuse consent, subject to –

964. MR WHITEHEAD: Subject to mitigation or compensation.

965. And imperative reasons of over-riding public importance, you have to have all of those things, don't you?

966. MR WHITEHEAD: Yes.

967. MR BIRD: Good. And the absence of any alternative solutions?

968. MR WHITEHEAD: That is a test, yes.

969. MR BIRD: Yes. Now as far as the IWDJ scheme is concerned, just looking at that in isolation, the scheme before the MMO, if we take up the Able exhibits and go to tab 7 of the exhibits, there are some letters – My Lord, it's in the blue file and it's tab 7 in the blue file, which is divided into three, A, B and C. And if I could just explain for the Committee's benefit, my Lord Chairman, the redactions are those made by the Marine Management Organisation who have supplied the consultation responses, and effectively, the only thing which appears is a name, is redacted, I think, for data protection reasons, however insignificant the reference may be, so that explains the black boxes, but in terms of substance the letters, they are clear. It's fair to say, isn't it, if we go to the third of those, which is 7C, which is a letter from Natural England.

970. MR WHITEHEAD: Yes.

971. Which sets out their position in terms of page 1 of that letter and page 2 of that letter, in relation to the European sites, they have not satisfied to date, have they, that you have demonstrated that it would be unlikely to have significant effects to the requisite standard.

972. MR WHITEHEAD: That is true, but it also talks about in combination with the AMEP development and the reason that there is no in-ombination is that the two projects, as put into the MMO for this application, are mutually exclusive in the design for the IWDJ that this refers to, cannot go ahead with the full AMEP with the two just overlap each other and therefore and cannot go ahead together.

973. MR BIRD: Don't run ahead at this stage, if we could just stay with the Natural England letter, there is also, on the fourth page the exhibit, a further letter dated 3 February 2014, which sets out in more detail their assessment of the environmental statement, submitted in support of that project, yes?

974. MR WHITEHEAD: Yes.

975. MR BIRD: And chapter 13 deals with ornithology.

976. MR WHITEHEAD: Yes it does.

977. MR BIRD: And we see on the second page of this letter, at the bottom of the page, there's reference to piling noise under the 13.917-13.210 paragraph of the environmental statement.

978. MR WHITEHEAD: That is true.

979. MR BIRD: There are requests over the page for further information in terms of the assessment of the potential impacts associated with piling.

980. MR WHITEHEAD: Yes.

981. MR BIRD: And also in terms of 13.232, further information in relation to the noise impacts and the level of disturbance to field 98, which I think is the triangle land, is it not?

982. MR WHITEHEAD: As far as I'm aware, yes.

983. MR BIRD: And they also query, at 13.236, the use of the threshold that you have used for significant noise impacts in terms of the North Killingholme Haven Pits SSSI, which is connected ecologically, if we can put it in that way, with the European site in terms of the black-tailed godwits, yes?

984. MR WHITEHEAD: Yes, that's a comment made, but again, as I said earlier, I can make comments on underwater noise, but not necessarily the ornithology section.

985. MR BIRD: No, I'm not asking you to comment, I'm just setting out the position in terms of where you are; 13.243 also addresses the issue of visual impacts, which are relevant in terms of the matter of disturbance, of birds and the European site. Yes?

986. MR WHITEHEAD: Yes.

987. MR BIRD: And then 13.255, more detailed information required in terms of the activities that will take place along the jetty and how this would impact on birds in the vicinity.

988. MR WHITEHEAD: That is correct.

989. MR BIRD: 13.256, they wanted more information on the physical presence of storage tanks, again how that might impact on birds.

990. MR WHITEHEAD: Yes.

991. MR BIRD: And then 13.258, again the issue of visual disturbance.

992. MR WHITEHEAD: That is correct.

993. MR BIRD: And then chapter 14 is the marine ecology section, is it not?

994. MR WHITEHEAD: Yes it is.

995. MR BIRD: And again, a number of issues raised in the marine ecology chapter; were you responsible for that chapter?

996. MR WHITEHEAD: Only in as far as the physical processes from the estuary and the modelling relate to sedimentation or erosion or accretion of areas, which can affect the marine ecology.

997. MR BIRD: Good. And again, various concerns raised in terms of the adequacy of the work done to support the IWDJ, I think it's fair to say.

998. MR WHITEHEAD: Yes.

999. MR BIRD: Further information required, for example 14.113 on piling again. Then estimates in terms of the effect behavioural reactions and the injury range for marine mammals and fish.

1000. MR WHITEHEAD: Yes, it does ask for additional information.

1001. MR BIRD: Yes. And then over the page, page 5 of the letter, 'Cumulative and combined effects', the criticism made is that the assessment didn't cover the combined effects of IWDJ with effects for the AMEP. It doesn't expressly refer to AMEP but that was one of the projects, is it not, that they had in mind, one assumes?

1002. MR WHITEHEAD: I assume that that is the case, although, as you say, it does not say and as I said earlier, the reason that that cumulative and combined section does not refer to AMEP is because the two schemes are mutually exclusive. It did talk about other schemes that are in the pipeline for the estuary which is, for example, Green Port Hull, HRBT, IOTA, sorry Immingham Oil Terminal Approach dredge, and others, which I can't recall off the top of my head.

1003. MR BIRD: Has Natural England changed its position in terms of the IWDJ application and its adequacy in terms of the appropriate assessment, as far as you're aware?

1004. MR WHITEHEAD: As far as I'm aware, the situation is that the consideration is stored relating to the outcome of this enquiry.

1005. MR BIRD: Have they been provided with the additional information they sought in this letter?

1006. MR WHITEHEAD: I am not aware that they have, I'd need to ask others on that.

1007. MR BIRD: So as far as the IWDJ scheme for which an application is made, the Government statutory advisor on the issue of the effect on the European sites, has yet to be satisfied?

1008. MR WHITEHEAD: For that particular development, yes.

1009. MR BIRD: And in terms of the cumulative and combined effects, as far as the amendments to the development consent order which are sought in the petition, the only reason they are sought by ABP are, we are told, in order to facilitate the future construction of the IWDJ, yes?

1010. MR WHITEHEAD: In a modified form.

1011. MR BIRD: Yes, I appreciate that, yes. But it would follow, wouldn't it, that on that basis that the combined effects of the amendment and the IWDJ, as amended, would need to be considered, having regard to the requirements for appropriate

assessment, and environmental assessment.

1012.MR WHITEHEAD: Yes, there would.

1013.MR BIRD: And that would have to be consulted upon, not only with the relevant statutory bodies, but also the public more generally, wouldn't it?

1014.MR WHITEHEAD: Yes it would.

1015.MR BIRD: Yes. It's not just a question of you sitting there saying, 'I don't think it would be required, screening assessment, for example, would involve Natural England and the Environment Agency, very probably here, yes?

1016.MR WHITEHEAD: Yes.

1017.MR BIRD: And the Secretary of State may very well consider it necessary to consult others such as RSPB?

1018.MR WHITEHEAD: Yes, they could.

1019.MR BIRD: Who may have a different view to you.

1020.MR WHITEHEAD: That is possible, but my view is based on taking the information that was put before the panel and the Secretary of State for him to make his decision, in other words, the AMEP documents on which the Secretary of State, has made his decision to consent the AMEP scheme. On that basis, that information, in my view, must be considered as a baseline of which a test can be made as to whether the impacts from not only a smaller scheme, for AMEP but also a combined compromise scheme, can be assessed.

1021.MR BIRD: Yes. Well as far as the compromise scheme is concerned, that would require to be assessed and combined with a reduced AMEP scheme, and as to what is required, given the rigorous standard of evidence required in order to demonstrate no adverse effect, it's likely, is it not, that the Secretary of State would require some modelling in order to demonstrate the likely effects of that different and revised overall scheme?

1022.MR WHITEHEAD: I think that is a possibility on there, but as I said, in terms of the valuation of the evidence from the information provided in the full AMEP scheme and the work done on the full IWDJ scheme, the two together can be used to interpret the likely impacts to a high level.

1023.MR BIRD: Yes, but that's the same approach you've taken in terms of the IWDJ application which has been made, and neither the Environment Agency nor Natural England have been satisfied, have they ?

1024.MR WHITEHEAD: On the basis that the IWDJ does not talk about the AMEP

scheme, because as I said, the two schemes, as designed, cannot occur in that particular form, and therefore, only one of those schemes, as designed could actually go ahead, and therefore they are mutually exclusive. If a compromise was accepted by this Committee, then, in my view, the AMEP could be constructed in its reduced form, on the basis that all the impacts are less than assessed for full AMEP, for that side of it. If and when the reduced IWDJ comes into and is requested for consent to the MMO, at that stage, they would have to do a full, as we discussed, a full combination assessment with the reduced AMEP scheme and then go through the appropriate assessments.

1025.MR BIRD: Forgive me, that's the point I was putting to you. If the purpose of the amendment is to facilitate the scheme, then the amendment can't be made without that process having been gone through, can it? Because it would be part of the combined effect of the propose amendment.

1026.MR WHITEHEAD: I'm not fully aware of the procedure that should be.

1027.MR BIRD: That follows logically doesn't it? If the only reason you're making an amendment is to facilitate another scheme, then in making the amendment, you have to take into account the effect of the other scheme, because it's part of the combined effects.

1028.MR WHITEHEAD: That in terms of what we've done so far in the assessment, is, I believe what we've done.

1029.MR BIRD: Well, you say you've done an assessment, there's no public assessment of that, is there?

1030.MR WHITEHEAD: There's no public assessment as yet.

1031.MR BIRD: You've not consulted, have you, the Environment Agency or Natural England on your views?

1032.MR WHITEHEAD: Not with respect to the compromise scheme.

1033.MR BIRD: No. And indeed, I'm sure we can agree, the Secretary of State is likely to pay significant weight to the views of Natural England and the Environment Agency in considering that issue.

1034.MR WHITEHEAD: Yes they are.

1035.MR BIRD: It would be an informed view by both those bodies?

1036.MR WHITEHEAD: Yes, that would be the case.

1037.MR BIRD: Yes. And you're not, are you, able to say how long that process might take?

1038.MR WHITEHEAD: No, I can't.

1039.MR BIRD: Then, if we could just go back to 7A, which is in the A exhibits, is a letter from the Environment Agency, dated 23 December 2013, which I think is more directly related to your expertise, do you have that?

1040.MR WHITEHEAD: 23 December, yes.

1041.MR BIRD: It helpfully has at the bottom right, 45 of 169, which no doubt was the original bundle of representations on the IWDJ, and 47 of 169 is 23 December 2013 letter.

1042.MR WHITEHEAD: Yes, it is.

1043.MR BIRD: Which identifies at 1.2 that they were not content with the absence of modelling undertaken in the absence of the AMEP scheme, yes?

1044.MR WHITEHEAD: That's what it says in there, but then that was specifically for the IWDJ.

1045.MR BIRD: Yes, I appreciate that. Over the page, 1.3, they refer to the fact that you've drawn heavily on the AMEP environmental statement and then halfway down that paragraph, 'Modelling of the AMEP quay is also indicated a greater volume of sediment in the area of the proposed jetty due to the protection afforded by the quay and sheltering of this area. This could significantly impact on the routine dredging that would be necessary to berth vessels at the proposed jetty'.

1046.MR WHITEHEAD: Yes, I agree with that and that's what I indicated between the berths earlier.

1047.MR BIRD: And then 1.9, they were content in terms of the modelling undertaken for the AMEP development and they are content that should AMEP not proceed, that's an appropriate method of considering the impacts of this development, but this, I point out, doesn't include any modelling of what would happen in the Immingham Western Deep Water Jetty were to proceed in conjunction with an amended AMEP development. So the issue of the combined effects is a matter of some concern to the relevant bodies, isn't it?

1048.MR WHITEHEAD: That is the implication of that letter.

1049.MR BIRD: Yes. And so they require, as indeed, the law requires, them to be satisfied to the appropriate standard of proof. And would require to be satisfied to the appropriate standard of proof that there would not be any likely significant effects before they would sanction the compromise, wouldn't they?

1050.MR WHITEHEAD: I think that that is true. But again, I would say, that what they are producing here is an opinion based on a project which is not a compromise.

1051.MR BIRD: No, I appreciate that, and you've not put before – as we've already agreed, any material that does reflect the compromise in order to form a view, have you?

1052.MR WHITEHEAD: Not in the public domain.

1053.MR BIRD: No. Good, thank you very much. Thank you, my Lord, those are my questions.

1054.CHAIRMAN: Are there any questions from members of the Committee? Lord Plant?

1055.LORD PLANT: I know nothing about the law governing rivers and so forth, and estuaries, who is it who authorises dredging, who pays for it, and who imposes conditions on the type and scope of the dredging that's undertaken?

1056.MR WHITEHEAD: The dredging is paid for by the proponent, for instance, it's ABP, if it was for their ports, or if AMEP or Able, in terms of maintenance of their berths. Permissions for dredging would be through the Marine Maritime Organisation.

1057.LORD PLANT: Who imposes the conditions, it has to be dredging of this type rather than that type or whatever?

1058.MR WHITEHEAD: Again, the conditions would be from the MMO – Marine Maritime Organisation, having consulted with likes of the Environment Agency, Natural England, and CFAS, and then they would draw conditions on that dredge, from that.

1059.LORD PLANT: And does the issue of dredging relate at all, and please excuse my ignorance, relate to the claim to have or not to have, for that matter, riparian rights, or is this quite a different issue?

1060.MR WHITEHEAD: As far as I'm aware, that would be a different issue.

1061.LORD PLANT: Right, thank you.

1062.CHAIRMAN: Are there any other questions? Mr Newcombe, would you like to re-examine the witness?

1063.MR NEWCOMBE: My Lord, have no re-examination; can I simply indicate if, and insofar as there's any debate about the processes under the law in relation to European sites, that's clearly a matter for me and I'll make submissions appropriately. If it would please the Committee, I can, very briefly, I hope, help Lord Plant a little further in the legal aspects, but if you would prefer me to leave it, I can deal with it later.

1064.CHAIRMAN: No.

1065.MR NEWCOMBE: My Lord, in answer to your question, the short answer was correctly given by my witness, no. That goes back to the fact, and my Lord may be assisted by looking at ABP9 which is a chart extract. The reason for taking my Lord

and the Committee to this is if we look in the right hand side of the plan, we see a number of cross-hatched areas, between which, there's something called the Sunk Dredged Channel. My Lord, that represents an example, not the only one, of human intervention in the navigation of the Humber Estuary. The Humber Estuary as identified, I think, two days ago, is tidal and therefore there is a presumption at law, that the public right of navigation is exercisable wherever the ebb and flow of the tide goes, which thus includes the intertidal. The riparian rights take one to the edge of the water, and thereafter, there is a public right of navigation throughout the estuary, which necessarily interconnects with Sunk Dredged Channel, or upstream, or all the way across to the Continent or wherever. That's putting it very briefly and I hope that helps, and that I have at least, in part, dealt with the question.

1066. CHAIRMAN: Thank you Mr. Newcombe. Well, I would like to then thank Mr Whitehead very much indeed for the evidence that he's given to the Committee, and you may stand down. Thank you.

1067. MR NEWCOMBE: My Lord, the next witness is Mr Andrew Baker, who is the second of the environmental witnesses I mentioned, and I don't need to repeat the introduction which I gave in relation to Mr Whitehead. It's similarly a downstream question to which Mr Baker's evidence goes, not the primary ones which we submitted before the Committee. Right, get settled Mr Baker, tell me when you're ready please. Thank you. Remember, don't look at me, look across the room, voice up, head up, insofar as you can – forgive me, I sound like a drill sergeant.

1068. MR BAKER: You do.

1069. MR NEWCOMBE: Maybe that's what I should be doing. Your full name please, Mr Baker.

1070. MR BAKER: Andrew Jonathan Baker.

1071. MR NEWCOMBE: And what is your area of expertise please?

1072. MR BAKER: I'm originally a botanist, by training, I did a degree in botany at Nottingham University, finishing in 1986. Since then I have been involved with professional ecology for the whole of my career, since leaving university, so I have branched out from just doing botany work to looking at the whole interaction of plants and animals with the environment and with people.

1073. MR NEWCOMBE: Thank you. You are the director of the ecological consultancy named after you, Baker Consultants and Baker Consultants Marine Limited?

1074.MR BAKER: That's right.

1075.MR NEWCOMBE: For the purposes of the Committee, does anything turn on the fact they are two different consultancies?

1076.MR BAKER: No.

1077.MR NEWCOMBE: Thank you. You hold a BSc with honours from the University of Nottingham and you've been a full member of the Chartered Institute of Ecology and Environmental Management since 1994?

1078.MR BAKER: Correct.

1079.MR NEWCOMBE: And you've got 25 odd years of experience?

1080.MR BAKER: Twenty seven, I think it is now, yes.

1081.MR NEWCOMBE: Again...

1082.MR BAKER: It's been a long enquiry.

1083.MR NEWCOMBE: Never, ever look me for sums. Twenty seven years. Give the Committee a flavour of your expertise which you consider to be relevant for the present purposes.

1084.MR BAKER: Okay. I have a particular interest in the application of nature conservation law and I have been a member of the UK Environmental Law Association and Nature Conservation Working Group for the last 10 years. I was convenor of that group for four years. Now, while I'm not a lawyer, my area of expertise in this case is actually the application of, what I should say, the biology in relation to the legal tests that are around, particularly the protection of SSSIs and also the protection of European sites. In terms of my pure botanical and biological expertise, I've been involved with many large scale developments, I cut my teeth early on in my career at Manchester Airport on runway two, which involved a huge amount of compensation and litigation, and I've been involved with habitats regulations cases on coastal estuarine sites and also heathlands for many years now.

1085.MR NEWCOMBE: Now, as I understand it, essentially, albeit, within your area of expertise rather than his, you've been asked by ABP to consider the same questions as has Mr Whitehead?

1086.MR BAKER: That's right.

1087.MR NEWCOMBE: Come to the AMEP scheme now and please let's take this as quickly as we can, but again, if there are points you need to make, make them. Taking the AMEP scheme in full, as presently contained in the latest iteration of the Development Consent Order, and comparing that with the compromised form of the

AMEP scheme proposed by ABP, within your area of expertise, what is the approach you've adopted and what do you invite the Committee to reach by way of conclusion?

1088.MR BAKER: There are two aspects to this; the impact within the intertidal zone which mainly relate to the use of the site by feeding birds. The birds for which the special protection area, the European site is designated. And of course, the reduced scheme would mean that there is a reduction of 20% in terms of the amount of mud flat that would be under the concrete, so in that respect, there's a reduced environmental impact from the reduced scheme on the face of it.

1089.MR NEWCOMBE: Just pause there and take this a little more slowly; and the birds on inter-tidal because of what, foodstuff or something else?

1090.MR BAKER: Yes, they're feeding on worms, crustacea, bivalves that are growing in mud because the mud is a very productive environment, so they're feeding on a whole range of worms and insects that lie in that mud flat.

1091.MR NEWCOMBE: Thank you. Forgive me, I interrupted you and you were about to go on and consider the mud flat further and then on to the various other aspects; please carry on.

1092.MR BAKER: Yes. The key thing from this site is quite interesting in that it actually supports a disproportionate number of one species, that is black-tailed godwit, and it might be worth me explaining, if I may, very quickly, using that photograph there...

1093.MR NEWCOMBE: No, just stay sitting there.

1094.MR BAKER: Okay. Well –

1095.MR NEWCOMBE: We're not allowed to walk around.

1096.MR BAKER: Fine.

1097.MR NEWCOMBE: You're cut off from the waist.

1098.MR BAKER: Difficult to explain without me pointing at things, but...

1099.MR NEWCOMBE: Take us to a plan in the ABP sequence.

1100.MR BAKER: If I can take you to ABP5.

1101.MR NEWCOMBE: I think you're about to be allowed a special indulgence Mr Baker.

1102.MR BAKER: Well, that's very kind. I'm sorry if I'm going against protocol here, I do apologise.

1103.MR NEWCOMBE: No, you've being treated very worthy.

1104.MR BAKER: That's marvellous, that helps me a huge amount. Just to the west

of the site...

1105.MR NEWCOMBE: You're going to remain seated because of the television. Yes, you need to be recorded for posterity.

1106.MR BAKER: Okay. Just to this end of the site, this is Killingholme Haven Pits and this is where the black-tailed godwits actually roost, 85% of the population. Now the population of the estuary is about four and a half thousand individual birds, 85% of those birds roost on this particular location. Now, the nearest bit of mud flat to them is of course where our development is and the figures vary from year to year but the latest figures that we've got for a five year mean peak is 79% of the population feeds at the location of where the AMEP project is. So, in looking at the impacts of this development, they've had to concentrate very carefully on the requirements for this particular species which of course, is part of the SPA designation. Now, one could say that the reduction in the length of the quay from the compromised position, would actually change the impact in terms of the amount of feeding area that's available to the birds. But the problem is here, that you're still losing the vast majority of the area that is relied on by this one species. Now, if one considers that what this species is doing, is it's got its nice roosting site here, it's going to the nearest site that it can, without expending energy flying to wherever the feeding site is, it goes to the nearest site it can to feed, which is why we've got this special relationship between the mud flats here and the Killingholme Pits.

1107.MR NEWCOMBE: Thank you very much indeed for holding that. Right, draw the strands together and take us, in the first instance please, beyond black-tailed godwit to any other relevant ecological areas which we need to consider when comparing and contrasting the full AMEP scheme on the one hand, and ABP compromise version of it on the other. What are the other ecological interests we need to look at?

1108.MR BAKER: The other main difference is the lack of development of the triangle, so the triangle would be taken out, essentially of the AMEP scheme, and so essentially, that when one considers the compromise on its own, then that triangle would essentially be free. Which then actually brings us on to what that area supports and it's key interest is roosting curlew and we have approximately 4% of the population of the Humber Estuary actually roosting or feeding on that site, mainly roosting because of course, they feed on the intertidal area. So we have a number of birds, of curlew specifically, on that triangle of land. So that fundamentally, is the main difference. You would have a reduction of intertidal mud flat that would be developed and a reduction of

roosting area on the triangle land.

1109.MR NEWCOMBE: Thank you. Draw the strands together then, in conclusion, looking at the – in isolation, ignoring any compromise IWDJ, we'll come back to that in a moment, ignore any compromise IDWJ, comparing and contrasting for AMEP with the compromise AMEP, what are your conclusions and do they lead you to consider that further environmental information is or is not here required?

1110.MR BAKER: For the reasons I've outlined, in terms of the intertidal habit, there would be very little change in the impact. The black-tailed godwits, for example, would be impacted in precisely the same way, as they would be with the full scheme. So in my view, there's no requirement there for further assessment, and there is no additional impact from the change in the scheme.

1111.MR NEWCOMBE: Just pause there; assume against yourself please, that you are wrong, or a relevant decision maker takes a different view, one therefore is faced with further environmental information within your area of expertise. Is that further environment information which, before it can be produced, necessitates further survey work, further investigation or whatever?

1112.MR BAKER: No, that's if we did have to revisit that, then that information is already available. For example, the bird surveys are carried out on a yearly basis of that area, so there is full up to date information on the birds in the locality. And likewise, surveys have been carried out of the triangle land that are entirely up to date. So there's no additional survey data that would be required.

1113.MR NEWCOMBE: Alright. Now, come back to the IWDJ in compromise form, Mr Whitehead has already stressed more than once that the full AMEP scheme and the full IWDJ are inconsistent, one to the other. Factor in the compromise IWDJ and the fact that effectively a Visigoth, not AMEP this time, but ABP or its customer, matters not for my purposes, is going to do something with the triangle land and is also going to build out what I call a finger out to the deep water jetty. Draw the strands together in relation to that please.

1114.MR BAKER: Well, if we look at – this is where ABP5 is quite useful...

1115.MR NEWCOMBE: Just pause while people get it. ABP5, the slim white bundle.

1116.MR BAKER: So we can essentially see that, stippled in red, the area that would be removed from the AMEP project, but we can also see that the triangle area would be developed for the IWDJ, the reduced IWDJ and also we've got a berth going out into the deep water for the IWDJ as well. So, in terms of the impact on the say feeding birds,

we're almost in exactly the same position as we were for the full AMEP. So, when we combine the reduced AMEP and the reduced IWDJ together, we're almost in exactly the same position in terms of impacts on the European site and the SSSI.

1117.MR NEWCOMBE: Thank you Mr Baker. My Lord, that concludes examination in chief of this witness.

1118.CHAIRMAN: Thank you, Mr Newcombe. Are there any questions at this stage from members of the Committee? Lord Plant.

1119.LORD PLANT: Does the triangle, leaving aside what might happen to it, provide a suitable roosting place? What do black-tailed godwits roost in or on and do they need trees or anything because there don't look to be any. Is it a good site for a roost?

1120.MR BAKER: That's a very interesting question and it's a very good point. The field is used at the moment because it's actually a rather large field. If it were taken down to the dimensions of the triangle, then that field would no longer be used, even though only half of it would be developed, because it isn't big enough for the site lines that would be required for the curlew to feel comfortable that they can see predators and so on. So, currently, it is used by curlew; it's not particularly a good piece of land for curlew, but they're still there because the height of the grass is actually quite high, it's quite a rank grassland, whereas they normally prefer wide open views. But it is used by curlew. It's not used by black-tailed godwits particularly, there are only very small numbers of black-tailed godwits on that land.

1121.CHAIRMAN: Thank you . Mr Bird.

1122.MR BIRD: Thank you very much, my Lord. Today, you've heard, I'm sure my questions to Mr Whitehead in terms of the approach, as far as appropriate assessment is concerned. Anything you disagree with in terms of what he accepted, as far as the tests are concerned?

1123.MR BAKER: No, I think I would add to that that the Habitats Regulations is not a bar to development. There are tests that have to be met, and those tests are necessarily very stringent because we are protecting some of the best areas in terms of nature conservation in Europe. However, it isn't constructed to prevent development *per se*. We have to go through the tests but at the end of the day, if the tests are passed, as indeed, the AMEP project did meet those tests, then development is allowed to go ahead.

1124.MR BIRD: As far as the IWDJ scheme is concerned, we referred to the Able exhibits, exhibit 7, which no doubt you've seen, the Natural England letter, have you

been involved with that, IWDJ scheme?

1125.MR BAKER: No, I haven't.

1126.MR BIRD: And you've heard from Mr Whitehead that, as far as he's aware, no further progress has been made in terms of the information sought from Natural England in relation to the IWDJ scheme alone?

1127.MR BAKER: My understanding is, that, speaking to the people that are involved with this assessment, is that the initial consultation has been carried out, while obviously Natural England and the Environment Agency have responded to the consultation. And this, in my view is the normal process of going through this Habitats Regulations assessment. One would submit the information contained in the environmental statement, one would normally expect Natural England to come back with comments as indeed they have, in this case, the consultants have been talking to Natural England about their concerns, and in my view, those concerns are pretty minor and are nothing that one wouldn't normally expect in a case of this type.

1128.MR BIRD: Yes, but Mr Baker, you're not suggesting, are you, if we were looking at the IWDJ scheme alone, whether in its applied for form, or its varied form, that it would not have an adverse effect on the European sites?

1129.MR BAKER: That it would not have an adverse effect on the integrity of the site?

1130.MR BIRD: Yes.

1131.MR BAKER: Well, that's difficult for me to judge as the Habitats Regulations assessment hasn't been carried out, but having reviewed the – and this is for the full IWDJ, having reviewed the environmental statement, no, I don't think it would have an adverse effect on the integrity of the site.

1132.MR BIRD: Yes, but of course, again, as I put to Mr Whitehead, the view was not your view, which is important, it's the view formed by competent authority, on the advice of Natural England.

1133.MR BAKER: That's correct.

1134.MR BIRD: And indeed, others. The Environment Agency may well be consulted, RSPB may well be consulted?

1135.MR BAKER: Yes.

1136.MR BIRD: And in terms of loss of the triangle site, again, looking at the IWDJ alone, that would lead to the loss of curlew habitat which is presently used, wouldn't it?

1137.MR BAKER: Yes. As does the AMEP site.

1138.MR BIRD: I'm asking you about IWDJ alone, so leave the AMEP away for the

moment, but as far as the IWDJ scheme is concerned, you would have to mitigate that impact, wouldn't you?

1139.MR BAKER: Yes you would.

1140.MR BIRD: Where is the mitigation proposal to support the IWDJ?

1141.MR BAKER: My understanding is that that mitigation is in negotiation with Natural England at the moment.

1142.MR BIRD: Well, where is the site?

1143.MR BAKER: I don't know that detail, I'm afraid, I can't answer that.

1144.MR BIRD: And in terms of the impacts of the IWDJ, it's not just the direct impact on, for example, intertidal habitat which is concerned, there are indirect impacts?

1145.MR BAKER: That's right

1146.MR BIRD: So the activity of the new berth, for example, the extent of use and the comings and goings on the berth and the disturbance on the intertidal habitat as a result?

1147.MR BAKER: That's right.

1148.MR BIRD: All of that would have to be assessed, wouldn't it? Indeed, modelled potentially to identify the effects of the IWDJ scheme in whatever form it might take.

1149.MR BAKER: It would have to be subject to the same Habitats Regulations assessment as any other scheme.

1150.MR BIRD: None of which has been done.

1151.MR BAKER: No, the competent authority has not carried out that as yet, but they have been provided with the data for the full scheme.

1152.MR BIRD: Yes, but they're not yet satisfied, are they?

1153.MR BAKER: No.

1154.MR BIRD: No. And it follows, does it not, that if you can't actually satisfied the competent authority in terms of the IWDJ scheme alone, you'll struggle to argue that the compromise scheme, the combined AMEP reduced, plus the IWDJ, has the same effect as the full AMEP scheme?

1155.MR BAKER: Well, I don't think we're in a position where we can't satisfy the various authorities. I think at the moment that we're at the normal stage that one would be at the beginning of a project like this, when one consults with the competent authority or the nature conservation statutory consultee, and through negotiation, it's agreed what mitigation or, if necessary, compensation might be. And I think that's the stage that this project is at at the moment.

1156.MR BIRD: Yes, and how long would it take to resolve the implications of that

process in terms of the proposed amendment?

1157.MR BAKER: Well, I think given the very small scale of the potential impacts of the IWDJ, I can't see why that shouldn't be resolved very quickly.

1158.MR BIRD: No, but again, the timescale is not within your control is it?

1159.MR BAKER: No, but you asked me my assessment of my – no, it isn't in my control.

1160.MR BIRD: And very quickly means what, in the context of appropriate assessment?

1161.MR BAKER: I'm sorry, I'm not sure I understand the question.

1162.MR BIRD: Well you said it would happen very quickly, so I'm asking you what does, 'very quickly' mean in the context of the process of appropriate assessment?

1163.MR BAKER: Do you mean in terms of timescales of actually going through the process?

1164.MR BIRD: Yes.

1165.MR BAKER: Well, when we were considering the impacts of the AMEP scheme, the scheme was modified on the first day of the enquiry and the assessment had to be redone from there, so that was in the space of weeks that it was turned around. So I can't see why a similar position couldn't be carried out in this case.

1166.MR BIRD: That, of course, is subject to the assessment of the effects of IWDJ having been undertaken to the satisfaction of Natural England and others?

1167.MR BAKER: Yes, it could be.

1168.MR BIRD: Good. Now you said, as I understand it, in terms of Natural England, your understanding was that discussions were still going on with them in relation to the IWDJ. Do you know...

1169.MR BAKER: Discussions have been had, yes.

1170.MR BIRD: When was the last time –

1171.MR BAKER: I'm afraid I don't have that information.

1172.MR BIRD: But not with you, anyway?

1173.MR BAKER: No, no, I'm not involved.

1174.MR BIRD: Good, I think that's all I've got for you. Thank you very much, my Lord Chair.

1175.CHAIRMAN: Are there any questions that the Committee would like to put to Mr Baker? Mr Newcombe, any further questions?

1176.MR NEWCOMBE: My Lord, no thank you.

1177. CHAIRMAN: Well, thank you very much indeed, Mr Baker and you may stand down.

1178. MR BAKER: Thank you.

1179. CHAIRMAN: How do we stand, Mr Newcombe?

1180. MR NEWCOMBE: Forgive me, my Lord?

1181. CHAIRMAN: How do we stand now with 15 minutes or so to go?

1182. MR NEWCOMBE: I have a greyhound straining in the slips and we won't finish him but we can at least start the course.

1183. CHAIRMAN: I had a nasty suspicion that we could even be involved in a division between now and half past five, but would you like to call him to the stand?

1184. MR NEWCOMBE: Indeed.

1185. CHAIRMAN: I think if that did happen, then we would have to break for the day, but you understand that?

1186. MR NEWCOMBE: My Lord, yes. I'm entirely content. It's important, in my submission, to make the best use and we've got the time. I'll make the best use we can of it. My next witness is Mr Rowell, again, just setting up his shop with the origami and the overview; he is a chartered town planner and his evidence will essentially be taking conclusions from others and drawing strands together from there. He will explain more eloquently than I. Full name please Mr Rowell.

1187. MR ROWELL: My name is Philip James Rowell.

1188. MR NEWCOMBE: And you are a director at the firm of Adams Hendry Consulting. What are Adams Hendry?

1189. MR ROWELL: Adams Hendry are an independent firm of town planning consultants, which take a particular interest or specialism in infrastructure projects.

1190. MR NEWCOMBE: Do you have any previous experience of ports?

1191. MR ROWELL: Yes, I do. I graduated some 17 years ago and the first job that I worked on, the first day, was a port project, and I have worked with ports and port authorities ever since then.

1192. MR NEWCOMBE: Right, you've got a BA degree in planning studies and a post-grad diploma from Oxford Brookes, and a member of the Royal Town Planning Institute and a member of the Chartered Institution of Highways and Transportation. I am not going to take you through the full gamut of your hearing.

[Division bell rings]

1193. CHAIRMAN: I'm afraid that's as far as we can take it today. So, I think the best

thing is to adjourn the Committee until 10 o'clock tomorrow morning. Thank you very much, I'm sorry that we had to break at this particular moment, but that's where we are. Thank you.

MINUTES OF ORAL EVIDENCE

taken before

**JOINT COMMITTEE ON THE ABLE MARINE ENERGY PARK
DEVELOPMENT CONSENT ORDER 2014**

Wednesday 22 October 2014

In Committee Room 4

PRESENT:

Viscount Ullswater (In the Chairman)
Mr Craig Whittaker MP
Dr Matthew Offord MP
Paul Blomfield MP
Lord Armstrong of Ilminster
Lord Plant of Highfield

IN ATTENDANCE

Mr Simon Bird QC, appeared as Counsel on behalf of Able Humber Ports Limited
The Applicant for the Order Mr Ian McCulloch (of Bircham Dyson Bell LLP) appeared
as agent for Able Humber Ports Limited
The Applicant for the Order Mr Andrew Newcombe QC, appeared as Counsel on behalf
of Associated British Ports (Petitioners 1 & 2)
Mr Paul Irving (of Winckworth Sherwood LLP) appeared as agent of Associated British
Ports (Petitioners 1 & 2)
Mr Mark Westmoreland Smith appeared as Counsel on behalf of Associated British
Ports (Petitioners 1 & 2)

Witnesses for the Petitioner:

Mr Philip Rowell, Adams Hendry Consulting

IN PUBLIC SESSION

(UNCORRECTED)

INDEX

Subject	Page
Mr Rowell, examined by Mr Newcombe	3
Mr Rowell, examined by Mr Bird	18
Mr Rowell, examined by Mr Newcombe	58
Submission by Mr Newcombe	66
Submission by Mr Bird	85

(At 10.00 a.m.)

1. CHAIRMAN: Good morning everyone. And in calling the committee to order, I must again note that we are now in a public session. It was arranged that Mr Blomfield may be absent from 11.15, but he is—just informed me that he’s going to be able to stay for much longer in the morning session. I thought I’d maybe mention that, because I know it had been agreed that he would leave the committee at 11.15.
2. I would just again ask people to do the usual thing with their mobile phones, so that we should not be disturbed, and say to Mr Newcombe that, having almost just introduced Mr Rowell, the bell rang last night and that was the end of last night’s session. So I don’t know whether you’d like to start where you left off, or whether you’d like to start again, Mr Newcombe?
3. MR NEWCOMBE: My lord, I’ll carry on. I think we’ve dealt with the introduction, and I’m just noting that I’m doing that on the basis that the committee already has—and I certainly do and I suspect Mr Bird, insofar as his exhibits is concerned, formally produces those documents, and ours include the promised signed note from Mr Cooper, which I don’t propose to read onto the transcript unless anybody particularly wants me to. It’s there to be read, and to answer questions.
4. CHAIRMAN: Thank you
5. MR NEWCOMBE: Right, Mr Rowell, we introduced you yesterday, and you identified various matters, and I’m going to take you straight through to the question of the tests. Cast your mind back to my opening submissions, and I submitted that there were three tests, or considerations here, derived from statute. One, whether the land was required; secondly, compelling case in the public interest; third, the question of serious detriment. Do you recall that?
6. MR ROWELL: Yes I do.
7. MR NEWCOMBE: Alright. Now as I understand it, although your evidence may be relevant to all three of those, you concern yourself primarily with the second and third; namely compelling case and the public interest and serious detriment?
8. MR ROWELL: Yes, that’s—they’re the two tests which my evidence goes to, yes.
9. MR NEWCOMBE: Thank you very much. I want to now deal—and I’m going, again, to follow the procedure which I’ve done in the past. So giving headings and subheadings. I hope that assists in establishing what I call pigeon holes.
10. And the first heading I want to go to is consideration of matters relating to benefits

that are in the public interest. Alright? Now the—it would appear that AMEP, or the AMEP development, is promoted with a view to achieving five public interests. Just identify your understanding of what those interests are?

11. MR ROWELL: Yes. My understanding of those public interests is taken by reviewing the application documentation, which Able submitted to the DCO examination. In summary, there are five public interest benefits which are identified, and they are described as ‘the decarbonising of energy production’—that’s the first one. Second is ‘securing the UK’s energy supply.’ The third one is ‘the development of large-scale wind turbines’. Fourth is ‘the economic growth within the UK’. And the fifth one is ‘the growth and regeneration within the Humber Sub-Region’.

12. MR NEWCOMBE: Alright. Now if that’s the obverse of the coin, let’s now come to the reverse of the coin, and what elements do you pray in aid, in terms of the public interest, so far as ABP is concerned, and particularly the preservation of the triangle land, together with its riparian rights. I’m going to take you in detail through this in a moment, but could you just summarise, please, your position on that?

13. MR ROWELL: Yes, I think there are at least five. There’s certainly five benefits in the public interest which I can identify, which are associated with ABP having the ability to develop its strategic landholding, that is the triangle landholding. I’ll just run through those in very, sort of, brief terms, if I may.

14. The first one I think we can title, is ‘the maintenance of a competitive deep-sea port at Immingham’. And I summarise this benefit in the following way. Almost as an existing facility, of critical importance to the nation, it is in the public interest that there should continue to be a competitive deep-sea port at Immingham. And this requires the port to be able to grow. Retaining the ability of ABP to develop its triangle landholding is a significant benefit in this regard. So that’s the first benefit which I’ve identified.

15. The second one I’ve titled ‘maximising the economic benefits of the port of Immingham’. And again I summarise that benefit in the following way. It is in the public interest that the growth of the port of Immingham is not restricted, because it’s a vital element in the economy of the local area, the sub-region of the region. Retaining the ability of ABP to develop its triangle landholding is again a significant benefit in this regard.

16. The third public interest benefit which I identify is titled—or I have titled it—‘making best use of the characteristics of the triangle landholding.’ And again I summarise that benefit in the following way. It’s in the public interest that the best use

is made of the characteristics of the triangle site. ABP's proposed development of this landholding, through its proposals for the site, will be a significant benefit in this regard.

17. The fourth benefit I've titled 'the provision of a secure, flexible, reliable and resilient energy supply system.' And I've summarised this benefit, is it's a significant benefit in the public interest, that ABP's proposals for the triangle landholding will assist in a secure, flexible, reliable and resilient energy supply system for the UK.

18. The fifth public interest benefit, which I've identified, I've titled 'the provision of additional capacity to serve renewable bulk energy products'. And again I summarise this benefit in the following way. It's a significant benefit in the public interest, that ABP's proposals for the triangle landholding will allow for the provision of additional capacity, to serve renewable bulk energy products at the port of Immingham.

19. MR NEWCOMBE: Alright. Let me haul you back to your first benefit. A preliminary point first, you talk about a deep-sea port at Immingham. When one mentions that to members of the public, one often gets the response, 'Well the sea's pretty deep wherever you are.' What does the adjective 'deep-sea' mean when its qualifying a port?

20. MR ROWELL: Deep-sea means that it has the necessary marine access to accommodate vessels of significant draft. Which, in a UK context, there are a number of marine access channels into estuaries or rivers, which provide access for the deepest draft vessels which operate in the trade; which operate through those ports.

21. So that's effectively what I mean by deep-sea. It's often a piece of national infrastructure—our deep-sea navigation channels into our ports—which people don't often realise are there. But in many respects they're like, for example, a runway of one of our major airports. It should be considered along those lines.

22. MR NEWCOMBE: So far as the UK is concerned, is it relatively easy to find deep-sea access wherever you look for it, or is it a limited characteristic of ports?

23. MR ROWELL: It is a fairly limited characteristic, and as you heard yesterday from Mr Whitehead, it is something that in the UK, to greater or lesser extents, port authorities have to work at maintaining. But access—this deep water access into the UK is critical for the UK, in order for it to import and export goods.

24. MR NEWCOMBE: Alright. Now, without further intervention from me—though I reserve the right to ask a few supplementaries, could you go on and flesh out the detail of this benefit, so we can slot that into the relevant pigeon hole?

25. MR ROWELL: Thank you. So the first benefit, again, just to give you the title

for—so we don't forget it, it's 'the maintenance of a competitive deep-sea port at Immingham.' Ports, as I've just tried to indicate, serve the national interest. That is fairly clear. For example, if you look at the government's national ports policy, that makes it very clear that ports play an essential role in the UK economy.

26. National policy also highlights the limited alternatives that are available for the movement of freight and goods. And in the bundle of documents that you've just been provided with, national ports policy's provided at—its ABP document 21. And I think it might be helpful if the committee took that up.

27. MR NEWCOMBE: Right. This is in the file ABP 2, which is the second of the slim white jobs.

28. MR ROWELL: That's correct. And the section I draw your attention to is section three, which is on page nine of that document, which is headed 'government policy and the need for new infrastructure.' And you'll see there ... sorry, I'll be honest, I went a bit quick there. You'll see there the title, for example, of section 3.1, talks about the essential role of ports in the UK economy.

29. And if you look down, for example, at paragraph 3.1.4, there's reference there to, as an island economy, there are limited alternatives available to the use of sea transport. And that shipping—at the end of that paragraph—shipping will continue to provide the only effective way to move the vast majority of freight in and out of the UK.

30. MR NEWCOMBE: Alright. And again, Mr Rowell, to be fair to AMEP, this isn't a policy which just helps ABP. It clearly embraces—enables proposed use of marine transport for wind turbines, amongst other things.

31. MR ROWELL: Yes it does. That's correct.

32. MR NEWCOMBE: Thank you. Carry on.

33. MR ROWELL: I'd also draw the Committee's attention to paragraph 3.1.5, which talks about ports in respect of energy supplies. And I think the first sentence of that is quite an important sentence. You may get fed up of me referring back to it by the time that I've finished, but ports have a vital role in the import and export of energy supplies. So these are fairly—these are statements which I think are fairly clear. So we have the position that ports generally are nationally significant. The country's ports industry is of national significance.

34. But, actually, I think as well that you can draw from that, you can refer to other documents, where the port of Immingham specifically itself is identified of national importance. And again I draw the committee's attention to another document which

you've been provided with this morning, and it's ABP 22. And this is a document that was produced by the Department for Transport back in November 2008, and it was produced in response to the Eddington Study and the Stern Review.

35. And it set out how the government at the time were intent on delivering a sustainable transport system. But the reason I've drawn that to your attention, is if you turn to page 30 of that document, section four of that document talks about the national framework. So this is the national transport framework. And if you go to paragraph 4.10 –

36. MR NEWCOMBE: That's beyond the executive summary and the main body.

37. MR ROWELL: That is correct. It's page 30 of that document. You have there a specific reference to 'the analysis has led us to'—that has to be—that's the DFT—'has led us to identify a number of components of the transport infrastructure that collectively are critical to the functioning of the system as a whole'—so that's the nations transport system—'and to the economic success of the nation. These are'—and the first bullet point there is the 10 ports and seven airports, 'which together make up our key international gateways, through which most people and goods either leave or enter the country.'

38. And if you drop down to the end of that paragraph, what's referred to there is the strategic core of the transport system is then illustrated in figures 4.1 and tables 4.1 to 4.3. And if you turn over the page, you see that table 4.1 on page 32 has the top 10 ports, and at the top are the ports of Grimsby and Immingham. So what you have there, it's very clear that the port of Immingham itself is of critical importance to the nation as a whole. That's been recognised at the national level. So I think what we can conclude from that is the critical importance of the port of Immingham to the nation is therefore beyond dispute. I don't think that there is any doubt about that.

39. MR NEWCOMBE: Alright. Now come on if you would, please, you touch on the legislative framework. My lord, ultimately, obviously, for better or for worse, the law is a matter for me. But Mr Rowell comes at it from his point of view, and his area of expertise, and he has some points to make in that regard.

40. MR ROWELL: Yeah, I think there are two points I'd like to draw the committee's attention to, and I think they've already been referred to. Its first of all the port of Immingham operates under something that's commonly known as the Open Port Duty, and this is brought into effect by the section 33 of the Harbours, Docks and Piers Clauses Act of 1847. As Mr Newcombe says, I'm not a lawyer, but my understanding

of that clause, or that duty, is that the practical effect of it is that ABP must allow those who are willing and able to pay the relevant dues, to load and unload vessels at the port, if the capacity of the port permits it. So they are under an obligation—a duty, to effectively allow those who are willing to do so, subject to those caveats, to use the port.

41. The second aspect, which is something which I think Mr. Cooper might have referred to, is that under section nine of the Transport Act 1981, ABP must, amongst other things, provide port facilities at its harbours, to such extent as it may think expedient. I would argue that this effectively imposes duty on ABP to make improvements at the port, once it has identified a need for them. So that's not a complete picture of the legislative framework against which the port operates, but I think they're two important points to note here.

42. MR NEWCOMBE: Alright. Now we're coming along to the national policy framework. Subject to any contrary view from the committee or others, I'm happy here for you simply to read out for the transcript the cross-reference to the policy document, and then read out the relevant extract. And if we take it reasonably slowly, then in so far as people want to go to the original document, they can, but you've actually read out the relevant portion.

43. MR ROWELL: Okay. Thank you.

44. MR NEWCOMBE: Thank you.

45. MR ROWELL: First I think it's important for the committee to recognise that the port of Immingham, along with all other UK ports, operates within a free market environment, where judgements about when and where new port development might be proposed are made on the basis of commercial factors by the ports industry. This is a long-standing aspect of national ports policy, which is identified as fundamental. And I'll—the relevant paragraphs there are from National Ports Policy, paragraph 3.3.1 and 3.3.2.

46. Secondly, the port of Immingham, along with all other ports, operates in a market environment, where judgements about the need for port infrastructure is not just simply a case of considering overall demand for port capacity. Such judgements, as national policy makes clear, also have to relate to—and I quote here from paragraph 3.4.1 of national policy—they also have to relate to the need to retain the flexibility that ensures that port capacity is located where it is required, and on the need to ensure effective competition and resilience in port operations.

47. National policy helpfully, I think, considers these factors in further detail. In

respect of the locational aspects that are being referred to, government make it clear that it does not wish to dictate where port development should occur. Rather, it's made clear that port development must be responsive to changing commercial demands, and that the market is considered to be the best mechanism for getting this right. And that's a quote from—or I'm referring there to National Policy paragraph 3.4.12.

48. In respect of the competition aspects which I've just referred to, the government makes it clear that it welcomes and encourages competition between ports. And that's both competition between UK ports themselves, but also competition with other European ports, because this drives efficiency, it lowers cost and it contributes to the competitiveness of the UK economy. Again, that's paragraph 3.4.13 of national policy.

49. It's highlighted that effective competition requires both sufficient spare capacity to ensure that real choices for port users and ports to operate—sorry, just got myself slightly confused there. Sorry, it's highlighted that there are two things that effective competition requires. That is sufficient spare capacity, to ensure there are real choices for port users, and it also requires ports to operate at efficient levels, which it is specifically made clear in national policy is not the same as operating at full physical capacity. Spare capacity is also identified in national policy, as helping to ensure the resilience of the national infrastructure. The government make it clear that it believes resilience in the national ports infrastructure is provided most effectively as a bi-product of a competitive ports industry. And that's paragraph 3.4.15.

50. And I apologise for the canter through that section of national ports, but I think it's important to have regard to the conclusion which national policy draws in respect of the considerations of the need for new port infrastructure. And here I'm looking at paragraph 3.4.16 of national policy, which makes clear that for various reasons, excluding the possibility of providing additional capacity for the movement of goods and commodities through new port development would be an outcome—and I quote—strongly against the public interest.

51. MR NEWCOMBE: I'm going to take you in a moment very briefly onto local policy, in so far as it concerns the statutory development plan. Just before I do that, though, would you take core document 12, please, which is the environmental statement. It's in volume three of the fat bundles.

52. MR ROWELL: Yes, I have that.

53. MR NEWCOMBE: Now I haven't seen, as yet, the transcript for yesterday. I don't say that in any critical sense. But according to my note, Mr Bird referred in cross-

examination of Mr Galbraith to page 5-32.

54. MR ROWELL: Yes.

55. MR NEWCOMBE: And he put this—again, according to my note—on the basis that this was government policy, and one of the manifestations of the government's commitment or campaign to drive down cost. Do you recall that?

56. MR ROWELL: I do, yes.

57. MR NEWCOMBE: I'm corrected. It was put as Crown Estate Policy. First—Crown Estate Guidance then. Firstly, who wrote the document, please?

58. MR ROWELL: Well I have to say that, as that point was made yesterday, I—as everyone else seems to be doing here—is going on—went on my device and had a look at it. And I did note that there's a paragraph at the beginning of that document which refers to the consultants who have written that report. And there's a disclaimer at the start of that report which indicates that it is the view of the consultants, and not necessarily the view of the Crown Estate. Now we can provide that exact wording, but that's what I looked at yesterday.

59. MR NEWCOMBE: Alright. Thank you very much. Second, I now come onto local policy. I refer to the statutory development plan. Summarise, please—most people will be familiar with it. But when people talk about the statutory development plan, what is it?

60. MR ROWELL: I'm quite tempted to say, at this present time, depending whether the government change their mind on what constitutes the development plan or not, at the moment, fundamentally, what we have is a—in this country, you have a series of local authorities, which are tasked with putting together land-use documents, which effectively guide the development of the land within their area. Commonly referred to as local plans, there are other forms of documents that go with it.

61. But, fundamentally, each local authority has to produce a plan, and it's a planning document which sets out—for example, it will identify the sites that can be used for certain forms of developments. It will set out policies which they will use in terms of their development control functions. And it's effectively a bible by which planning decisions, development decisions are made by local authorities.

62. MR NEWCOMBE: Right. Now there is an emerging development plan, which has yet to be finalised. I'll leave that one. But just dealing with the statutory development plan, it's called statutory because, on planning applications, any decision thereon, whether by the local planning authority or the Secretary of State, has to be in

accordance with the development plan, unless other material considerations indicate otherwise.

63. MR ROWELL: Yes, that's the test which we as planners are aware of.

64. MR NEWCOMBE: Now let's make clear, the Able application is not a planning application. It's an application under the development consent.

65. MR ROWELL: That is correct.

66. MR NEWCOMBE: Or the process.

67. MR ROWELL: That is correct, yes.

68. MR NEWCOMBE: But—it's a fairly self-imminent question, but please confirm, for present purposes is the statutory development plan relevant or irrelevant?

69. MR ROWELL: I very strongly believe that the statutory development plan is relevant. Its—I believe it's relevant to—obviously it's relevant to planning applications, but it's also relevant, I believe, to proposals that come forward under the DCO regime.

70. MR NEWCOMBE: Thank you. ABP has produced the extract—the reference of the transcript is ABP28. But rather than taking people to that, unless they want to follow what you're saying by going to it, please summarise what that does in relation to the port of Immingham generally, and the triangle land in particular.

71. MR ROWELL: The statutory development plan at the moment has the operational portland identified on the proposals map. And just to be clear, the local plan, or the development plan, is accompanied by a—used to be called a proposals development map, it's now called a policies map. But it effectively has a map which shows in diagrammatic form the policies which are included in the plan. So, for example, if a site is identified for housing, it will be identified on the policies map. So that when you read the plan together—the plan and the map are read together. So effectively it puts it on a map form.

72. The proposals map which accompanies the local plan—the current adopted local plan, identifies the area of the operational port of Immingham on it. And there is an accompanying policy which goes with that, which is policy IN4A, and that's titled 'court related development ABP.' I should just add there, sorry, Mr Newcombe, that of course the triangle land is identified as part of the port of Immingham on the proposals map, and that policy—policy IN4A—relates to it.

73. MR NEWCOMBE: Thank you very much. Now we've just about finished your first benefits points. Now's your opportunity to draw any concluding strands you wish to, before I move onto the second benefit.

74. MR ROWELL: Yes, I think what I'd like to draw out of the first benefit is, against the policy context which I've outlined, I think it's very clear that in order for the port of Immingham to remain successful, and thereby continue to serve the national interest in the way that it does, it cannot stand still. It must compete, it must be resilient, it must offer flexibility. And to do this it must have sufficient land and berths available to accommodate the demands of the market and trade which want to operate from the port.

75. As Mr Cooper has explained, the triangle land is very, very important in this regard, because it's the last remaining undeveloped area of land with deep-water frontage, in ABP's ownership of the port of Immingham. And I would just, again, draw the committee's attention to the evidence of Mr Cooper on that, where he talked about grading portland, and the importance of land which has deep-water access. Which in my experience of working with port operators, is not just a view which is taken by ABP, but is taken by the ports industry generally. Land which has access to the deep water, or the provision of—the ability to access the deep-water, is very, very important.

76. MR NEWCOMBE: Thank you. Right, now your second benefit heading is 'maximising the economic benefits of the port of Immingham.' Take it away please, Mr Rowell.

77. MR ROWELL: That's correct. As I've taken you already to certain aspects of the national policy statement, but I'd again just draw your attention to what national policy says at 3.1.7. It says that ports continue to play an important role in local and regional economies, further supporting our national prosperity. And the government also make it clear—and this is paragraph 3.3.5—that amongst other things, they wish to see port development being an engine for economic growth.

78. MR NEWCOMBE: And again—forgive me cutting in—let's be absolutely fair on this, in so far as Able can justify their scheme, that policy assists them every bit as much as it assists Immingham, doesn't it?

79. MR ROWELL: Yes it does.

80. MR NEWCOMBE: Thank you very much. Sorry, I interrupted you. Carry on.

81. MR ROWELL: The picture in respect of the port of Immingham is clear. I think it's one of the most significant economic generators and catalysts within the local and regional economy. As I've already highlighted, the national economic importance of the port is identified at the national level. In Mr Cooper—in the note that you received this morning, identifies the job, the numbers of people that are directly and indirectly

employed through the port, and work which ABP have done has indicated that the port of Immingham generates something in the order of £460 million worth of output to the economy.

82. And just concluding on that point, is that—as I’ve already made clear—the port of Immingham operates within an industry which is deliberately market led, and where competition is actively encouraged. Within this context, it’s my view that removing the ability of the port of Immingham to respond to market demands, through the removal of the growth potential offered by the triangle site, would be detrimental to the best interests of the port.

83. Such an imposed limitation on the development opportunities of the port not only means that the additional economic benefits—the development of the triangle site by ABP would generate—are not achieved, but could potentially, in my view, put at risk existing economic activity and benefits associated with the current operation of the port of Immingham. And again, just in that respect, I would again refer you back to the evidence of Mr Cooper, who made it clear that there was a very real risk that that could happen. And again, in my experience of working with port companies and port operators, that is a very real risk.

84. CHAIRMAN: I’m struggling with the evidence to put it in context of what we’re being asked to do, seeing as Secretary of State has already made the direction. But for the benefit of your evidence, I wonder if you could give me your view on whether you think that the triangle of land is the only area for the port of Immingham to expand?

85. MR ROWELL: I’m not in a position to tell you whether it is the only area of land. All I’m in a position to do is to effectively take the evidence which the people who run the port, which is Mr Cooper, has been telling you; that the importance of that piece of land, as the only area of land which has the deep-water frontage. And that’s the point that I think comes out, is the evidence you have from ABP as the operators of the port, is that’s the only area of land with the deep-water frontage which they have left, on which they can develop.

86. CHAIRMAN: Okay. So just for clarity then, it is—you are unsure of whether there are other areas within the port of Immingham to expand the operation?

87. MR ROWELL: Well there are no other areas of land with a deep-water frontage. Whether there are any other pockets of land within the port, that’s a question you would have to ask Mr Cooper, because I’m not—as you’ll understand—I’m not responsible for the day-to-day running of the port. I don’t—you know, I’m not familiar with those

details.

88. CHAIRMAN: Okay. Thank you.

89. MR NEWCOMBE: Just picking up Mr Whittaker's point, Mr Rowell, in your view, is there or is there not a public interest in keeping the triangle land, with its riparian access to deep-water, available to the port of Immingham or not?

90. MR ROWELL: There is.

91. MR NEWCOMBE: Alright. Assume for the sake of argument that the Able scheme, contrary to ABP's primary case, is justified either in the form contained in the DCO or in some form which does not go back to the proposed compromise, such that there is therefore a physical tension—so that the two can't coexist—between the use of the triangle land and the port of Immingham.

92. Assist us, please, in how one there draws the overriding public interest balance. Because clearly, in so far as they can justify it, AMEP equally is entitled to say 'we are in the public interest.; So you've got a tension there. Two public interests on your evidence. Assist the committee and Mr Whittaker in how in your view, or your submission, the committee should approach that.

93. MR ROWELL: Yes. Thank you. If that position arises, it's very—it's my clear view that the balance in that situation has to fall with the port of Immingham. Now, the reason for that, in my view, is that what you have in the Port of Immingham, you have an existing established facility, which is already identified as critical to the nation's economy and the nation's transport system. You have very clear public interest benefits, which allowing the port to develop that triangle land would have.

94. And I think, again, I also think that the reduction in that circumstance, in the public interest benefits associated at Able, I've certainly not heard evidence that they would be particularly great, even in that situation. So I think in the situation that you've just outlined, Mr Newcombe, I think the balance has to fall on the port of Innigham.

95. But I would add that my position is, that hearing the evidence of Mr Cooper and Mr Galbraith, that effectively in all material respects the benefits that Able want to seek from the full AMEP can be done on the compromise. I don't think you're in that position, if I might respectfully say. I think the evidence is that you can have both. You can have the public interest benefits that come with the Able facility, and you can have the public interest benefits that come with the ABP—allowing ABP to retain the ability to develop that land.

96. MR NEWCOMBE: Just pause for a moment, Mr Rowell. Right. We were on

your second heading: 'maximising economic benefits'. Had you finished on that, or are there any other points you want to make before I move onto the third?

97. MR ROWELL: No, I'd finished on that.

98. MR NEWCOMBE: Thank you very much. You then come to your third heading, 'making best use of the characteristics of the triangle landholding'; the characteristics clearly including the deep water access.

99. MR ROWELL: Yes.

100. MR NEWCOMBE: I make no apology for repeating that. Okay. Take us through this one please.

101. MR ROWELL: Again, this again—you'll forgive me—as a planner, I always head towards policy. National planning—and here I'm referring to the national planning policy framework, which is the government's national framework for planning. And that sets—out in section 4 of that document, it sets out the way in which the government want to promote sustainable transport.

102. Running through that aspect of policy is the theme that plan making—again local plan making and decision-taking—should seek to ensure that the use of sustainable transports modes is maximised. National ports policies explains that the government wish to see port development, wherever possible, supporting sustainable transport, by offering more efficient transport links and lower external costs, and that's a quote from paragraph 3.3.5.

103. I think again you've explained, Mr Newcombe, in terms of the deep-water access, and we've discussed that. There are a number of characteristics which ABPs triangle landholding benefits from, which are relevant. They make them ideally suited for the purpose for which ABP propose. And they are as we've discussed, they are the proximity to the deep water navigable access channel, there is the proximity to the government storage pipeline system, there is the proximity to the national rail network, there's proximity to the road network, both the local and the strategic road network, and there is also the proximity to the underground gas storage cabins.

104. And I—my view is that, as a result of these characteristics, ABP's proposals for the site will provide for the sustainable import and onward distribution of the products envisaged to be handled. I think in a very real sense it will make use of sustainable transport modes, and make best use of the site for the purposes for which it's ideally suited. And I say that this is a benefit that's in the public interest.

105. MR NEWCOMBE: Good. Unless there's anything else on your third heading,

move onto your fourth, please: ‘the provision of a secure, flexible, reliable energy supply system.’

106. MR ROWELL: Yes. Again, I think this is a significant benefit in the public interest. And again if you go through various policy documents which you’ve got before you in the folder, if you go to National Policy Statement for Ports, if you go to the government’s Energy Security Strategy, if you go to, for example, the recent review of the refining and fuel import sectors in the UK, what those documents—and common themes which come through those documents—are that there is a need for reliability, security, flexibility and resilience in respect of the delivery of energy which we as a nation need. That’s, I think, common themes which are very clear in those documents which come through that. And my view is that ABP’s proposals for the triangle will provide additional facilities for the import, storage and onward distribution of a range of liquid bulk product, which will assist in achieving precisely what those aspects of policy want to achieve. And I say that that is a benefit in the public interest.

107. MR NEWCOMBE: Good. Anything more on energy supply?

108. MR ROWELL: Well it’s the fifth point which I say is in the public interest, and it’s what I’ve titled ‘the provision of additional capacity to serve renewable bulk energy products.’ And again reference back to National Ports Policy which talks about the vital role which ports play in the import and export of energy supplies. Mr Cooper has already explained to you why the port needs to protect its ability to expand its energy related dry bulk facilities. Mr Cooper has explained specifically about the biomass, and the need to potentially increase—provided capacity for the increase of the importation of bio-mass.

109. I just—one reference which I think is important in this respect is National Ports Policy, which makes clear in paragraph 3.3.5, that ‘the government wish to see port development wherever possible, supporting sustainable development by providing additional capacity for the development of renewable energy.’ Biomass, by reference to other aspects of policy, can clearly be seen as within that scope of the renewable energy being referred to. So it’s my view that the provision of additional capacity for the development of the biomass trade, is a clear benefit in the public interest.

110. MR NEWCOMBE: Thank you. Now, as you already indicated in responding to Mr Whitaker’s question, if the committee is satisfied on the evidence that the extent of scheme which Able proposes is not justified, having regard to the trade which they’ve demonstrated needs to be done—you understand what I mean by trade?

111. MR ROWELL: Yes.

112. MR NEWCOMBE: Then the public interest requires the scheme to come forward, in that reduced form, and the public interest of Immingham, and the public interest of that compromised scheme, move in the same direction. Again though, I want you to assume for the purposes of drawing the strands together under this heading, that for whatever reason the committee may not be satisfied on that point, contrary to ABP's primary case, and thus there is what I cause a tension with the public interest moving in divergent directions.

113. MR ROWELL: Yes. I think I can't really add to the answer that I've already given, that if you reach that point, and you are faced with looking at the balancing exercise of looking effectively at the Able need, of the AMEP need for the land, and the port of Immingham need for that land, it's my view that, looking at the evidence, the balance has to fall in favour of the port of Immingham. And again, for the reasons I've already explained, that's the decision that I think has to be made.

114. MR NEWCOMBE: Now the third of the tests is the question of serious detriment, and it may well be that you've already identified a serious detriment which would arise were the triangle land and its riparian right to be infringed. Now is your chance, please, either to simply adopt what you've said under your previous heading, or to add any other points which you wish to make.

115. MR ROWELL: I think I'd just add—I mean, obviously I don't want to go back over the evidence I've given. But I think I would just add that the serious detriment point is not, in my view, it's not just simply about the position as of today. It's about the impact on the operations of the port today and going forward. And, you know, almost irrespective of whether there is a specific proposal now or whatever for the use of that land, that land—the triangle land—is the only land available with access to deep-water which the port of Immingham have. If the port of Immingham is not able to develop that land, then there is serious detriment, in my view, to the ability of the port of Immingham to carry on doing what it is doing.

116. MR NEWCOMBE: Right. New matter Mr Rowell. We called a coastal processes witness and an ecologist yesterday, to deal with the two areas of environmental impact, which appear to call for some amplification as to whether or not reduction to the compromise scheme would or would not require the provision of further environmental information. Do you recall that? I do, yes. So far as you are aware, and you're a planner. You're not a noise consultant, or a landscaping visual consultant or

whatever. So far as you are aware, are there any other areas of environmental impact which warrant that degree of further investigation?

117. MR ROWELL: No they're not. And I would just add to that and elaborate on that if I can? ABP have, using the consultant team that they've engaged both on the IWDJ proposals and the AMEP proposals, have asked those consultants to look at the impact of a reduced AMEP scheme. And the conclusions coming from that work is that it would not generate any significant impact over and above that which would be generated by the full scheme.

118. MR NEWCOMBE: Thank you very much. You've already summarised most of your evidence. Are there any further summary or concluding remarks you wish to make, before I turn to you for cross-examination, and indeed any further questions the committee may have?

119. MR ROWELL: No.

120. MR NEWCOMBE: My lord, that concludes Mr Rowell's evidence in chief.

121. CHAIRMAN: Do the members of the committee have any questions for Mr Rowell at this point? No questions I think from our side, Mr Bird. Perhaps you would like to examine this directly?

122. MR BIRD: Thank you very much, Mr Chairman. Mr Rowell, good morning.

123. MR ROWELL: Good morning Mr Bird.

124. MR BIRD: Could we first go to the Secretary of State's decision letter, which is in the core reference bundle, document three. So that would be in the first volume of the four reference exhibits: volume three. It should be volume one of the core reference bundles, and it should be tagged three of the new one. We can see it's dated the 18 December 2013. It's fair to say, isn't it, that all of the national policy which you've been referring to in your evidence in chief was in place as at the date of the Secretary of State's decision?

125. MR ROWELL: All of the national policy was, yes.

126. MR BIRD: Yes. So in terms of the encouragement to port development, identification of the port of Immingham as being of strategic importance to the UK, and the need for the security of energy supplies, and the emphasis on renewable energy and the contribution ports could make to it, all existed as at the date of the Secretary of State's decision?

127. MR ROWELL: They did, yes.

128. MR BIRD: And all taken into account by the Secretary of State in his decision.

129. MR ROWELL: They were taken into account. Whether they were taken into account in sufficient detail is a separate question.

130. MR BIRD: Well Mr Rowell, it's fair to say, isn't it, you were involved in the panel process?

131. MR ROWELL: I appeared—I didn't appear, but I attended sessions at the examination, yes.

132. MR BIRD: Did you contribute of the form of the written representations to the panel process?

133. MR ROWELL: Yes I did.

134. MR BIRD: Yes. So you had the opportunity to bring before the panel, and through the panel to the Secretary of State, all those issues which were of importance to ABP, didn't you?

135. MR ROWELL: Well, I did. Yes, I did. And I believe there were aspects within those elements where—sorry, within the written representations which were made, where those points were, how shall we say, flagged.

136. MR BIRD: Good. So you did your job competently, not negligently, and brought to the attention of the panel all of those aspects of ABP's case which it felt to be important.

137. MR ROWELL: Yes I did. But the subsequent question to that, Mr Bird, is whether in my view the panel then correctly or sufficiently dealt with those points.

138. MR BIRD: Well, let's just touch on that. Stay with Secretary of State's decision letter first please. Go within the decision letter; first, I think, to paragraph 42. We see there, do we not, the reference to Associated British Ports case in relation to the certificate under section 127 of the 2008 act, in relation to the issue of the compulsory acquisition, and whether or not there would be serious detriment caused to ABP? And that summarises, does it not, the Secretary of State's position, in relation to the effect on ABP of that acquisition?

139. MR ROWELL: That summarises the Secretary of State's view, yes.

140. MR BIRD: Good. And we can agree, can't we, that as a matter of fact, as far as the IWDJ proposal is concerned, it has made no further progress than is here set out?

141. MR ROWELL: That is set out—what, here?

142. MR BIRD: Yes.

143. MR ROWELL: For the—yes, for the reasons that were explained, I think, to you yesterday, is that they've not made any further progress because, well, until the outcome

of this proceedings, I understand that the MMO have put the consideration of this on hold. So I think it's an unusual situation, and I don't think it would be right to characterise this as the normal state of affairs in terms of the procedure of a development proposal.

144. MR BIRD: The fact remains no material change of circumstance has there been since the Secretary of State reached his decision, in relation to the IWDJ application.

145. MR ROWELL: There hasn't, but as I've explained, there are reasons why that is the case, which is not the norm in terms of a development proposal.

146. MR BIRD: He also concluded that it was, and remained, appropriate to issue the section 127 certificate, because he wasn't certain that the IWDJ would proceed, or that it must occupy the triangle site. You don't contend, do you, that in terms of the assessment of the IWDJ scheme, he was wrong to apply a certainty test, having regard to the nationally important project with which he was concerned, and which ABP was seeking to amend?

147. MR ROWELL: I'm sorry, Mr Bird, you're going to have to rephrase that question, because I don't understand it.

148. MR BIRD: You don't suggest that he was wrong, were you, to apply a certainty test, having regard to the balance between the nationally important project with which he was concerned, and the IWDJ proposal being advanced by ABP as the need for the triangle site?

149. MR ROWELL: The certainty test isn't part of the test. It's the serious detriment: whether it's going to have serious detriment to ABP. So that is not the test which the Secretary of State had to satisfy himself, or was required to satisfy himself, of.

150. MR BIRD: What you're saying he's wrong, are you? First time I think we've heard that you were alleging the Secretary of State was wrong to apply the certainty test, in terms of establishing whether or not serious detriment will be caused to ABP? What are the words 'will be caused'?

151. MR ROWELL: Could you take me to where that reference is, Mr Bird?

152. MR BIRD: In terms of the test, what do you understand differently? What do you understand the test to be under section 127, and the serious detriment?

153. MR ROWELL: Well the test is, can the land be taken without serious detriment to the carrying on of the undertaking. That is the test.

154. MR BIRD: Yes. Yes. So you have to be satisfied, and the Secretary of State's indicating here, in terms of the issue of serious detriment, that if the land is taken there

will be serious detriment, don't you?

155. MR ROWELL: Yeah. The Secretary of State has to satisfy himself that there is serious detriment, yes.

156. MR BIRD: Yes. And that is why it's appropriate to use the certainty test, isn't it? You have to be sure that there will be detriment.

157. MR ROWELL: Yes, you do have to be sure—

158. MR BIRD: Good.

159. MR ROWELL: —that there would be detriment.

160. MR BIRD: And the Secretary of State wasn't sure, on the basis on the evidence before him, in terms of the IWDJ, was he, having regard to the stage it had reached?

161. MR ROWELL: That's the Secretary of State's position that he's taken. But the question that—the question I would raise, is was that issue adequately considered by the panel, therefore which was looked at by the Secretary of State?

162. MR BIRD: Well, forgive me.

163. MR ROWELL: So on the basis of what the panel told him, the Secretary of State has reached that view. But it would be my case that I don't think the panel looked at that sufficiently. And if I could give you an example, Mr Bird, is that the—for example, the national policy statement requires an applicant's assessment, for example, to give—should also assess any effects on neighbouring development. That's clear, and if you look at the panel report, there is no reference to that aspect of national policy statement, which requires that to be done. ABP pointed that out.

164. MR BIRD: Mr Rowell, you're not suggesting, are you, that the panel did not have regard to the possible effects on ABP of acquisition of the triangle. So we can go to the planned report section 18 if we need to.

165. MR ROWELL: No.

166. MR BIRD: So the suggestion that they were not aware of the need to look at the effect on ABP is nonsense, isn't it.

167. MR ROWELL: Pardon, sorry say that again.

168. MR BIRD: The suggestion that the panel were not aware of the policy need to look at the effects on adjoining landowners is nonsense, isn't it.

169. MR ROWELL: I agree that they were probably aware of it, but the question I have is did they do that sufficiently and did they allow that issue to be dealt with sufficiently.

170. MR BIRD: I'm not going to address whatever ground I've covered in terms the written representations. Go back to paragraph 42 of the Secretary of State's decision letter because there were two independent reasons why the Secretary of State concluded that ABP had not established serious detriment. The first is because of the absence of certainty that the IWDJ will proceed, and there has been no material change of circumstance since. The second and independently of that is that it bore any evidence that it must occupy the triangle site. Either one of those would be sufficient, wouldn't it, to have the effect that your serious detriment case fails.

171. MR ROWELL: In my view no it doesn't, because I think serious detriment is—as I've tried to explain—goes beyond just looking at the IWDJ proposal or the fact whether that IWDJ proposal has to occupy that site. I think serious detriment goes to... As I tried to explain, is even if you leave aside the IWDJ or the issues about alternatives, the fact is if the market fell away tomorrow for refined imported products, who is to say that in two, three, four or five years' time there wouldn't be another customer of ABP coming forward wanting to develop something. The point is I actually do think it was wrong for the Secretary of State to specifically look at the IWDJ proposal without taking the wider issues into account.

172. MR BIRD: You are not suggesting, are you, that a serious detriment case could be laid out unless you could show that there was some realistic prospect of the triangle site being used for a port-related purpose to serve ABP's interest in the foreseeable future.

173. MR ROWELL: But the evidence that I've—what I've demonstrated is that the policy position is, that irrespective of whether you have a specific proposal with a specific need, that site—bearing in mind the policy legislative framework within which ports operate—that site is the only expansion land with deep water access which the port can expand onto. I do think that—irrespective of whether a need for a specific proposal—yes, detriment would be caused by taking that away from ABP.

174. MR BIRD: Well there lies your problem Mr Rowell, doesn't it. In terms of detriment, that's only established provided you can show that there would be benefit in the use of the triangle site, i.e. that it could be put realistically to some form of port-related use of benefit to ABP. Unless you can establish that, then your benefits fall away, don't they.

175. MR ROWELL: But I don't think, Mr Bird, there is any in principle reason why that land cannot be used for port purposes for ABP. We have it identified in the

statutory development plan. We have the wider policy context which I have run through. I don't agree with you.

176. MR BIRD: We're not here dealing with the issue of principle. We're dealing with how it would practically be used to the benefit of the port, aren't we. We don't get economic benefits from a principle; you have to be able to put that principle into effect in order to achieve those benefits.

177. MR ROWELL: Apologies Mr Bird, I cut across you there. I think you're dealing with both. I think you're dealing with principle and you're dealing with the practicality.

178. MR BIRD: You cannot have serious detriment without the practicality can you. Loss of a principle which cannot be put into effect is not serious detriment, is it, to a statutory undertaker.

179. MR ROWELL: But again I come back to the evidence that I –

180. MR BIRD: Answer the question. You can add the rider afterwards.

181. MR ROWELL: Could you put –

182. MR BIRD: Loss of a principle to a statutory undertaker is not of itself serious detriment in the absence of the loss of a practical opportunity.

183. MR ROWELL: I think that it is, but I will... As I said to you before, I think it is both a principle and a practical view that needs to be taken. As I have said, I do not see any in principle practical reason why that land cannot be developed by ABP for port purposes.

184. MR BIRD: We'll come back to that in a moment. We then go on in the Secretary of State's decision letter, if we can, to the overall conclusion section which is paragraph 50 onwards. We can see in paragraph 51, can't we Mr Rowell, the overall balance undertaken by the Secretary of State which takes into account the effect on the European site and the habitats directive.

185. MR ROWELL: Yes.

186. MR BIRD: And his overall conclusion that the benefits would outweigh significantly the residual adverse impacts of the project after mitigation and after taking into account the proposed ecological compensatory measures.

187. MR ROWELL: That's what it says, yes.

188. MR BIRD: Good; and Able demonstrated to the satisfaction of the Secretary of State firstly that there were no alternatives to the scheme, didn't they.

189. MR ROWELL: They did.

190. MR BIRD: They demonstrated to the benefit of the Secretary of State that there were imperative reasons of overriding public importance why the scheme should progress, notwithstanding the impact on the European site.

191. MR ROWELL: They did to the satisfaction of the Secretary of State, yes.

192. MR BIRD: And they satisfied the Secretary of State on the issue of compensation in terms of the effect on the European site.

193. MR ROWELL: Eventually I understand that they did, yes.

194. MR BIRD: Good. Those are all very high thresholds to pass, aren't they, in terms of any project.

195. MR ROWELL: They are, yes.

196. MR BIRD: Good. They demonstrate, don't they, the weight which the Secretary of State has attached to the need case for the AMEC project.

197. MR ROWELL: Yes, but again there's the argument between need and the argument between the public interest. What you've just run me through there is the public interests which Able have identified as being met. The need, as I've experienced through numerous infrastructure projects... The question then is, but do you need absolutely everything that you have applied for? It is a slightly different consideration. The point you have put to me is about public interest rather than the specific need.

198. MR BIRD: Where do you get the test, 'do you need absolutely everything that you have applied for'? What do you understand the test is in terms of the acquisition of land? I think it is fair to say that the panel and the Secretary of State identified that all of the land being acquired as part of the AMEC scheme was reasonably required for that scheme.

199. MR ROWELL: That is the conclusion which the Secretary of State has come to, yes.

200. MR BIRD: And you differ, is that right?

201. MR ROWELL: I differ from—from the evidence I've heard I do not believe that all of the land is reasonably required to meet the public interest benefit which ABLE have identified. I think that is the evidence which others have produced on ABP's behalf.

202. MR BIRD: Yes, so you rely, for example, on Mr Slark's evidence of need.

203. MR ROWELL: I rely on Mr Cooper, Mr Slark and Mr Galbraith.

204. MR BIRD: Well we'll come to Mr Cooper and Mr Galbraith in a moment. You rely firstly on the issue of need, for renewable and offshore wind turbines in particular, on Mr Slark, yes.

205. MR ROWELL: I do, yes.

206. MR BIRD: Who accepted that he had only assessed part of market, namely the installation of turbines as opposed to the market available to the AMEC scheme, didn't he?

207. MR ROWELL: I heard that aspect of his cross-examination and I have to say I was somewhat surprised about references to market beyond those which Mr Slark had looked at because, from the application documentation which you put in, I'd understood that that wasn't a need which was being referred to by yourself, but I heard that.

208. MR BIRD: Well forgive me; what I wanted was what your position is. In terms of your having undertaken your public interest balance, compare the case in the public interest, have you or have you not taken into account the potential of the AMEC scheme to serve wider markets?

209. MR ROWELL: I haven't because the public interest benefits which I have referred to are the public interest benefits which your clients themselves have referred to in their application documents; so they are the public interest benefits which I have taken account of. So if for example, Mr Bird, those public interest benefits have included the wider need, then yes I have taken them into account, because I have taken your client's public interest, as specified in their application document, as the public interest benefits that I have been looking at.

210. MR BIRD: Forgive me Mr Rowell. In terms of the AMEC scheme, you are not seriously contending, are you, that it doesn't have the potential and has always had the potential to serve an export market in terms of components.

211. MR ROWELL: That's where I have to say, Mr Bird, I'm not in a position to say yes or no. I'm not an expert in that field.

212. MR BIRD: You have excluded it from your considerations where the public interest lies, we can note that.

213. MR ROWELL: No, that's not what I said.

214. MR BIRD: What are you saying?

215. MR ROWELL: I said that I have taken the public interest benefits into account which your client refers to, so if they –

216. MR BIRD: Well forgive me; do they not include the potential of the AMEC scheme to serve a wider market than the UK market in terms of components?

217. MR ROWELL: I could not see from reading your client's application that they did; so if your client hasn't included them then I haven't taken them into account.

218. MR BIRD: So straightforward answer—you have not. Is that right?

219. MR ROWELL: I haven't, Mr Bird, if your client has not taken them into account.

220. MR BIRD: In terms of alternatives to the IWDJ concerned, you rely there on Mr Cooper's evidence do you, and the note that we were presented with this morning.

221. MR ROWELL: I do.

222. MR BIRD: Can we just look at the note and see to what extent it patches up the IWDJ alternatives case on behalf of ABP? I don't know whether it has a reference, my Lord Chairman; I don't have a document number as yet for it, but if everybody has it to hand.

223. MR NEWCOMBE: If it would assist, my Lord, it might helpful to make it ABP29 which follows on in sequence, but that's merely a suggestion. Forgive me; I should have touched on that when I introduced it.

224. MR BIRD: If we go to paragraph four of the note, it doesn't, does it, advance the relationship of the IWDJ to the caverns one jot from the position we established with Mr Cooper. Namely there's no evidence from ABP that there is any spare capacity within the gas caverns for additional storage, is there?

225. MR ROWELL: What's put there—and again, Mr Bird, you'll appreciate that I'm not the author of this note –

226. MR BIRD: Who was?

227. MR ROWELL: But what it...

228. MR BIRD: Who was?

229. MR NEWCOMBE: There's a signature at the end, Mr Bird.

230. MR BIRD: So Mr Cooper was the author of it.

231. MR ROWELL: When you refer to the gas caverns, it is the second paragraph there which you need to look at. The essential point to appreciate is not the capacity of the gas caverns but the fact that the IWDJ will be required to service the gas caverns in the event that HIT3 is built because the gas jetty will no longer exist.

232. MR BIRD: Well that makes the point, doesn't it? 'In the event that HIT3 is built'—and we know from Mr Cooper that HIT3 is simply an option that ABP is

seeking to preserve. There is no commitment, be it funding or any other commitment to the development of HIT3, is there?

233. MR ROWELL: That's a question you'd have to put to Mr Cooper.

234. MR BIRD: Well I did, and he said, no, there wasn't any funding committed to the scheme. His evidence was that it was an option which ABP were seeking to preserve.

235. MR ROWELL: If that is Mr Cooper's evidence, I think that makes the point. It is about optionality. It is about the port being able to develop its business in the future. I think that is a genuine point to be considered.

236. MR BIRD: Paragraph six—in terms of modelling of the IWDJ, again that doesn't advance the position. There has been no modelling, has there?

237. MR ROWELL: It says what it says, Mr Bird.

238. MR BIRD: I'm getting you to agree. You are the only witness left for me to ask these questions of, you see Mr Rowell, so I have to ask them of you in fairness. There's been no modelling and we see the last sentence of paragraph six still continues to rely on the modes of getting the fuel out of any storage would be the pipeline—the GPSS pipeline at 80%, train 10% and HGV 10%. That of course is entirely dependent on the pipeline having capacity for that isn't it?

239. MR ROWELL: Yes, it depends on being able to get that out of the pipeline but –

240. MR BIRD: There's no evidence is there –

241. MR ROWELL: But as Mr Cooper explained to you, and talking with ABP, they have not been able to talk to the OPA perhaps in as much detail as they would like because of the sale process for the OPA, but I can't believe that ABP would proceed with a proposal like this without there being some view that that capacity was available.

242. MR BIRD: Well I'm sure they won't but they haven't checked, have they, to see whether that capacity is available.

243. MR ROWELL: I think they have checked as far as they're able to at this stage because of the circumstances which have been relayed to the committee.

244. MR BIRD: Mr Rowell, they have no idea do they—ABP—as to whether there would be adequate capacity in the existing pipeline.

245. MR ROWELL: I am afraid, Mr Bird, that is a question that you are going to have to put, or perhaps you should have put to Mr Cooper.

246. MR BIRD: I did, and his answer will be in the transcript. You don't take that any further, because that's relevant, isn't it, for the issue of alternatives. If we go down to look at the issue of alternatives in the note—it is over the page—paragraph 14 touches

on the Immingham oil terminal. If we go to the second and third bullet points which are said to provide the constraint in terms of an extension. The first one, which is a perennial theme of ABP, is that it might actually have to acquire rights. Why is that such a problem?

247. MR ROWELL: Sorry?

248. MR BIRD: Why is that such a problem?

249. MR ROWELL: You would have to ask ABP.

250. MR BIRD: Well in your experience of working for ABP they have, do they not, powers of compulsory acquisition. There are some contained in their draft harbour revision order application for the IWDJ.

251. MR ROWELL: Yes, they do have powers of acquisition, Mr Bird. I think as well an important point which Mr Cooper made in re-examination was if this is, if I might say, a genuine alternative from your client's perspective, it is not only ABP that could have compulsory purchased this land. It is not only ABP that, through an HR or whatever, could do that. Your client could have done that through their DCO and sought to replace ABP's land if this was a true alternative.

252. MR BIRD: In terms of just ABP's position, I am investigating here whether there are options open to ABP to extend the IOT. We are agreed, according to the note, that subject to the acquisition of rights that could be achieved, because the next bullet point then refers to the distance from the GPSS system which ABP has no evidence could in fact be accessed by any additional fuel storage, and to the gas caverns which again it has no evidence have any capacity for any such additional storage. Neither of those are compelling reasons against IOT as an alternative location.

253. MR ROWELL: Even if the arguments you make hold true, Mr Bird, the fundamental point that comes back is ABP still require that triangle land for their future undertaking. Even if your arguments are right and there is an alternative to the IWDJ at the moment, which I am not accepting there is because I am not the relevant witness to go through that in detail, you are still left with the position that ABP still require that land for their undertaking going forward. It is the only site with deep water access available to them.

254. MR BIRD: 'Within their control' are the words which you repeatedly added to that expression as you went through your evidence in chief, which is why I raised the issue of the acquisition of rights.

255. MR ROWELL: ABP as a statutory undertaker have the ability of those rights. But the question I would raise is they have that land existing at the moment. There is no guarantee that those rights will be granted to them. That's a process that has to go through. Irrespective of that, you're still left with taking away the only bit of land which they currently have which has got deep water access, which is identified as being needed for the future of the port.

256. MR BIRD: Forgive me; if such expansion is vitally important to the preservation of the strategic port of Immingham which is your evidence, and if it could be demonstrated that land was necessary in order to deliver that objective, what would actually stand in the way in terms of the compelling case in the public interest of ABP being accorded those rights?

257. MR ROWELL: Well you would hope that that argument would be put forward and be accepted, but I cannot tell you. I cannot prejudge a theoretical process that we are talking about in front of another decision maker.

258. MR BIRD: Then if we go to paragraph 15 of the note which deals with the potential for an additional berth to the west of HIT3 between it and South Killingholme Jetty, the only issue raised is the ability to accommodate the design of vessels that will use the IWDJ. Again just check ABP's position; is it saying that in terms of the use of any such new berth there would not be the ability to schedule vessel movement so that that berth could be used in conjunction with the use of HIT3 for liquid bulks?

259. MR ROWELL: I am afraid, Mr Bird, that is a question you are going to have to raise with somebody else who knows about these things.

260. MR BIRD: Then in terms of the South Killingholme Jetty; other than, I think, in the second bullet point—the need for additional pipework infrastructure and the potential to reconstruct the existing jetty were there to be any foundation issues—there do not appear to be any constraints to the improvement of the South Killingholme Jetty, are there, subject to negotiation.

261. MR ROWELL: I think that last bit is quite important though, isn't it?

262. MR BIRD: Subject to the issue of negotiation—so we are back to the issue of rights again.

263. MR ROWELL: Well it's not owned by ABP, is it? Again, Mr Bird, I am not ABP. You have the evidence of Mr Cooper on these alternatives. I cannot add... It is evidence and issues which are beyond my expertise.

264. MR BIRD: No Mr Rowell, you are here performing, as I understood it, the overall balance in the public interest; to advise the Joint Committee on whether in your view there's a compelling case in the public interest against the acquisition. Relevant to that is the weight one attaches to the argument as to whether or not there are any reasonable alternatives to the IWDJ. I think the Joint Committee can expect, can they not, that you would have formed a judgment as to the weight to be attached to those. Have you?

265. MR ROWELL: I have using the detailed evidence of Mr Cooper who has indicated to you why these are not alternatives. I come back to the point I raised; even if, Mr Bird, your arguments stand—and I do not believe that they do from the evidence that Mr Cooper gave—but even if your evidence stands, you still have ... ABP have that land on which to expand. So even if there is an alternative for this specific proposal, ABP still require that land for the future development of the port. It is the only land which has got deep water access.

266. MR BIRD: We'll come to that point in a moment. Then as far as Stallingborough is concerned which is paragraph 17. I note the correction in relation to rail access. The note says it has not got rail access; that is a correction. But in terms of the land itself, other than the pipeline and securing an easement for the pipeline, no other constraints to its use for that purpose identified.

267. MR ROWELL: It is not identified in those paragraphs, but whether there are any other restrictions again would be a matter that would need to be looked at in detail and Mr Cooper has already given you his view on that. I have to say I do find it very surprising putting forward a potential alternative which has such a long pipeline connection from the site to the jetty. You talk about an easement; I'm not sure an easement would suffice.

268. MR BIRD: In terms of the triangle site, that doesn't presently have rail access either does it?

269. MR ROWELL: It does not have a rail spur into the site, no, but the rail runs close to it.

270. MR BIRD: And requires the acquisition of rights.

271. MR ROWELL: I wouldn't know whether it does or it doesn't, Mr Bird.

272. MR BIRD: Well have you looked to see whether or not that could be achieved without the acquisition of rights in terms of your public interest balance?

273. MR ROWELL: No I haven't, but even if it does require those rights, I can't see any reason why those rights could not be acquired. I haven't looked at whether the rights are needed or not.

274. MR BIRD: Just take up the ABP original bundle of documents if you would. Go, if you would, to exhibit seven which is the artist's impression of ABP's compromise. Although it's not terribly clear, we see above the OPA facility to the left of the triangle site. We see above the words 'OPA Facility' a grey line which is the railway and railway siding in order to serve the triangle isn't it.

275. MR ROWELL: That is what is shown there but whether that accurately reflects the application documentation that's gone in, I don't...

276. MR BIRD: Well, forgive me, is there any way of achieving that without acquiring land? Or any way, as far as you are aware of securing access into the triangle site without acquiring land?

277. MR ROWELL: Mr Bird, I've not been involved in the detail of the current IWDJ proposal.

278. MR BIRD: You must have read it.

279. MR ROWELL: That's not a detail that I'm going to be able to help you on.

280. MR BIRD: You must have read the application, have you, and the documentation supporting it.

281. MR ROWELL: Yes I have, but again it comes back to the point that the current IWDJ proposal to a certain extent is irrelevant.

282. MR BIRD: Whether or not the current proposal is irrelevant, the issue of securing rail access to the triangle is not irrelevant is it? That is relevant to whether or not you can get the fuel in and out of the site by means other than the road. So what I am asking you is whether or not you've identified any means of getting rail access to this site which does not involve land within the Oil Pipelines Agency site, and in particular their entrance and indeed their administration building or buildings which we can see on this impression.

283. MR ROWELL: I believe that's the proposal that's been put forward, yes.

284. MR BIRD: Well is there any means of achieving it without having that effect on OPA land?

285. MR ROWELL: I'm not a railway engineer; I couldn't tell you whether it can or cannot.

286. MR BIRD: Just staying with the issue of the IWDJ scheme, just back to the issue of balance. As far as EN-1 is concerned—so that’s the national policy in relation to nationally important infrastructure projects—you’ve included some extracts in the exhibit bundle that we received today, haven’t you?

287. MR ROWELL: Is this the National Policy Statement for...

288. MR BIRD: It’s EN-1—the general National Policy Statement.

289. MR ROWELL: Thank you.

290. MR BIRD: ABP24.

291. MR ROWELL: Yes, I have that. Yes, I have included some extracts.

292. MR BIRD: 25 sorry, mine is out of tab kilter. I don’t know whether others have the same issue. They’ve been loaded incorrectly so it may be in 24 or 25, but it looks, my Lord, like that blue front piece.

293. CHAIRMAN: 25.

294. MR BIRD: 25.

295. MR ROWELL: It’s 24 in mine but I have the document.

296. MR NEWCOMBE: My Lord, I apologise on behalf of ABP. There is a mismatch. We’ll have that corrected and provide you with a new index; my apologies to the committee and to Mr Bird.

297. MR BIRD: As far as the extract you’ve included is concerned it doesn’t, does it, include the section of the National Policy Statement which deals with the advice on alternatives?

298. MR ROWELL: No it does not.

299. MR BIRD: No, but you’re familiar with that advice I assume.

300. MR ROWELL: Yes, and I believe it is similar to the advice on alternatives that is contained within the national ports policy.

301. MR BIRD: Yes, so alternative proposals and the compromise proposal would be, as it were, ABP’s alternative proposal to the AMEC scheme as I understand it.

302. MR ROWELL: Yes it is an alternative, yes.

303. MR BIRD: Alternative proposals which mean that the necessary developments, so just assume for the purposes of my question that the AMEC scheme is necessary development. But alternative proposals which mean that necessary development could not go ahead because of viability or other reasons, are not, are they, as a matter of government policy to be treated as either important or relevant to the decision making process.

304. MR ROWELL: It might be helpful if we had that extract so we could discuss that.

305. MR BIRD: Paragraph 4.4.3, for the record, in the EN-1. I am happy to read it out and we can supply it as an addition to the exhibit. So in part four of the National Policy Statement which deals with the assessment principles and it is on page 49 of the EN document; do you have that Mr Rowell?

306. MR ROWELL: No, I'm afraid I don't.

307. MR BIRD: Let's see whether we perhaps might do it by reference to the national—there's similar advice in the National Policy Statement for Ports—because we do have that in its complete form.

308. CHAIRMAN: I'm lost on the reference, Mr Bird.

309. MR BIRD: My Lord, it is not in the EN-1 document but I'm trying to see if there's a different way of dealing with the issue. I'm afraid we only have extracts of the National Policy Statement on Ports as well. Can I read the extracts, my Lord, and then we can supply, as it were, an additional page to the exhibit? It's from paragraph 4.4.3 of EN-1. There are a number of bullet points which give advice on the extent to which alternatives are relevant in the decision making process under the Planning Act. They include alternative proposals which mean the necessary development could not proceed, for example because the alternative proposals are not commercially viable or alternative proposals for sites would not be physically suitable, can be excluded on the grounds that they are not important and relevant to the IPC decision. The IPC there was a reference to the now abolished decision-making body, but it is now the Secretary of State via the panel. Then alternative proposals which are vague or inchoate can be excluded on the grounds that they are not important and relevant to the IPC's decision. Those were the two that I was going to ask Mr Rowell about. In terms of the first of those, if the ABP compromise would or might have the effect of frustrating the AMEC scheme as a whole, it would not, would it, for the purposes of national policy be a relevant and important alternative?

310. MR ROWELL: Without the benefit of the text in front of me which is quite difficult, if that is what the policy says and if that is the conclusion and the evidence that can be demonstrated then I see the point, yes.

311. MR BIRD: I am happy if you want to look at it in due course and come back if you ... add any rider; I am more than happy in relation to that. In terms of the second point—vague or inchoate proposals—in terms of specific proposals for the IWDJ site

which are being advanced by ABP, there is, is there not, no evidence in terms of the fuel type which is intended to pass through the IWDJ's site under the ABP compromise?

312. MR ROWELL: Under the ABP compromise?

313. MR BIRD: Yes.

314. MR ROWELL: I imagine it would be the similar type of fuels that they have talked about in terms of the application that is in front of them.

315. MR BIRD: They again are vague, are they not?

316. MR ROWELL: I think it's very—if I might say—at this stage being precise about fuel and the precise mix of fuels, I wouldn't expect them to be very much more detailed than they have been at this stage.

317. MR BIRD: Well that affects, as it were, the capacity and the throughput of the modelling issue which I've already touched upon, doesn't it?

318. MR ROWELL: I'm sorry. I'm not quite clear on...

319. MR BIRD: The type of fuel will effect what you can get through any given site having regard to statutory requirements, the pumping requirements, the containment requirements, etc.

320. MR ROWELL: Yes it will.

321. MR BIRD: As far as the IWDJ scheme is concerned, it is not, is it, advanced as a nationally important project.

322. MR ROWELL: It is not advanced as a nationally significant infrastructure project falling within the terms of the Planning Act 2008, but I don't think that that necessarily means you can exclude it as project of national significance.

323. MR BIRD: Well forgive me. If you are comparing a scheme which is demonstrably within the statutory definition of a nationally important infrastructure project and one which is not, which do you give greater weight to if you are striking a balance?

324. MR ROWELL: The question you asked me was not to compare. The question you asked me was, was I arguing that the IWDJ was a project of national significance? For the reasons I've given I believe that it is nationally important.

325. MR BIRD: Back to my question—when you are comparing a project which is demonstrably within the statutory definition of a nationally important project with one which is not, which do you give the greater weight to?

326. MR ROWELL: It depends upon the detail of the two projects.

327. MR BIRD: In terms of the detail of the two projects we have the ABP scheme which has the potential to generate 50 jobs.

328. MR ROWELL: But as I've –

329. MR BIRD: Just agree the point and then you can add any rider you like. It has the potential to generate 50 jobs, doesn't it?

330. MR ROWELL: In pure job numbers, yes, but I come back to the point I've raised before. It's not just about the specific proposal, but it's about what that proposal then has in terms of the ability of the port of Immingham to develop and grow its business. I don't believe that you can just look at the proposals on that site in isolation. You have to look at them as part of the development of the wider port.

331. MR BIRD: Yes, which is why we've touched on the issue of alternatives, and you have no evidence that a single port occupier will lose existing employment as a result of the AMEC scheme going ahead as it is, do you?

332. MR ROWELL: The evidence I have is the evidence which is given by the chief executive of ABP, in which he said there is a real risk that that will occur, and also based upon my experience of working with the ports industry that that is a very real risk.

333. MR BIRD: Well forgive me. In terms of the very real risk, that of course depends entirely on you being able to demonstrate those existing employers do not have capacity to expand elsewhere within the port, don't they; a question to which you had no answer when asked.

334. MR ROWELL: That is one of the issues, yes.

335. MR BIRD: Yes good. Now as far as general approach of policy is concerned and EN-1... My Lord, I do notice the time and I think on the timetable there was an indication there would be a morning break. I will just give you the opportunity of that. I am not saying that I need one or that it is the right moment for one, but if you wanted one now is as good a moment as any.

336. CHAIRMAN: Well thank you Mr Bird. I think that as we have arrived at a suitable moment it may be the best time to take... If it is a suitable break for you, then I think it will be a suitable break for the committee. I think I will suspend the committee meeting for 20 minutes. Thank you.

Sitting suspended

On resuming—

337. CHAIRMAN: Mr Bird, you may note that Mr Offord has left the Committee for only a few minutes and he has suggested that it would be perfectly all right for us to start. He will be back with us within a very few minutes. He is just recording his vote. So, I think now we have reached the end of the 20 minutes and if you would like to continue, please do.

338. MR BIRD: Thank you very much, my Lord Chairman. Mr Rowell, I just wanted to turn to general policy issues arising from the Overarching National Policy Statement for Energy, which you have included extracts from at your ABP 25. I don't think we need to go through the extracts. I think these are propositions which should not be in dispute between us. It is right, isn't it, that as far as the Government is concerned, it advises that the UK needs all types of energy infrastructure covered by the National Policy Statement in order to achieve both the energy security of supply and also the greenhouse gas emissions reductions?

339. MR ROWELL: Yes, I believe that is what the policy says.

340. MR BIRD: Good, and just as with ports it is for the industry to propose new projects within the framework set by Government, and the Government does not see it as appropriate to set targets or limits does it?

341. MR ROWELL: No, I don't believe that it does.

342. MR BIRD: In terms of the approach to such projects, again, as with ports, as we have seen, the Government's advice is that decision makers should proceed on the basis of the scale and urgency of the need as described in the relevant policy guidance is demonstrated?

343. MR ROWELL: Yes, I believe that is what the policy says, yes, but we need to check it. We can check it.

344. MR BIRD: Good. And as far as the National Policy Statements are concerned, if we just go to tab 25, the Overarching National Policy Statement—this is your second bundle of exhibits and in that, tab 25—just inside the front cover we can see that all National Policy Statements are presented to Parliament aren't they?

345. MR ROWELL: They are indeed.

346. MR BIRD: That is indicative of their importance and to enable Parliament to have input into their content.

347. MR ROWELL: Yes.

348. MR BIRD: Then if we could go, please, within your tab 25 to section 3, which starts in your extract on page 35, you have included quite a lot of material here in terms

of the gas market.

349. MR ROWELL: Yes, what has been included is section 3.8, which is the Need for Nationally Significant Gas Infrastructure, and 3.9, The Need for Nationally Significant Oil Infrastructure, yes.

350. MR BIRD: Yes. In terms of the issue of and gas and liquefied natural gas, we heard from Mr Cooper that if AMEP were to proceed, even with the compromise, then the triangle site would not be used for LNG for safety and other reasons. Do you recall that?

351. MR ROWELL: I am not sure I recall that precisely. I am not saying that he didn't say that but it would be useful to go to the transcript.

352. MR BIRD: Certainly that is my recollection of what he said, which is why I am asking why it is we have the gas market here given that it wouldn't be served by the triangle if the AMEP scheme went ahead.

353. MR ROWELL: I am not sure that that is what Mr Cooper said. We would have to go back to the transcript and have a look at what he said on that.

354. MR BIRD: We could take time doing that now but that is my clear recollection. I am not being contradicted as to what he said and on the assumption that that is what he said, as far as LNG is concerned, it must follow, mustn't it, that as far as ABP is concerned it does not regard the LNG storage case as sufficient to outweigh the benefits of the AMEP scheme?

355. MR NEWCOMBE: No barrister can resist an invitation to be contradictory. My Lord, that is not my recollection, and I say this I hope to be helpful. Mr Cooper, in response to questions from me, indicated firstly that the LNG was not an upfront or critical part of it; that it only required further investigation and, in my words, not his, I recall him saying that he was not ruling it out but it was not a central part of the case at the moment. Now, I will cooperate with Mr Bird and we will find the relevant transcript and insofar as it is material we will put an agreed position back.

356. MR BIRD: I am quite happy with that, my Lord, but it was not just questions from you, it was my questions in cross-examination and the answers given, but recollections can fade, even over short periods of time, so I had better check that I have got it right. But on that basis, if that is right, Mr Rowell, LNG is not being advanced, is it, by ABP as a significant matter in relation to the triangle site in terms of the national security of supply or, indeed, the market is it?

357. MR ROWELL: Again, I have managed to find the extract and it is

Mr Newcombe. I think this is the relevant extract and I will be corrected. Mr Newcombe put that point: "Is LNG a core part of ABP's requirements for the IWDJ or is it merely a potential use which is being explored?", and Mr Cooper said, "It is a potential use which is being explored. It is a new potential market."

358. MR BIRD: Yes, that is why I referred to the question put in cross-examination because I asked him, for example, whether or not the costs of the provision of liquefied natural gas storage had been assessed on the site, for example, and other questions came back. I just want to know what ABP's position is. Are you saying that this site can be made suitable for LNG storage? If so, where is the assessment to demonstrate that?

359. MR ROWELL: ABP's position on that is the position as expressed by Mr Cooper, but in terms of the use of LNG on that site, if ABP want to use the triangle landholding for LNG storage under the compromise, then that will have to fit in with whatever happens on the sites around the triangle landholding.

360. MR BIRD: If we go to paragraph 13 of Mr Cooper's note, which I think we are calling ABP exhibit 29, which was put in this morning, in terms of the costs estimate for the IWDJ which we see at paragraph 13 of that note, there is no provision within that cost for the costs of LNG storage is there?

361. MR ROWELL: There isn't but there isn't any costs with any product storage because I think, as the final paragraph makes clear, and again I am here just reading out what ABP have put, this is consistent with the majority of ABP projects where ABP invest in the transport infrastructure and the operator of the site invests in the specialist operating infrastructure such as tanks and shore-side safety equipment, so no, that 40 million does not because that is what the customer or the operator invests in.

362. MR BIRD: Yes, and what would be the broad range of costs for LNG storage, provision of the capacity required on this site?

363. MR ROWELL: That is a question which as a planner I am unable to give you an answer to but I am sure that ABP could provide an indicative cost if you would like that.

364. MR BIRD: Have you seen any evidence that the triangle site could viably support LNG storage?

365. MR ROWELL: Have I seen any?

366. MR BIRD: Yes.

367. MR ROWELL: I have not seen any.

368. MR BIRD: No.

369. MR ROWELL: But that doesn't necessarily mean that it isn't viable because I

have not seen any assessment that it isn't.

370. MR BIRD: If we take up, please, the Able exhibit bundle and go within that to Able exhibit 12, we find there the IHS report on UK Refined Product Market and LNG Analysis, do we not?

371. MR ROWELL: Yes, I have that.

372. MR BIRD: The content of this is not challenged by ABP, is it, in terms of its broad overall conclusions?

373. MR ROWELL: Again, we need to go back to the transcript in detail to understand ABP's position as Mr Cooper has explained that to you. My understanding is, as you said, that the broad conclusions are not necessarily disagreed with, but there are aspects of detail which are.

374. MR BIRD: All right. Let's go on to page 25. Which of the aspects of the assessment of the UK LNG market history and forecast in section 5 of this report are disputed by ABP? That is a section which goes from page 25, for the record, to page 30. So, which of the paragraphs of this section are disputed by ABP?

375. MR ROWELL: That is a question which, I think, Mr Bird, you should have put to Mr Cooper.

376. MR BIRD: I did. I asked him whether or not there is a cigarette paper between ABP and IHS and he said not, and indeed, was asked that in chief—"not"—which is why I am just confirming with you to find out whether or not as far as this chapter of the report is concerned there may be an issue.

377. MR ROWELL: You have asked me whether ABP disagree with it. As I have said to you before, I am not ABP and I do think the question is slightly different. You didn't put the specific question to Mr Cooper about which bit of that section he agreed or disagreed with.

378. MR BIRD: Because I asked him about the report as a whole and he said you could not put a cigarette paper between ABP and the report as a whole. I am just trying to establish with you whether, through your exhibits, you are trying to push rather more than a cigarette paper between ABP and IHS. What is the position?

379. MR ROWELL: The position is as Mr Cooper has explained. ABP's position is as Mr Cooper has explained.

380. MR BIRD: As far as the assessment of the LNG market is concerned, if we go to V2—I am afraid that the paragraph numbers are slightly strangely numbered but it is V2 on page 25—we can see, can't we, in terms of the capacity of terminals which are used

for LNG, whilst they began to be heavily utilised, since the mid-2005 period it has actually only averaged around one-third over the past five years and was less than 20 per cent in the period mid-2013 to mid-2014. So, there is a very substantial capacity in the storage of LNG at present, isn't there?

381. MR ROWELL: From a UK perspective, yes, but the question then comes that this is looking at it from a UK perspective. But again, as I have tried to emphasise at the beginning, the need for port infrastructure does not just take into account overall demand.

382. MR BIRD: But it will take into account existing facilities elsewhere and the cost of revision of facilities for LNG because they will affect the commercial decision to invest in LNG facilities won't they?

383. MR ROWELL: The market will take account of other facilities if the market wants to use those facilities because they are in the right location and they are what the market wants, and that comes back to the point, as Mr Cooper did say, that this is looking at it from a UK perspective but what you have to look at it from is an Immingham perspective.

384. MR BIRD: We will come to that in a moment. Let's go over the page to V8. In terms of the Isle of Grain LNG import terminal, it has presently utilised less than 6 per cent in the six months to the middle of the year we see from V8 isn't it?

385. MR ROWELL: That's what that says, yes.

386. MR BIRD: Yes. Teesside Gas Port, V10 has averaged less than 1 per cent over the past five years and zero in the 12 months to the middle of 2014.

387. MR ROWELL: That is what that paragraph says, yes.

388. MR BIRD: South Hook, over the page, V12, two lines up from the bottom, a capacity of 53 per cent over the past five years and has been around 37 per cent in the past 12 months to the middle of 2014.

389. MR ROWELL: That is what that says, yes.

390. MR BIRD: Dragon, V14, has averaged around 21 per cent over the past five years and less than 3 per cent in the 12 months to the middle of 2014. Yes

391. MR ROWELL: Yes, that's what that says.

392. MR BIRD: And then the output for the UK LNG import capacity requirements, V17. Conclusion of the report: no clear need for additional capacity.

393. MR ROWELL: That is what that report says and, as I have said, that is looking at it from a UK capacity point of view, but as National Ports Policy makes clear, need, in

terms of specific proposals, is not just based upon overall UK demand. There are other aspects you take account of.

394. MR BIRD: Yes, and one of those other aspects you take account of is cost isn't it, because the report also concludes that if there is likely to be expansion of the existing facilities it is likely to be far more cost effective to expand existing LNG storage than a newly constructed site at some other UK location. Do you have any evidence to dispute that?

395. MR ROWELL: No, as a statement I would agree with that but the market will decide whether it is cost effective to do that or whether it wants facilities in a different location.

396. MR BIRD: As far as liquid bulks are concerned—you can put the Able exhibits away for a moment, and take up your most recent ABP exhibits—we are back to the Overarching National Policy Statement at tab 25 again.

397. MR ROWELL: Yes.

398. MR BIRD: Just in terms of the section which you have included, that is section 3.8, which starts on page 35 dealing with the need for nationally significant gas infrastructure, it doesn't does it, express the need by the same reference to urgency as the document refers to the need for renewable energy?

399. MR ROWELL: I don't know whether it does or it doesn't, Mr Bird. You will have to take me to the relevant references to help me to agree that.

400. MR BIRD: Are you aware of any reference? It may very well be there; I may have missed it, but are you aware in this section of the reference to urgency which appears in relation to the need for renewable energy sources?

401. MR ROWELL: I am not aware that there is or there isn't such a reference. I can go away and look at it if you would like me to.

402. MR BIRD: It is relevant, is it not, in terms of the relative weighting of a renewable energy scheme versus one which is being promoted for fossil fuels?

403. MR ROWELL: I don't believe that it necessarily is. Coming back to your opening statements to me, it is about all sources of energy, which are important. I am not dismissing the renewables, but we are going to need fossil fuels as well, as you made clear at the beginning. It is the full gambit of energy that is required.

404. MR BIRD: But where you are advancing a trade-off between two which are both covered by the National Policy Statement, in terms of a choice between renewable and fossil fuel, in terms of the urgency of need, you are likely to give greater weight, are you

not, in the balance to renewables than you are to fossil fuel?

405. MR ROWELL: I am not sure you are, taking account of the wider factors which I have referred to about the need for the Port of Immingham. I think we are being slightly narrow in toning it down to a renewable against a fossil fuel need. That is not the balance that I think needs to be struck.

406. MR BIRD: It is part of the balance, isn't it, and unless you can show effectively that additional storage for fossil fuels could not be provided at the Port of Immingham elsewhere, then the balance is even more firmly in favour of a renewable scheme on the AMEP site, isn't it?

407. MR ROWELL: No, I don't believe that it is because then you are back into the question of irrespective of the particular product which ABP want to handle through this site, this is the only site which the port can expand into and whether, as Mr Newcombe, I think, put, it's "cuddly bunnies from Siberia", the fact is it is the balance between the needs of the Port of Immingham against the need for the Able.

408. MR BIRD: Yes, but if it can go elsewhere on the Port of Immingham that affects the balance.

409. MR ROWELL: I don't believe that it does.

410. MR BIRD: Of course it does. How could it not affect the balance if the same proposal could be put elsewhere on the Port of Immingham and not displace either an existing occupier or another current proposal?

411. MR ROWELL: For the reasons I have just explained, I don't believe that it does affect the balance because you are still left with the fact that going forward, the Port of Immingham, for whatever trade, if you don't put fuel storage on that but some other trade, you still need it for the expansion of the Port of Immingham.

412. MR BIRD: As far as liquid bulks are concerned, could we go back, please, to the Able document 12, and back to the IHS report, and this time section 3, which deals with the UK refined product market for 2030.

413. MR ROWELL: Yes, I have that.

414. MR BIRD: And within that, please, could we go to page 12 of the document. There is a figure on that page, figure 3-6, UK Heavy Fuel Oil Demand and then also beneath that there are two figures. The one I want to go to is the second figure on the page, the Total UK Product Demand and Advance Split. It shows, does it not, in terms of the period 2014 to 2030, essentially flat demand?

415. MR ROWELL: From a UK perspective, yes, I would agree that it does.

416. MR BIRD: Good. So, in terms of the national security of supply arguments that you have been pursuing this morning in terms of the benefits of the IWDJ scheme, there are no identified benefits are there?

417. MR ROWELL: No, I disagree with you. The point you have just taken me to is overall demand.

418. MR BIRD: Yes.

419. MR ROWELL: The points I made about security of supply weren't just about security but about having a resilient, flexible and secure supply. Again, that comes back to National Ports Policy, which makes it clear that it is not just about meeting overall demand but about having that flexibility, security and resilience in the network.

420. MR BIRD: Yes. As far as the existing facilities are concerned, they are meeting the present product demand with capacity in the system aren't they?

421. MR ROWELL: I am sorry, Mr Bird, you will need to explain where you are getting that from.

422. MR BIRD: Yes. That is the conclusion of this report. You have read this report have you?

423. MR ROWELL: Yes, I have read that report.

424. MR BIRD: Yes, well, that is the conclusion of this report, isn't it, that existing storage capacity meets present demands and insofar as in the future there may be a change in the nature of the fuels, for example the increased need for aviation fuel, the need would be best met by development in the south east, for example the Thames Port Oil Terminal, which is being constructed at the Coryton Refinery.

425. MR ROWELL: But again it is looking at UK demand.

426. MR BIRD: That is the question I was asking you about, the UK national security of supply. So, do you have any evidence that if the IWDJ does not go ahead, there would be any material risk or threat to the national energy security of supply?

427. MR ROWELL: The UK demand? I have no evidence but the point I keep coming back to is that it is not just about looking at it from a UK perspective; it is about looking at it from an Immingham perspective. My position is that the fact that Immingham supports these trades and customers want to expand there is itself of national significance.

428. MR BIRD: In terms of imported product, what does imported product compete with in the liquid bulks market?

429. MR ROWELL: Imported product will compete with product that is refined in the

UK.

430. MR BIRD: Yes. If we go to your recent exhibit, which I think is exhibit 26, that is, Review of the Refining of Fuel Import Sectors in the UK, a report produced by DECC I think earlier this year?

431. MR ROWELL: Yes, I have that.

432. MR BIRD: It is fair to say, is it not, as far as we see from the assessment of the industries concerned that the refining sector is challenging in terms of the UK at present given the competition it faces?

433. MR ROWELL: Yes, the refining sector is challenging, albeit for various reasons.

434. MR BIRD: Yes, and so to the extent to which additional liquid bulk storage at the IWDJ site might compete with the refineries at the Port of Immingham, that would be a disbenefit, would it not, in terms of the national interest?

435. MR ROWELL: No, I don't believe it will.

436. MR BIRD: Why not?

437. MR ROWELL: Because this review makes clear that you are going to need both and if the refineries cannot provide the product then it has to be made up by importers, although I don't believe that it would necessarily be a disbenefit.

438. MR BIRD: You can only provide both provided the refining sector remains viable can't you?

439. MR ROWELL: I am sorry?

440. MR BIRD: You can only provide both, i.e. refineries and imported products, provided that you retain an independent refining sector in the UK. There is, at the very least, a risk of competition between what might happen on the IWDJ site and activities of the refineries at the Port of Immingham, isn't there?

441. MR ROWELL: The refineries at the Port of Immingham?

442. MR BIRD: Yes.

443. MR ROWELL: There are no refineries at the Port of Immingham. They are adjacent to it.

444. MR BIRD: Mr Rowell, you know what I am talking about. You have Phillips 66 and Total. Both operate refineries at Immingham don't they?

445. MR ROWELL: They do.

446. MR BIRD: Yes. The potential for competition for what might happen at the IWDJ site with those refineries is a material consideration is it not?

447. MR ROWELL: Yes, but it is competition which the Government encourages, for

example as I have explained in the National Ports Policy.

448. MR BIRD: Then bio mass. Would you turn, please, in your recent exhibit bundle to ABP 27, The National Infrastructure Plan 2013.

449. MR ROWELL: Yes.

450. MR BIRD: And within that please go to page 54.

451. MR ROWELL: Yes.

452. MR BIRD: This deals with the issue of biomass doesn't it?

453. MR ROWELL: It does.

454. MR BIRD: We can see at the bottom of the page, "Energy Generation, Other Renewables", about 10 lines up and then there is a heading, "Biomass" and then a rationale, isn't there?

455. MR ROWELL: Yes.

456. MR BIRD: Within that rationale there is reference to the conversion of existing coal power stations isn't there?

457. MR ROWELL: Yes.

458. MR BIRD: That is seen, is it not, as a transitional rather than long-term arrangement?

459. MR ROWELL: That is how it is expressed there, yes.

460. MR BIRD: Yes, and again when you are comparing a scheme which is designed to deliver long-term renewable energy benefits in the national interest with a possible scheme which is intended to meet a transitional demand, which would you give greater weight to in the balance, Mr Rowell?

461. MR ROWELL: Again, what you are asking me to do is to compare an energy use with another energy use, and that is not the balance that I say you needed to do.

462. MR BIRD: Well, of course you do. If effectively one might frustrate the other, you have to make a choice don't you?

463. MR ROWELL: No, I don't think it is just strictly the biomass—again I haven't not seen any evidence—that would frustrate Able. That is not my case and that is not the position that I take.

464. MR BIRD: No, but it is Able's position as you heard outlined on the first day of this session.

465. MR ROWELL: Yes, I understand that is Able's position but ABP's evidence is that it is not frustrated but the balance has to be the issues associated with the Port of Immingham not just the biomass point and Able, if you are in that position.

466. MR BIRD: If there is a risk, for example, of IWDJ, which is there to facilitate HIT3, frustrating AMEP, in terms of the balance between the two schemes you give greater weight, do you not, to the one which is intended to serve the long-term national interest in terms of renewable energy as opposed to a transitional market requirement?

467. MR ROWELL: No, I am afraid I don't for the reasons I have given, which is that element leading to the wider case, that that is needed to effectively allow the Port of Immingham an existing facility to continue to provide the benefits that it does.

468. MR BIRD: In terms of that, that means that you cannot succeed on your point unless you can show that there is some knock-on effect on the overall Port of Immingham which, added into the balance, outweighs the benefits of the AMEP scheme doesn't it?

469. MR ROWELL: But I think I have explained, having regard to the way in which the port operates and the policy and the legislative framework against which the port operates, that removing the ability of the port to use that land is a knock-on effect on the port.

470. MR BIRD: I think we've been over that ground. If I can then move on, as far as the ports are concerned, as far as the national policy statement on ports is concerned, which you've referred to, it's not, is it, concerned with the identity of the individual port operators, or indeed port promoters.

471. MR ROWELL: No, it does not do that.

472. MR BIRD: No, it's concerned with the infrastructure required, isn't it?

473. MR ROWELL: It's concerned with the infrastructure required and sets out the government's policy towards the provision of that.

474. MR BIRD: Yes. And as far as the guidance is concerned, it is—we can turn it up, go back to your second volume of exhibits, ABP 21, and within that just the bottom of page 5 and over to the top of page 6, we can see the nature of the schemes with which this advice is concerned. And it sets out the thresholds derived from the Planning Act, doesn't it?

475. MR ROWELL: It does, yes.

476. MR BIRD: Yes. Neither the IWDJ nor HIT 3 would qualify as proposed as nationally important projects for those purposes of those thresholds, would they?

477. MR ROWELL: I believe that's the case.

478. MR BIRD: Yes.

479. MR ROWELL: But that doesn't make this policy statement irrelevant to those

considerations. I think you need to look at 1.2.1, which explains that the document is also a relevant consideration for the Marine Management Organisation, who would look at those proposals, which decide other port development proposals, and for local planning authorities where they have a role to play. This is—

480. MR BIRD: Did I suggest it was irrelevant, Mr Rowell?

481. MR ROWELL: No, but I'm just providing the context.

482. MR BIRD: Let's go on to the context I want to ask you about, please: page 10, 3.1.5, energy supplies.

483. MR ROWELL: Yes.

484. MR BIRD: In terms of the vital role in terms of the import and export of energy supplies, and securing energy supplies, it's not just, as it were, fossil fuels which are relevant in this context; it's also the contribution which ports can make to renewable energy provision as well.

485. MR ROWELL: That's correct.

486. MR BIRD: Good. And that assists AMEP just as it would assist any proposals by ABP.

487. MR ROWELL: I think I've made that clear and open.

488. MR BIRD: Good. And in terms of bringing together businesses in order to generate economic benefit, if we go to 3.1.7 on that page, page 10, again AMEP designed as a cluster has the express support, does it not, of that advice?

489. MR ROWELL: It does, as does the clusters and the businesses which operate out of the Port of Immingham.

490. MR BIRD: And in terms of the issue of competition which you identified—

491. MR ROWELL: Yes.

492. MR BIRD: AMEP, of course, has an advantage over ABP in that sense because it would add competition on the Humber, as opposed to preserve your client's existing monopoly on the south bank of the Humber.

493. MR ROWELL: It would add competition in respect of the specific trade which it is allowed to handle.

494. MR BIRD: Which is a good thing, isn't it?

495. MR ROWELL: The trade is a good thing, yes.

496. MR BIRD: No, no. Competition is a good thing.

497. MR ROWELL: Yeah, competition is a good thing and it is something which the government recognises.

498. MR BIRD: And then further on in the advice notes, we go on to page 15. There's express reference, is there not, to the demand for port capacity to service the manufacture, operation and maintenance of offshore wind farms. And it says that will be substantial. Yes?

499. MR ROWELL: Sorry, Mr Bird. Which paragraph?

500. MR BIRD: Page 15, paragraph 3.4.10.

501. MR ROWELL: Paragraph 3.4.10, thank you. So this is under the heading, 'Demand forecasts.'

502. MR BIRD: Well, it's under the heading, 'The government's assessment of the need for new infrastructure.'

503. MR ROWELL: Yes, under the subheading, 'Demand forecasts,' isn't it?

504. MR BIRD: Yes, 3.4.10. This remains, does it not, current up-to-date government policy laid before Parliament.

505. MR ROWELL: Yes, it does.

506. MR BIRD: Do you dispute that there continues to be a need, and a substantial need, for additional port capacity to service the manufacture, operation and maintenance of offshore wind farms?

507. MR ROWELL: Again, that is what that policy says. I'm not in a position to say whether that is... Whether that's still... Whether it could be described as substantial or not. That's something that perhaps you should have put to other ABP witnesses.

508. MR BIRD: Mr Rowell, you know perfectly well what I've been putting over the last few days, so I'm going to ignore that point. As far as the issue of substantial need is concerned, it's your position, is it, that government policy is now out of date?

509. MR ROWELL: That's not my position, no.

510. MR BIRD: Right. So the Joint Committee can acknowledge, can they, that it's your evidence to them that this remains current up-to-date policy guidance?

511. MR ROWELL: It does, but I would just add that the demand forecast section there, I am aware that I think the DfT have recently commissioned consultants to relook at the demand forecast on which this is based. So yes, it remains current policy but I am aware I think that the DfT are relooking at that.

512. MR BIRD: And in terms of target to which everybody is working, it is a 2050 target, is it not, with statutory effect?

513. MR ROWELL: That is the target which people are working to that's set out in—yes.

514. MR BIRD: That hasn't changed, has it?

515. MR ROWELL: As far as I'm aware it hasn't, but again that's—

516. MR BIRD: So the need hasn't changed. The steps taken to meet that need have been slower than anticipated. So the only conclusion which can be drawn is that the need is more pressing and greater than when the policies were put in place, isn't it?

517. MR ROWELL: I'm sorry, Mr Bird. Could you break that down so I can...?

518. MR BIRD: As far as the need, which is to meet the statutory obligation by 2050, that remains the same?

519. MR ROWELL: The statutory obligation remains, yes.

520. MR BIRD: Yes. In terms of the progress in terms of offshore and indeed other renewable provision to meet that need, it has not, as it were, across-the-board met the requirements, has it, in order to meet that target?

521. MR ROWELL: Again, that is not something that I'm—

522. MR BIRD: Well, you've read Mr Slark's evidence, haven't you?

523. I have read Mr Slark's evidence, yes.

524. MR BIRD: Good. And in terms of the, as it were, any shortfall to date, if the target is to be met by 2050, steps will have to be taken to address that existing deficit and also go forward and meet the need in the future.

525. MR ROWELL: If the target is to be met, steps will have to be taken.

526. MR BIRD: Within a shorter period of time than when the policy was put in place.

527. MR ROWELL: Time moves on, so that's a look—

528. MR BIRD: So the need is now more urgent and greater in the time period than was the case when policy was put in place, isn't it?

529. MR ROWELL: The need to meet the statutory obligation that's currently in, yes.

530. MR BIRD: Good. And as far as the national policy statement is concerned for ports, you made reference to the word 'resilience,' didn't you, which does appear in the guidance. I don't think we need to dig out the reference to it.

531. MR ROWELL: I did, yes.

532. MR BIRD: That is a factor which applies to AMEP just as it does to the Port of Immingham, doesn't it?

533. MR ROWELL: It does in respect of the single trade which AMEP is going to handle.

534. MR BIRD: Good.

535. MR ROWELL: And there is a difference there between AMEP and the Port of

Immingham.

536. MR BIRD: Good. And as far as the Port of Immingham is concerned, does it have aspirations in terms of the offshore wind turbine market?

537. MR ROWELL: Sorry, the Port of Immingham?

538. MR BIRD: Yes.

539. MR ROWELL: That's a question you'll have to ask ABP.

540. MR BIRD: Well, you presumably have asked your clients and you've read their master plan. Does it have aspirations to service that market?

541. MR ROWELL: I don't know, Mr Bird.

542. MR BIRD: I see. Does it have land which might be available at the Port of Immingham to service that market?

543. MR ROWELL: Again, that's a question you'll have to ask ABP, Mr Bird.

544. MR BIRD: No, no, I'm asking you. Do you know whether it has land—

545. MR ROWELL: I don't know, Mr Bird.

546. MR BIRD: So you don't know, for example, whether it has such land, where any such land might be inevitably?

547. MR ROWELL: I don't know. Mr Cooper would have been the person to have addressed those questions to.

548. MR BIRD: Good. Then can we turn up the panel report please, which is in the main core reference documents and it will be in the first volume of those. And it's core reference document 4. And if we could, within that, please go to page 138, which is in section 18 of the panel report. And this deals with the triangle site, doesn't it Mr Rowell, and the compulsory acquisition case.

549. MR ROWELL: Yes.

550. MR BIRD: Yes. And ABP had and took the opportunity, didn't they, to put in written representations setting out why, in their view, their land should not be compulsorily acquired in order to facilitate the AMEP project.

551. MR ROWELL: They had the opportunity to put in written representations, but as Mr Cooper made clear to you the other day, ABP do have issues with the way in which they were allowed to present their case, or the ability they were able to present their case at the examination.

552. MR BIRD: Yes. What we need to just probe is to what extent those were legitimate. As far as the Planning Act process is concerned, which you'll be familiar with I assume, Mr Rowell.

553. MR ROWELL: Yes.

554. MR BIRD: It is intended, is it not, to be principally a written procedure in order to speed the procedure up?

555. MR ROWELL: It's principally a written procedure, but there are opportunities for sessions where you have cross-examination and consideration of witnesses, consideration of the evidence through cross-examination.

556. MR BIRD: Indeed, focused—

557. MR ROWELL: Now—

558. MR BIRD: Could you let me finish?

559. MR ROWELL: The point I'm making here is that the fact that the compulsory acquisition aspects of the Able examination allowed that. And the point that Mr Cooper made the other day is ABP were not, in APB's view, allowed—and actually in my view as well—were allowed the relevant time to correctly probe and test the evidence.

560. MR BIRD: Well, forgive me, but the sessions are intended, are they note, to be focused sessions, again in order to ensure that a proportionate approach is taken and to make sure that nationally important infrastructure is in fact delivered on time.

561. MR ROWELL: I take all those points, Mr Bird.

562. MR BIRD: Good.

563. MR ROWELL: But my response to that is I don't think that allowing 15 minutes to cross-examine and probe this kind of issue, when you are dealing with as significant of issues we're talking about here, is sufficient. That is my view as a practitioner and I believe it's also ABP's view.

564. MR BIRD: Well, as far as the 15 minutes are concerned, of course the compulsory acquisition stage of the process also took into account the broader consideration of the issues raised before the panel, didn't it, at the hearing sessions. That set the context for the compulsory acquisition, didn't it?

565. MR ROWELL: To the extent that they were relevant.

566. MR BIRD: Yes, and—

567. MR ROWELL: But I come back to —

568. MR BIRD: Sorry, let me finish please. ABP participated in those other sessions, didn't it, to the extent that it was relevant to their interests?

569. MR ROWELL: ABP participated in the other sessions. Whether ABP felt that they had the ability to put across their points is another question that you'd have to ask ABP. ABP were there and ABP participated.

570. MR BIRD: Good. And then just within the panel report, if we go please to 18.205 at the bottom of the page.

571. MR ROWELL: Yes, I have that.

572. MR BIRD: Well, in fact let's start with 18.204 because that sets the context. Firstly, the triangle site is required for hard-standing to store components on the siting of a pumping station, but it also leads on to section of the quay. That is a fair description of the scheme, is it not?

573. MR ROWELL: It leads on to the quay, being the land behind the quay.

574. MR BIRD: Without this triangle of land, it appears that approximately 250 metres of quay could not be built or accessed and approximately 10,000 of hard-standing could not be built. It's fair to say, isn't it, that even with the ABP compromise, there is the reduction down to 995 metres and the loss of a quay, or a length of quay.

575. MR ROWELL: Yes, there is the loss of those areas.

576. MR BIRD: Right. Not only would this significantly reduce the size of the development, but it would also inevitably reduce the flexibility needed to move the very large components involved in the manufacture of wind turbines around. So as far as panel were concerned, following their consideration of the proposal as a whole, they regarded the effect as a significant one, didn't they, if you took the triangle out of the scheme?

577. MR ROWELL: That is they concluded, but I come back to the point I raised earlier, Mr Bird, is whether the panel had all the information that they necessarily had to reach that conclusion is another point. That is what they concluded on what they heard. The question I'm making you is ABP does not consider that it had the opportunity through the CPO session to make their point sufficiently.

578. MR BIRD: Then, moreover, with 250 metre less quay, that would presumably mean that in practical terms, that one less ship could be handled at a time. Certainly in terms of wind installation vessels, that is correct, is it not, as a matter of fact?

579. MR ROWELL: I think you heard from Mr Galbraith yesterday that that's not necessarily the case.

580. MR BIRD: Well, the loss of 250 metres of quay does mean the loss, does it not, of the ability to accommodate a wind installation vessel?

581. MR ROWELL: Again, not necessarily. What you lose is you'd lose 250 metres of quay. Whether that limits your ability to handle the same number of wind installation vessels that you're referring to is a point that you debated yesterday with Mr Galbraith.

582. MR BIRD: Yes, but I didn't ask you that question. The point I'm putting to you is the point raised here by the panel. The loss of 250 metres of quay, in practical terms, one less ship could be handled.

583. MR ROWELL: And again, I don't—that's what they say, but I don't believe from the evidence of Mr Galbraith that that is necessarily correct.

584. MR BIRD: And then on to 18.205, the panel accepted the need, did they not, to maximise the potential of the site having regard to the wider objectives?

585. MR ROWELL: The panel say there that they've accepted that argument.

586. MR BIRD: Yes. And they also concluded that it formed an integral part of the applicant's plan since it would be used for external storage behind the quay, access to the quay, the siting of a pumping station, and associated drainage ditches.

587. MR ROWELL: That is the conclusion they reached on the evidence that they heard.

588. MR BIRD: Good. You can put that aside. Then I think just one final point and this relates to the issue of environmental assessment, because you were asked about the issue there in terms of the compromise, whether or not there might or might not be any different effects. And I think you said there would be no effects, as far as you were aware.

589. MR ROWELL: I said no greater effects.

590. MR BIRD: No greater effects, but of course that's not the test, is it, Mr Rowell?

591. MR ROWELL: Well, the test ultimately is likely significant effects.

592. MR BIRD: Yes. An effect may be significant; it may not be greater, but it might be different, for example.

593. MR ROWELL: It then depends what you're comparing it to in terms of the baseline, Mr Bird.

594. MR BIRD: Well, let's just put this rather more easily. If we go to the Able exhibits please, and go within those to exhibit 7.

595. MR ROWELL: Yes. These are the letters.

596. MR BIRD: They are the letters. And I want to go to one we didn't look at yesterday with the ecologists. I want to go to 7B, which is English Heritage's response on the IWDJ application.

597. MR ROWELL: Yes, I have that.

598. MR BIRD: It's dated 17 Dec 2013.

599. MR ROWELL: Yes.

600. MR BIRD: Who identify, do they not, in terms of the use of the site as proposed for five storage tanks of up to 4 million tonnes per annum. If we go to the last page of the letter, 'A major adverse impact on the setting of the three Grade 2 listed lighthouses.'

601. MR ROWELL: That's what that says, yes.

602. MR BIRD: Yes. Is the combined effect under the compromise, in terms of the effect on listed buildings, of tank storage, fuel tank storage, adequately appraised in the AMEP environmental statement or indeed in the HRO application environmental statement?

603. MR ROWELL: Sorry, I'm not quite sure the question you're asking me there.

604. MR BIRD: In terms of the effect of the IWDJ tank storage on the site, it has different effects on the setting of listed buildings compared to the AMEP scheme, doesn't it?

605. MR ROWELL: I'm not sure it has different effects.

606. MR BIRD: Well, tank storage of up to 30 metres—I think it's 30 metres—in height is not part of the AMEP scheme in that location, is it, and has not been appraised as in the environmental statement, as part of that scheme.

607. MR ROWELL: No. As part of the AMEP scheme, it hasn't been assessed.

608. MR BIRD: No.

609. MR ROWELL: But the question I've come to is: what is the conclusion which the AMEP scheme comes to in terms of the setting of those three Grade 2 listed lighthouses? If that is a major adverse impact, it doesn't matter whether that is being caused by the tanks or by whatever AMEP want to do on that site. If the impact is still the same, that is the impact.

610. MR BIRD: Firstly, what conclusion is reached in relation to AMEP in terms of the effect on the lighthouses?

611. MR ROWELL: Without going through it and looking it up in detail, I wouldn't like—

612. MR BIRD: Secondly, the issue is not whether or not the effect may be, as it were, the same in terms of the gradation, but in terms of the assessment of the effects, the difference, isn't it?

613. MR ROWELL: No, because the question you've asked me is: does it generate any likely significant effects? If one project is having a major adverse impact and therefore a major adverse effect, and the other one has a major adverse effect, there is no

difference in terms of likely effects of the scheme.

614. MR BIRD: Despite the fact that the effects themselves may be quite different?

615. MR ROWELL: But it's the significance the effect that you're talking about. It might be a different type of effect, but if the significance is the same, there is no difference.

616. MR BIRD: Okay. But we note, leaving that issue aside, that as far as English Heritage are concerned, they clearly have significant concerns, do they note, about tank storage on the IWDJ site.

617. MR ROWELL: Well, the position as of 17 December 2013 from English Heritage is that. And how that has moved on, you've heard that ABP have tried to engage with these statutory bodies, but the process of dealing with these issues has stalled because of these proceedings.

618. MR BIRD: No, that's with the MMO. Have you engaged, or has ABP engaged with English Heritage in terms of this issue?

619. MR ROWELL: I stand to be corrected, but my understanding is yes, they have.

620. MR BIRD: And have they resolved it?

621. MR ROWELL: I don't believe they have resolved it, but that doesn't mean that it's not resolvable.

622. MR BIRD: Equally, it doesn't mean that it's not resolvable, does it?

623. MR ROWELL: But that's the nature of dealing with development proposals, Mr Bird. That's –

624. MR BIRD: Not in terms of setting—

625. CHAIRMAN: Please let him finish.

626. MR ROWELL: The issue you have here is it's an unusual situation in that you have a development proposal before a determining body who have decided not to deal with it, put it on hold. In the normal course of events, you would have expected to sit down with English Heritage and work through these issues.

627. MR BIRD: The setting of listed buildings is a matter of some importance, isn't it, in the national interest?

628. MR ROWELL: Yes, it is.

629. MR BIRD: It's not a simple and straightforward, easily resolved issue. A balance has to be performed, doesn't it?

630. MR ROWELL: Yes. A judgment has to be made.

631. MR BIRD: A balance has to be performed, which is weighted in favour of the

preservation of the setting of listed buildings, isn't it, by law?

632. MR ROWELL: In all circumstances—I don't think it's right to say it's balanced in favour in all circumstances.

633. MR BIRD: No, no. It starts off—there is a presumption in favour of the preservation of the setting of buildings by law, isn't there?

634. MR ROWELL: It starts off with that presumption.

635. MR BIRD: Yes. And to outweigh that presumption, you have to have the weight of the benefit of any scheme you're proposing has to clearly outweigh that disbenefit, doesn't it?

636. MR ROWELL: Yes, it does.

637. MR BIRD: And whether or not you can demonstrate that to the satisfaction of English Heritage would include, for example, matters of whether or not there might be somewhere else you can do what you're presently proposing.

638. MR ROWELL: Whether there is a specific alternatives aspect of that, I don't think there is a specific alternatives aspect. You would have to demonstrate that you needed to do that there and you would have to demonstrate the benefits in the public interest, benefits which I've explained, for doing what you're doing.

639. MR BIRD: Yes. You're unlikely to be able to do that unless you can show there's nowhere else to do it, are you?

640. MR ROWELL: But we come back to the evidence. That might be one aspect which English Heritage want to look at, but as I've said before, the evidence which ABP have before you is there isn't an alternative to do what you want to do.

641. MR BIRD: Thank you very much, Mr Rowell. Thank you, my Lord, those are my questions.

642. CHAIRMAN: Have the Committee any questions for Mr Rowell? Lord Plant.

643. LORD PLANT: Could I just take you back to the document which we discussed—sorry, you discussed—a few minutes ago, the infrastructure plan of 2013, national infrastructure plan, and the section on biomass? I'm a bit confused about this. When I think it was Mr Cooper was giving evidence, he did mention that—I think it was that—the Drax power station was either converting a boiler to biomass or was going to build a boiler for biomass. I can't remember which it was now, but it was one or the other, that there would be a kind of demand from Drax for biomass. Now, if that's right—and I stand to be corrected, we've heard a very great deal of evidence over the last few days—but if that is right, in what sense do you think the word 'transitional' in

the government's paper makes a lot of sense? It says, 'The conversion of existing coal power stations to biomass is seen as a transitional and low-cost solution to rapidly reduce the carbon intensity of the electricity grid.' Now, what do you think this is a transition between? It's a transition between fossil fuel boilers, but what's it a transition to? Is it a transition to a new sort of power station there that's going to be based upon other fuels, or is it a transition that will somehow be to a low carbon economy generally, that Drax may just sort of pack up at that point? I mean, I don't know—when the government says this conversion is a transition, I don't know understand what they mean, really. You can't just have a transition; it's got to be from somewhere and to something, but we're not told what the 'to something' is.

644. MR ROWELL: I'm afraid I'm going to try and help you as best I can. Issues to do with Drax and transition and what they're intending to do are matters that I'm not experienced in or have particular detail about. But I do think you're right that you can read that as the transition from a coal powered station to a biomass powered station. And that power station then becomes part of the reduced carbon intensity of the electricity grid. So I don't think you can read that necessarily as, 'Oh, just for the time being we'll transfer this off to biomass and then when everything else has come on-stream, we'll shut down the power stations.' Again, I don't think you can read it like that.

645. LORD PLANT: No. So there's likely to remain a market in DRAX, which is in the hinterland, as it were, of the south bank of the Humber, for biomass... Well, there will be a demand for biomass.

646. MR ROWELL: Again, I'm probably not the relevant expert, but in my view yes, there probably will be.

647. LORD PLANT: Okay. Thank you.

648. CHAIRMAN: Mr Bird, does that throw up any questions that you wish to put?

649. MR BIRD: My Lord, no. My Lord, it doesn't.

650. CHAIRMAN: Then Mr Newcombe, I daresay there are some questions that you wish to re-examine Mr Rowell on.

651. MR NEWCOMBE: I feel constrained in those circumstances to drudge some up, my Lord. Just before I do that, in fairness to Mr Bird, can I point out to him the relevant quotation regarding LNG? And I say I'm doing that in fairness to him, because having reminded him of what was actually said there, from my part and subject to the Committee's view, if he then wants to pursue it further with Mr Rowell, that would be

appropriate before I go on to re-examination. This is day 4, my Lord, at page 65. And, forgive me, contrary to Mr Bird's recollection, I dealt with it in chief—or Mr Cooper mentioned it in chief. Mr Bird cross-examined on it and I returned to it in re-examination. And you will see the point commencing at paragraph 6.3.3 on page 65. I'll read it out for those who don't have it immediately to hand. Me speaking: 'Mr Bird also put to you various questions about LNG, forgive the acronym. Is LNG a core part of ABP's requirements for the IWDJ or is merely a potential use which is being explored?' Mr Cooper then said, 'It is a potential use which is being explored. It's a new potential market.' Me again: 'If I recall correctly, that was referable to the sulphur emissions control point in the chain from bunkering.' Mr Cooper: 'Yes.' Newcombe again: 'Clearly LNG can only come forward, as you very fully accepted, if it passes all the relevant consents, including if it blows up, it does not destroy all wind turbines next door if that facility were built.' And then I continue on the consultation boundary point, which unless Mr Bird particularly wants me to read it, I don't propose to. Having drawn attention to it, it was in re-examination. That was where Mr Cooper's evidence was left. And I will now shut up in case Mr Bird wishes to pursue the point further.

652. MR BIRD: Well, my only pursuit would be, my Lord, I'll check the transcript and find my reference in cross-examination so you can see the two together. Because obviously it was re-examined by reference to the questions I asked and the answers I obtained in cross-examination, which is what I was putting to Mr Rowell.

653. CHAIRMAN: Thank you, Mr Bird.

654. MR NEWCOMBE: My Lord, I'm going backwards again through the order. I think I have about 11 points. It will resolve itself possibly into more than 11 questions though. The question of whether there is a materially different likelihood of significant effect as between AMEP, as proposed by Able, and what I will call 'the compromise' AMEP. Do you recall that line of questioning?

655. MR ROWELL: I do.

656. MR NEWCOMBE: All right. The Committee has already been told, on more than one occasion, that if the compromise were to be allowed to come forward, then of a necessity the existing full IWDJ application will be withdrawn and a new application for the compromise would need to be put forward.

657. MR ROWELL: Yes, that would—

658. MR NEWCOMBE: I'm just reminding everybody of the context. Now, the question. Ignore for the moment the possibility of a reduced application for the IWDJ in

due course and just put that on one side. As between AMEP, as presently proposed, and the compromise AMEP, what do you understand to be the position as to whether or not there is likely to be a material change in the likelihood of significant effect?

659. MR ROWELL: The understanding that I have from the work undertaken by others is that there is no difference in the significance of effects in that respect between the full AMEP scheme and the reduced AMEP scheme.

660. MR NEWCOMBE: All right. Now factor in, so far as you can, the reduced IWDJ, the compromise IWDJ, but acknowledging—in fairness to Mr Bird and his clients—that the actual triangle end (i.e. not the jetty going out which is reduced, but the triangle end) may well not be substantially different from the full IWDJ. Against that context, tell us what—anything within your area of expertise—you wish to say about the English Heritage view to which your attention was drawn.

661. MR ROWELL: I mean, again, as I've said before, the work is work that has been undertaken by others on behalf of ABP. And my understanding of that work is that if you put forward the compromise position, consisting of a reduced AMEP scheme and a reduced, altered IWDJ, the significance of effects aren't going to be any greater than the AMEP facility as a whole.

662. MR NEWCOMBE: Thank you. Now, moving to my second point, take the original exhibits in the first of the slim white bundles and go to ABP tab 2.

663. MR ROWELL: Yes, I have that.

664. MR NEWCOMBE: I thought I heard Mr Bird put to you a suggestion of the monopoly position on the south bank of the Humber. Do you recall that?

665. MR ROWELL: Yes.

666. MR NEWCOMBE: All right. Now, just looking at the four proposals here and acknowledging that Immingham and Grimsby are each ABP ports, and that the AMEP scheme self-evidently has yet to be built, if indeed it is built in its form, insofar as you understand Mr Bird's monopoly point, what is the substance in it?

667. MR ROWELL: Well, I think it's demonstrated there that I don't believe, from that plan, that you can conclude that ABP do have a monopoly on the south bank.

668. MR NEWCOMBE: Thank you. Third point: you were taken to the relevant part of the ports NPS, National Policy Statement. Unless you particularly want it, I don't require you to have it to hand. At paragraph 1.2.3, with reference to the thresholds which are crossed to enter the territory of a nationally significant infrastructure project—

669. MR ROWELL: Yes.

670. MR NEWCOMBE: i.e. the threshold which a project needs to clear if it's to be allowed to proceed under that procedure.

671. MR ROWELL: That's correct.

672. MR NEWCOMBE: All right. What, at the panel proceedings, was ABP's position, insofar as you recall, as to whether or not the Able proposal had indeed cleared those thresholds?

673. MR ROWELL: It was ABP's position that actually the AMEP proposal, from the evidence was in the environmental statement, wasn't a facility that was going to handle 5 million tonnes of cargo.

674. MR NEWCOMBE: Insofar as you can remember, what was the panel's conclusion on that?

675. MR ROWELL: I think the panel's view on that was a question of the actual wording in the Act about whether the facility was capable of handling 5 million tonnes of cargo. And I think the view the panel took was that, taking everything into the round, that they concluded that the facility could be capable of handling 5 million tonnes of cargo even though it was not expected to be handling that amount of cargo.

676. MR NEWCOMBE: All right. Now go, if you would please—this is the fourth point—to ABP 25 which in the second slim white volume. And we remind ourselves that tab 25, as presented, we find in there the blue cover of the overarching national policy statement for energy, EN-1. Do you see that?

677. MR ROWELL: Yes.

678. MR NEWCOMBE: Go in that, if you would please, to page 41. This is in the context of section 3.8, the need for nationally significant gas infrastructure, about which you were asked a number of questions. Do you see that?

679. MR ROWELL: I do.

680. MR NEWCOMBE: Go to paragraph 3.8.20 and quickly cast your eye over it please. And tell me when you're finished. I will then pose the question.

681. MR ROWELL: Just demonstrating how slowly I read, but I've finished.

682. MR NEWCOMBE: Well done. At least you don't use your finger, as I do. Just over halfway down at the right-hand corner, do you see a sentence starting, 'Market participants will also take into account the various risks summarised above. There is no one right answer.'?

683. MR ROWELL: Yup.

684. MR NEWCOMBE: ‘The strong expectation is that they will wish to bring forward proposals for additional gas supply infrastructure; i.e. import and storage.’

685. MR ROWELL: Yes.

686. MR NEWCOMBE: ‘Some market participants may judge that their requirement for additional gas supply capacity is urgent.’ Do you see that?

687. MR ROWELL: I do.

688. MR NEWCOMBE: All right. Your comment please, Mr Rowell, if indeed you wish to make one. If you don’t, then simply say and I’ll move on.

689. MR ROWELL: I think it goes back to, I mean, actually you can’t express it any clearer than that. There is no right answer. There is no one right answer. And then there are various things which you have to take into account, that the market will take into account, in bringing forward infrastructure.

690. MR NEWCOMBE: All right. Forgive the jumping from document to document, but it’s necessary. Now, it’s entirely a matter for members of the Committee, but it’s not necessary for my purposes that the Committee go to the next reference, because I’m going to get Mr Rowell to read it out. It’s a discrete point but, forgive me, that’s I hope a helpful indication. Able 12 please.

691. MR ROWELL: That’s the IHS report, is it?

692. MR NEWCOMBE: Correct. Go in it, if you would please, to page 32, pagination is in the header. In this case, top left.

693. MR ROWELL: Yes, I have that.

694. MR NEWCOMBE: Coincidentally, that has a diagram of the government pipeline supply system. Just read out, for those who haven’t got it open please, paragraph roman 6.4.

695. MR ROWELL: ‘The OPA have declined to comment on the current operation and capacity of the system.’ I assume that has to be the GPSS system. ‘This is believed to be because the system is due to be sold by the UK government imminently.’

696. MR NEWCOMBE: Reach down a new cigarette paper. Is there a cigarette paper between you and IHS in that regard?

697. MR ROWELL: No, that’s what I was explaining to Mr Bird.

698. MR NEWCOMBE: Thank you. Seventh point. My Lord, I’m not competing for a second footnote in Erskine May today, having achieved one on the display board yesterday. I’ve spoken to Mr Bird and so far as the parts of the national policy statement, EN1, are concerned, which are not in hard copy before the Committee, I’ve

taken the liberty of calling them up on my iPad. Mr Bird is relaxed if I pass that to Mr Rowell so he can refresh his memory as to what he says, but I deliberately indicate what I'm proposing to do, in case that causes anybody any distress. It's simply I'm anxious while the point is fresh in our minds, Mr Bird can deal with it and not have to send a note in or something.

[General assent]

699. MR NEWCOMBE: My Lord, I'm grateful.

700. CHAIRMAN: I think the Committee will be content.

701. MR NEWCOMBE: Thank you, my Lord. I'm taking Mr Bird's paragraph 4.4.3... Just find the bullet points you were taken to, please, and then read the introductory words at the top.

702. MR ROWELL: Sorry, Mr Newcombe, I was reading the... The introductory paragraph is 4—and the reason I hesitate is this is similar to the reference that I was making to what's included in the national policy standard report. But paragraph 4.4.3 reads, 'Where there is a policy or legal requirement to consider alternatives, the applicant should describe the alternatives considered in compliance with these requirements. Given the level and urgency of need for new energy infrastructure, the IPC should, subject to any relevant legal requirements (e.g. under the habitats directive), which indicate otherwise be guided by the following principles when deciding what weight should be given to alternatives.' And I believe I was taken to... I think it's the sixth bullet point, if that's right.

703. MR NEWCOMBE: And the seventh.

704. MR ROWELL: Yes. Sorry, sixth and seventh. Sixth bullet point is: 'Alternative proposals which mean the necessary development could not proceed—for example, because the alternative proposals are not commercially viable or alternative proposals for sites would not be physically suitable—can be excluded on the grounds that they are not important and relevant to the IPC's decision.' And then the bullet point seven is: 'Alternative proposals which are vague or inchoate can be excluded on the grounds that they are not important and relevant to the IPC's decision.'

705. MR NEWCOMBE: All right. Assuming you've refreshed your memory sufficiently for present purposes, if there is any additional comment you wish to make, having seen that in context, please make it now. If not, so indicate and I'll move on.

706. MR ROWELL: Well, it's the point I made, or tried to make, under cross examination, is that the alternative—it refers to because the alternatives proposals are

not commercially viable. And that has to be demonstrated.

707. MR NEWCOMBE: Thank you. Can I have that back? Thank you very much indeed. Right, I'm on to my final series of points, Mr Rowell, but they run together because they all go to a similar area. First, so far as section 127 of the 2008 Act is concerned –

708. MR ROWELL: Yes.

709. MR NEWCOMBE: Mr Bird was asking you about the question of certainty; for instance, if the IWDJ will go forward. Do you recall that?

710. MR ROWELL: Yes.

711. MR NEWCOMBE: All right. And he suggested that the onus was on the person identifying the detriment to prove that for the Secretary of State to be certain. Now, if Mr Bird and I have to argue about this, we will make legal submissions in due course. But for the purposes of my question, I'm going to tell you what I will be submitting the law is. And I want you to assume, however risky, that I'm correct in that. Section 127 requires the Secretary of State to be satisfied that there will not be a detriment. Not that the IWDJ won't go forward, but to be satisfied—i.e. essentially for the applicant to prove that there will not be a detriment. Very simple question: can the Secretary of State, or the Committee insofar as they're considering the matter, can they be satisfied that there will not be a detriment to ABP's Port of Immingham undertaking?

712. MR ROWELL: No, for the reasons I've explained, I don't think he can.

713. MR BIRD: Serious detriment.

714. MR NEWCOMBE: Forgive me. Mr Bird very correctly reminds me that the word 'detriment', the noun 'detriment' is qualified by the adjective 'serious' and I entirely take the point. It was an error on my part simply to refer to it in shorthand form. It's right: serious detriment. Does that alter your answer, Mr Rowell?

715. MR ROWELL: No, it doesn't alter my answer.

716. MR NEWCOMBE: Mr Bird, I'm grateful. You now need core document volume 1, the fatter of the white... Forgive me, I will be inviting members of the Committee to follow Mr Rowell through this, but it's only a couple of references.

717. MR ROWELL: Sorry Mr Newcombe, could I just clarify that last answer, just to be absolutely clear?

718. MR NEWCOMBE: Yes, of course.

719. MR ROWELL: I don't think the Secretary of State can conclude that there will not be—I think he has to conclude that there is a serious detriment.

720. MR NEWCOMBE: Thank you very much. We need to, in volume 1 of the large white file, to tab 4, if you would please. At section 13, this is a matter I looked at with Mr Cooper expressly and we can take it reasonably swiftly. It's headed, 'Marine issues and implications for other users of the Humber,' and it starts with, 'Conflict with ABP plans for the development of the western deep-water jetty.' Do you see that?

721. MR ROWELL: I do.

722. MR NEWCOMBE: It goes on and refers to submissions by ABP in paragraph 13.3.

723. MR ROWELL: Yes.

724. MR NEWCOMBE: And then it says, 'The panel has considered this carefully,' and it refers to three significant issues there, which it derives—amongst other things—from the port master plan. Do you see that?

725. MR ROWELL: Yes.

726. MR NEWCOMBE: We go over, 13.10: 'ABP itself acknowledges there are possible alternatives readily available for the IWDJ.'

727. MR ROWELL: That's what that paragraph says, yes.

728. MR NEWCOMBE: Yes. And Mr Cooper indicated—and I don't have the transcript reference immediately to hand; if it becomes an issue, I'll find it in due course and report back—indicated that ABP had indeed considered alternatives and concluded that there weren't any to substitute for the full IWDJ.

729. MR ROWELL: Yes, he did.

730. MR NEWCOMBE: And then it says, 13.11: 'Without the triangle site, the applicant would not be able to complete the hard standing.'

731. MR ROWELL: Yes.

732. MR NEWCOMBE: On if you would, please, to the second of three references. And it's where Mr Bird took you as well, page 138, 18.202. It has been read out several times. If you need to, refresh your memory. If not, please say so and I'll put the question.

733. MR ROWELL: Yes.

734. MR NEWCOMBE: Now, to what extent, on your reading of the panel report, did the panel have regard or not have regard to the wider elbow room point?

735. MR ROWELL: I don't believe that they had regard to that wider elbow room point.

736. MR NEWCOMBE: Thank you. And then, if you'll excuse me one moment, final

reference. Go back in the panel report to page 131 if you would please. There is a heading halfway down, or just under halfway down page 131, headed: 'Scale of development.' Do you see that?

737. MR ROWELL: I do.

738. MR NEWCOMBE: And the introductory words are at 18.154. I'll just pause while you cast your eye over that.

739. MR ROWELL: Yes.

740. MR NEWCOMBE: And 18.155 is in fact the paragraph I read out to the Committee when I was opening the case last week. Do you recall that?

741. MR ROWELL: I do.

742. MR NEWCOMBE: The panel identified there—well, I'll read the words: 'The panel has come to the view that you can only deal with the application before it in its totality, acknowledging the changes that have taken place in the course of the examination. It is not for the panel to consider amendments to the scheme or recalculation of the requirements based on the applicant's assumptions or any other assumptions.' And then they continue and I'm not going to read that, unless anybody wants me to. The matter of law is for me and Mr Bird to chew over in due course. Insofar as it lies within your area of expertise and your consideration as a planner when you come to consider alternatives and the like, and whether or not a different or a smaller solution would do—in your view, within your area of expertise as a planner, were the panel correct or incorrect in the approach they took?

743. MR ROWELL: I believe that the panel were incorrect in that approach. And I've scribbled in the margin, you have to if these are alternatives.

744. MR NEWCOMBE: Thank you very much indeed. My Lord, I'm very grateful. That concludes my re-examination. I don't know whether the panel has any further questions for Mr Rowell.

745. CHAIRMAN: I'm looking at the members of the panel and I don't believe that they do.

746. MR NEWCOMBE: I do apologise. A transcript correction, my Lord. It is a jolly Committee; I do apologise.

747. CHAIRMAN: So I must thank Mr Rowell very much indeed for the evidence that he's given and say that you are free to stand down.

748. MR ROWELL: Thank you.

749. CHAIRMAN: Thank you. Mr Newcombe, I'm advised that having made an

opening submission, by convention you perhaps should not be making a closing submission, but I think that I would like to hear your view.

750. MR NEWCOMBE: My Lord, I had understood that the practice was I make my closing submission after Able has called its evidence. I understand the requirement to deal with it now and if the panel wishes me to make my submissions on that, I'm perfectly prepared to do so, to see whether Able need to be called upon.

751. CHAIRMAN: I just feel that maybe it would be wise to sum up the evidence that you've put before the Committee at this point. I am looking at the time and we are due to break at 13:45. And therefore, perhaps it may be sensible to break at this point, unless you feel that your submission will take merely a quarter of an hour to do. I'm slightly in your hands.

752. MR NEWCOMBE: I think that it will take a little more than that, my Lord. If it assists, I'm happy to commence or to give them in one lump when we resume, whichever the panel—forgive me, the Committee—finds more convenient.

753. CHAIRMAN: I'm reminded of course that Mr Blomfield is not here at this point. And perhaps it may be sensible to hear it all in one go when he returns. So I suggest now that we adjourn the Committee until 14:30 on that basis—14:45, sorry. 14:45 is the time that has been agreed.

754. MR NEWCOMBE: My Lord, I'm grateful.

755. CHAIRMAN: Thank you.

Sitting suspended

On resuming—

756. CHAIRMAN: In calling the Committee to order again, I would just remind everybody that we are now in a public session. Mr Newcombe, are you ready to summarise a bit your evidence?

757. MR NEWCOMBE: My lord, yes.

758. CHAIRMAN: Thank you very much.

759. MR NEWCOMBE: My Lord, I am treating this as effectively a half-time match report. I refer back to the opening submissions I made, which are recorded on the day three transcript, starting at page 12, and I will be following precisely the same structure of those pigeon holes which I sought to erect. I shall be highlighting the evidence as I go through because it would take as many sitting days as has already elapsed were I to

go into any great detail, but I hold on to the point I made to the Committee in opening, that the tests here are very simple. That's not to say that the weighing of matters does not involve serious consideration, but the framework of this is extraordinarily simple.

760. A further point in relation to evidence, I shall be referring expressly to some of my witnesses, but I shall not each time refer to Mr Cooper's evidence, I shall simply refer to the substance of it on the basis that his evidence was introduced and is overarching of all three of the relevant tests, and additionally, has the merit of coming from the Chief Executive of Associated British Ports. That doesn't mean that I'm submitting that therefore he enjoys the same doctrine of infallibility as a gentleman resident in Rome, but it does add considerably to the weight and further, in my submission, of the way in which he gave evidence also underlines and underscores what he said.

761. I am going to concentrate, for reasons which will be readily apparent, on the compromise scheme, and I refer back to, but don't repeat what I said about the amendment to petition as actually originally drafted, and also about the general petition. I respectfully sought to remind the Committee of its powers in opening. Again, I don't presume to repeat that.

762. I come now to the approach which we continue to submit the Committee should adopt here, and it is *de novo*, that is approaching it on the merits from first principles, and I say that for two reasons. One, that that is the appropriate approach, even insofar as the Panel has considered points and then reported to the Secretary of State, but also because we have identified in the course of our submissions and presenting Associated British Ports' case, various material flaws in the legal sense, and the Panel's consideration, and lacuna where they either omitted to consider something or expressly decided not to consider something. And in those respects, the Committee's consideration here is the first time the matter is being considered, and the first time ABP has enjoyed the fairness of having its case considered in those respects.

763. And by way of legal flaws, I refer amongst others, and My Lord will forgive me, I hope, insofar as I am extremely tedious and go back to portions of the Panel Report, with which the Committee are already well familiar. We have it in volume 1 of the fat bundle at tab 4. In the first instance, I would invite attention to page 92, which is where we find section 13. And I prefix my submissions about the flaws in the Panel's consideration by indicating that I am deliberately limiting myself to some examples on the basis I'm very conscious that we are not yet at a judicial review stage. Hopefully

we won't have to go that far, but we are not yet at a judicial review stage, and I'm not before a red judge identifying the various grounds upon which the decision is challenged. Therefore, as I say, I limit myself to examples and not a full list.

764. Section 13, despite the heading, expressly deals primarily with ABP's plans for development to the Western Deepwater Jetty, and I can take this, I hope, slightly faster, though I'm sure the Committee will stop me if they wish me to go more slowly over what precisely is here said. It refers at 13.3 to ABP's submissions relating, amongst other things, to HIT 3 and the gas jetty, Immingham Gas Jetty, which then feeds into the full Immingham Western Deepwater Jetty proposal, for which an application was made, and as the Committee has heard, is now stalled in non-technical speak, because that is the way the MMO chooses to deal with it. They put it on the backburner, and as we understand it, the various statutory consultees are for obvious reasons also putting it on the backburner unless and until the matters before this Committee are resolved and clarity is achieved.

765. It is also evident, and I make no apology for repeating, that the full scheme will be withdrawn because the application does relate to the full scheme, and given ABP's stance now, that is inviting the Committee to consider the compromise proposal, were the compromise proposal to receive some form of blessing, I deliberately put it in that general sense, then necessarily the IDWJ full application, pending application, would be withdrawn and a new application would be made to deal with the reduced scheme.

766. The Panel, and here we have to bear in mind the Panel, as Mr Bird, and indeed as I have stressed, the Panel process, indeed the whole process under the 2008 Act, is primarily inquisitorial and paper heavy. That has advantages in terms of speed, but also weaknesses in the sense that although a Panel, and in this case was, quorate at three, it is impossible so to empanel a team of inspectors as to have expertise across all the various areas of technical evidence that are going to come before them. It is therefore no disrespect to criticise the Panel if and insofar as they misunderstood things, but nonetheless, that does not prevent it being a legal flaw. And the area of misunderstanding here is the lessons they thought could be drawn from the Port Master Plan and various other matters which we see referred to in paragraph 13.5, 13.6, 13.7 and 13.8.

767. That led the Panel, at 13.10, to lead itself into fundamental error. It is entirely correct, as Mr Cooper told you, that ABP, in bringing forward the Immingham Western Deepwater Jetty, considered alternatives. That is scarcely surprising given that as a

matter of general case law in this area, there is a requirement to consider alternatives in circumstances where a project has environmental impacts and is sought to be justified by need or demand, and sensibly the case law indicates that there is a requirement to see whether there are any different ways of meeting that need. Not just sites, but solutions, which offer lesser environmental impacts. It's always a balance. And there is a requirement under the environmental impact assessment regulations to grapple with the main alternatives considered, and I explained the reasons for rejecting them in the environmental statement.

768. The question of alternatives here is yet more acute because of the European Sites aspect. And as the Committee is aware, and if you use AMEP's proposal as an example, AMEP could not show—I don't think they even argued—that they could show there was no likelihood of significant effect. That immediately led them into the next stage of the process, which is a requirement for what is termed appropriate assessment. And then, as a matter of record, because the appropriate assessment was in some material respects negative, that is they could not show a lack of impact on the overall integrity of the relevant site or sites, that is why, again, as Mr Bird has identified entirely correctly, they were into considerations and they could only proceed if and insofar as they could show what in the ghastly speak, and this error of the law is known as IROPI, IROPI standing for Imperative Reasons of Overriding Public Interest. And there is a further requirement to show an absence of alternative solutions.

769. I don't need to deal with compensation here because that, although very important, is slightly off to one side. By parity of reasoning, because the IWDJ would also have an impact or impacts on relevant European Sites, they too had to consider those matters and review alternatives. As Mr Cooper told you, having reviewed those, they rejected the other alternatives and concluded that the springing a jetty for the triangle land represented the correct approach and the best fit in terms of the legal requirements.

770. But the Panel appear to have drawn the conclusion from the fact that alternatives had been considered and explained as ABP's acknowledgement, and I'm reading from paragraph 13.10 that: "There are possible alternatives readily available for the Western Deepwater Jetty." And 13.11: "Without the triangle site, the applicant," that's AMEP, Able, "would not be able to complete the hard standing and it would be impossible to construct the quay in its entirety because the foreshore is the base of the triangle site and needed to complete the quay as planned."

771. We then leap forward in the report, and I'm taking the Committee now forward to page 138, which expressly is headed at the top, "The Triangle Site". 18.202: "The Panel is not persuaded that the Western Deepwater Jetty should be seen as a direct and equivalent competitor. Despite ABP's representations, the production of the Port Master Plan and the Draft Harbour Revision Order, the Western Deepwater Jetty is clearly still at an early stage of project development. The jetty may be required to support the further development of the undertaking, but the acquisition of the triangle site at this time would not obviously cause serious detriment to the carrying on of the undertaking. The Panel must conclude it would cause little or no detriment to the current undertaking. The detriment is potential rather than certain. It is in the future; it will not arise if the demand does not arise. It may not arise if other sites for the WDJ within the ABP estate can be used."

772. We can see the errors there. Firstly is the carrying forward of the erroneous and fundamentally wrong conclusion not only that ABP had accepted the alternatives, but that indeed there were feasible alternatives. Second, it applies the wrong test because the detriment in terms of the IWDJ, albeit a future scheme, the shutting off of that option is nonetheless a present and actual detriment to the undertaking.

773. That is also linked with what Mr Cooper called optionality for the Humber International Terminal Number 3. And that is something that the Panel approached on a mistaken view of the facts, on a mistaken conclusion from those "facts", and in looking simply to the future and regarding it as potential rather than actual, they further erred in law by failing to apply the correct test.

774. There is inherent in this paragraph an additional legal flaw, which is, as the Panel have noticed, the Committee gave no consideration whatsoever to what before this Committee has become known, and forgive me, I started this, but the elbow room point. That is the fact that ports require this supply of land in order that they can reconfigure if necessary. That's precisely what HIT 3 is proposed, but it might be something else tomorrow if the market changes. And also to meet unforeseen demand. It's essential in terms of customers that the customer, if he's considering the Port of X, to make it neutral, that customer needs to be assured not only that they can accommodate him presently, but also he can be accommodated with sufficient flexibility so he can meet his future demands if and insofar as they arise.

775. If I can then invite the Panel back to paragraph 18.155. I apprehend I don't need to read all of this because we've been through it on more than one occasion, but the

Panel concluded that it can only deal with the application before it in its totality. It's not for the Panel to consider the amendments to the scheme or a recalculation of the requirements based on the applicant's assumptions or any other assumptions. That is plain wrong because the question of alternatives arises expressly in the context of need/demand. I draw the distinction on the basis that need, for present purposes, is that quantum of demand, which Government by policy and/or law considers is proper to be met in the national interest. Thus it may be that in a particular sphere of human endeavour, the Government considers that notwithstanding 100% demand, the actual need, which should be met in the public interest, is only 50% of that demand.

776. But here, port's policy as we know, is demand led, so I merely flag up that distinction, but indicate that for present purposes, need and demand are in large measure used interchangeably in the context of ports. But even if I'm wrong in that, then it doesn't alter the submissions that I'm making.

777. I've already referred to the requirements under the Habitats Regulations, and as a matter of general case law in this area, to consider not just alternative sites but alternative solutions. And if one posits the need/demand that Able here say they're going to meet, it had originally, as we understood it, been 400 turbines plus to load out, we know because of the intervention by Mr Bird on Monday of this week, that now it should be 500. That's a matter to which I will return in due course.

778. But if the evidence shows that even assuming that that demand can be met on less real estate, that is a matter of the merest common sense; is an alternative solution. Indeed, it's an alternative solution with less environmental effects because it involves less direct intrusion into European Sites, amongst other things. Whatever the evidential position before the Panel, the fact is that the Panel closed its eyes to that aspect and did not consider it.

779. That concludes my canter through the various matters here in terms of illustrative errors of law, save that the one final point I make, both in terms of the Panel Report and the downstream consideration by the Secretary of State, but also because it's directly relevant here, is a matter I made in re-examination of Mr Rowell earlier today. Mr Bird was putting the point in relation to the test under section 127, the test of serious detriment, and suggesting that the Secretary of State needed to be certain that the IWDJ, for example, or the elbow room point, it matters not, would actually occur or was made out. That is not the way the statute is framed. The statute requires the decision maker to be satisfied that there will not be detriment. Whilst lawyers tend to avoid or like to

avoid questions of onus of proof, if and insofar as a question of onus arises here in showing an absence of serious detriment, that lies firmly on Able. And the Panel has as yet heard no evidence from them on that matter. Nor indeed, in my submission, did the evidence before the Panel begin to make out or show an absence of detriment. That's a point to which I will return in looking at the triangle land in a moment, under the three tests.

780. There is also at the moment, before this Committee, what I would describe as an evidential gap. I mean no disrespect to Mr Bird when I say his cross-examination of my witnesses has been substantially negative on the basis of simply asking them whether or not they have evidence to show X. Do they have evidence to show Y? Very little if any evidence has actually been put to my witnesses to make out Able's case. That has yet to be heard.

781. Additionally in that respect, let me give an example. Mr Bird put it to more than one of my witnesses that any diminution in the Able scheme would frustrate it. Nothing to back up that submission, nor to explain why even a square millimetre reduced from the AMEP Scheme as presently permitted would frustrate it. Indeed it would be surprising if that were the case. Indeed, if the position were that any material reduction in the AMEP Scheme tipped it from viability to failing to achieve viability, it must mean that, as put at the Panel stage, the viability was materially in question. And given the developments in the financial market, the fiscal and financial support for renewable energy, to which Mr Slark spoke, and the collapse—perhaps resulting collapse of other wind farm schemes, that climate has not got any better, and therefore the viability is even more marginal, which raises the question of whether or not this scheme, the AMEP Scheme, is one which is ever going to proceed. Because although Mr Bird, entirely understandably, has been emphasising strongly the Government's drive to bring down costs, Able owes a duty to its shareholders, and there is not a scintilla of evidence, indeed it would be surprising if there were any evidence to show that Able is adopting a charitable approach here, and is bringing the port forward and accepting it will make a loss on it. It is inconceivable that Able will proceed with this unless it is satisfied that costs will be covered, and that it will make a suitable return on its investment.

782. So much for what I term the evidential gap, and I turn to the question of a materially different scheme. I've already referred to it's not 400 but 500 turbines, but it goes wider than that. And I'm now turning, if I may, to core document 12, which

includes the relevant sections for present purposes, of the Able Environmental Statement for the AMEP Scheme. And forgive me, I would invite My Lords and Honourable Members to have that available to them because I fear I have to make some points of detail on this. I am conscious that I've already made a submission on this, but for reasons I'm sure Members will appreciate, I need just to highlight and remind the Committee of those submissions.

783. And it would also assist if we had open the plan ABP/5. And in the first instance I would invite the Panel's attention to page 4-8, which includes the paragraphs 4.4.26 and 4.4.27. 4.4.27 refers to an indicative mix, and the indicative mix is contained in the paragraph above, namely three nacelle factories, two tower factories, two blade factories and a foundation factory. The numbers of each component are given there, and we can see that if we look at the tower factories, producing 400 units, in order to produce onsite, whether manufacturing or assembling I'm not fussed for present purposes, if we're to assemble 400 towers we need three blades for each, which is the totality of the production of the blade factories, plus two thirds of the nacelle units, that is the bit on top of the turbine to which the blades are attached and which turns to face the wind. That leaves a surplus of 200 units for export, it is said.

784. And the calculation which has been carried out here is done by reference to the previous page. We need only flick back to see there that the various components are given indicative assumed weights because one of the things that need to be considered is ground loading and the like. And the multiplication exercise has been carried out against the numbers of units in 4.4.26, and the detailed calculation of gross weight of goods is given in 4.4.27.

785. I come back to the use of the adjective "indicative". I read out extracts from another part of Able's own environmental statement, written by ERM, dealing with project specification and the approach taken to it. It said: "Where full details are not known at this stage of the project's development, then parameters have been set, and a worst case assessment carried out with expectations. It is no criticism whatsoever of the Able Scheme that they could not be entirely certain as to precisely what form the development would take. Any project, particularly any project of any size, starts with a light bulb coming on in somebody's head, and ends months, possibly years later with Murphy pouring concrete. Inevitably, in the consenting process one tends to be closer to the light bulb end rather than the pouring of concrete end. There are therefore—and I mean no Rumsfeld analogy—there are unknowns.

786. The approach taken to the unknowns to ensure that there is a realistic worst case assumption is precisely that; to assume what is going to be done and to double-check that that's the ceiling, so that one has at least assessed what is going to be the worst case so that the environmental assessment is done on the worst case basis. And that is why there is adjective "indicative" used, because this is the indicator of what is the realistic worst case. And as ERM themselves explain in terms, the EIA is undertaken based on the maximum development that could reasonably be built. And it says: "The project has been sufficiently well defined in the ES, and expressly refers back to chapter 4." That is not only a signpost to those who are considering the project as decision makers or reporting on it. It's also the starting point for all the various experts who then went on to assess the project.

787. Whilst there is limited reference in a different chapter of the environmental statement to 500 turbines on an illustrative basis, this is the only detailed identification of the leviathan to be assumed for the purposes of environmental assessment. Nonetheless, Able have now gone on and said, "Oh, well of course we're going to build it to 500." It follows from that, that the proposal which they put before the Panel, and is now before this Committee, was environmentally assessed on other than a realistic worst case assumption, if it is 500 turbines. And additionally, that insofar as the project has been sized, it presumably, or they wouldn't be asserting it, is large enough to deal with 500 turbines, and so on. And therefore overly sized is too much river state if in fact, as the ES tells us, it's only 400.

788. There was an additional finesse when Mr Bird last week referred to the figure of 279 as the berth length, and the dedicated berth length. But we know that the ES considered no such figure; it was considered on 200 metre berth lengths. And notwithstanding the fact that Mr Bird referred to 279 on Thursday, on Friday when we received some further exhibits from Able, and if I can invite the Committee, please, to keep open ABP/5—actually forgive me, it's a different bundle, I've simply put mine together in one. And if we go to ABP at Able 14, which is in the second small blue volume, I'm perfectly prepared to accept for present purposes that this is an Able document prepared with due care and attention and purports to show the latest state of play. It is interesting that it came into us on the day after Mr Bird referred to a dedicated berth of 279 metres, and came to the Committee today, yet this still shows 200 metre berths. And the plot thickens further when yesterday Mr Bird corrected

himself and then had to take further instructions as to whether or not 279 should actually be 290.

789. There is a third element of material change, and the Committee will recall that a number of figures in hectares were put to Mr Cooper as the area's required for blade manufacture, for tower manufacture, and so on. Interestingly, and I'm only going to take one example here, all of them have changed. If I simply take foundations, and we look at ABP/5, there is one foundation factory here proposed at F/1, and if we talk it through, if we look—I spoke to the green shaded area at the south-eastern corner at the bottom of the plan, the operational buffer and then a nacelle factory on the left, the words on the orange indicator of the building, and a tyre factory on the right. If we move due north from the north-eastern corner of the tyre factory, that takes us into the foundation factory. The figure there given is 17.4 hectares, but on the figures now being put forward by Mr Bird on behalf of his client, that figure has now topsied to 30 hectares.

790. I don't need to take the Committee through the way in which the various other figures have changed. Some have gone up, some have gone down, but the result is a clear reorganisation of this plan, but the Committee has before it no revised plan to give effect to those figures. Again, a matter about which Able remains coy, to use my adjective.

791. And I will remind the Committee that in the Panel Report, and I will read it out, hopefully to avoid Members having to have it in front of them, at 18.36. In fact—actually, forgive me, having said I won't take you to it, may I do what barristers invariably do and change their mind and say, please would you go to it? Forgive me, it's volume 1 of the fat bundles, and if we go, please, if we may, in tab 4 to page 112. And we can see this is the Panel's Report of the case advanced by the applicant, that is this is not the Panel itself drawing conclusions; it's rehearsing, albeit in summary form, the basis upon which the applicant, Able, closed its case in this respect. If we go over to page 114, at paragraph 18.36, and the Panel there records the way in which Able closed its case upon that for which it was seeking consent, and we see it's exactly the same insofar as items are concerned, as we identified in the indicated realistic worst case in ES, namely 400 towers, 300 blade sets and so on.

792. And none of the changes which I've identified had taken place at this stage. We don't know when they took place, but this is the basis of one which they closed it. In fairness to Mr Bird, and as I indicated when I made my submission on Monday, we can

look across, and for instance, in paragraph 18.34, the last sentence: “The five proposed berths for offshore wind turbines would therefore have the capacity to handle around 500 complete units per annum.” That can be compared with the 400, which follows a mere two paragraphs later. It is clear that there is a tension between the two, and at least one eyebrow raises. But, because of the error that I’ve already submitted the Panel made in refusing to consider the sizing of the matter for whatever reason, the Panel either failed to advert to the mismatch between 400 towers as assessed in the environmental statement, and the wish list of 500, or they simply chose not to consider it. It doesn’t matter which interpretation is placed, it’s still an error.

793. In all the circumstances therefore there is, in my submission, only one conclusion to be reached in terms of what has been environmentally assessed. There is no environmental assessment. There has been no environmental assessment of 500 turbines. The assessment which was carried out was based at 400, and that translates into the development consent granted.

794. ABP/5, the A3 drawing, the base from which it is drawn is identical to one of the application drawings, which is expressly identified and listed in one of the requirements for the DCO, to which I will take the Committee in a moment. The only difference between this drawing and the one there is in addition to the fact that there’s a new heading on it for the purposes of the Committee, and an insertion of a box in the bottom right-hand corner, one can see that it’s had superimposed the triangle land immediately to the north of the OPA, the Oil and Petroleum Authority area, and that part of the Able proposal, which Associated British Ports seeks to have removed as part of the compromise, is dotted pink, with the reduced IWDJ superimposed over it.

795. This bit I will read out, but the reference for the transcript is volume 1 of the core documents, tab 2, which is the Development Consent Order, and page 83 thereof, which is in schedule 11, which sets out the requirements. And although the word “requirements” is used in the DCO process, they are actually little if any different from conditions that are attached to planning permission; they perform substantially the same function.

796. Requirement 5 requires: “That the authorised development is carried out in accordance with the drawings listed, and that no authorised development may commence until details of the layout, scale and external appearance of the authorised development so far as they do not accord with drawings listed in paragraph 6, have been

submitted to and approved by the relevant planning authorities, and the authorised development must be carried out in accordance with the agreed details.”

797. Requirement 6 is the one that lists the various application drawings, and we see the first of those listed is AME/02OO6. That’s the base plan from which ABP/5 has been drawn. The authorised development, requirement 6 provides: “Must be carried out in accordance with the drawings listed below unless otherwise approved by the relevant planning authority in accordance with paragraph 5, and the altered development falls within the order limits and has no significant environmental effects beyond those assessed in the environmental statement.”

798. It follows that any 500 turbine aspiration, and I use 500 in headline terms for obvious reasons, I’m not referring to all the other components, can only come forward if and insofar as Able seeks dispensation under 6, and can also show that there’s no change in the environmental impact. The Committee it at present not in a position to form any conclusion on that, however provisional, not least because there aren’t the plans to show actually what Able now wants to do.

799. I come now to the three tests, and I will take them in turn, and I can take these more quickly, but I still need to cross-reference to various elements of detail. Are the disputed plots required is the first test. And for the assessed scheme, at 400 clearly they cannot be, and that point alone is sufficient to get ABP home. But I refer also to the evidence of my witnesses, particularly Mr Slark and Mr Galbraith.

800. Mr Slark predicts actually what the demand is going to be. He entirely accepts and does not resile from, indeed it would be impossible for him to resile from the fact that there are legal requirements and targets for the bringing forward of renewable energy, and indeed a duty on the Secretary of State to secure them. But that has to be balanced in practical terms with the recognition that no wind turbine technology can achieve profitability in an unmanipulated market. Government recognises that and has manipulated the market by providing financial support and fiscal encouragement. I do not need to go to the detail of that now, but Mr Slark further identified that since the Panel considered matters, that financial and fiscal environment had become less favourable. The Government has put the onus on bringing forward energy generation across the board, and energy generation by renewable sources in particular onto the private sector. In so doing, and this is successive Governments, the Government has necessarily recognised that the only way these matters are going to come forward or be brought forward by the private sector is if the private sector, owing its duty to its

shareholders, can be assured that there is a realistic prospect, not merely of breaking even, not merely of making a profit, that is being technically in the black rather than the red, but also of making an appropriate return on investment, having regard to the return it might have secured had it invested in other areas.

801. The state of the demand and market is therefore most material; a) because of what trade, in my coarse term, might actually eventuate, but also having regard, as I've already identified, the fact that Able is itself a commercial organisation, an *ex hypothesi* will only bring this forward if and insofar as it can be realistically assured of meeting the financial criteria that I just summarised.

802. So far as concerns Mr Galbraith, and here I invite the Committee's attention to ABP/12, he has considered all bar one of the scenarios, that bar one relates to the 500. I'll come to that in a moment, he's not to be criticised, in my submission, for that. Ones that are set out in the table are the first three, all of which relates to an assumption that the trade will reach the level assumed in the indication of the realistic worst case we've already looked at for the purposes of environmental assessment. He then goes on, picking up Mr Slark's assessment of the actual demand and the extent to which trade really will occur, and deals with the scenarios. He puts those in terms of key utilisation and berth occupancy, expressed as a percentage. I do not need to repeat the definition of what those terms mean. Mr Cooper explained it to the Committee, and explained that this was a usual test to be applied – test of performance in the ports industry, and gave an indication of the sort of range which port operators are looking for, namely 65% to 75%. Even if Mr Slark's evidence is wholly discounted, on Mr Galbraith's figures the proposed scheme is materially overambitious in land take.

803. Having had it drawn to his attention that Able was now arguing, on whatever basis, for a 500 turbine capacity, Mr Galbraith calculated what was the key meterage necessary to achieve to unlock the 500 capacity, and gave the figure of 600 metres. It is also relevant to note that Mr Galbraith gave the yardstick indicator of 27 weeks to clear – in my unfortunate vocabulary, 100 wind turbines over a berth length of 200 metres. That equates to 185 turbines over a period of 50 weeks. 5-0 weeks. And one can interpolate between those dependent on how many weeks one assumes.

804. It doesn't matter how Able constructs its case at this stage, bearing in mind I'm still in a half time match report. This is not concluded submissions and, in fairness to Able, they've yet to call their evidence. But on the basis of the evidence presently available to the Committee, there is only one conclusion possible from that, in my

submission, albeit necessarily an interim conclusion, unless and until the Able case has been heard, and that is, at the moment, the case for the full – the land acquisition, spoken to by Able, cannot be concluded as yet to have been made out. Mr Cooper also, bearing in mind that Associated British Ports works with Siemens at Green Port Hull—is working—the Green Port Hull proposal. The Green Port Hull proposal has an expected throughput of 300, but a capacity up to 500.

805. Now, even putting on one side the extent to which import vessels and materials can or cannot gain access through the locks at the Port of Hull to the locked berths – by locked I mean those which have to be – which where the water level remains constant, where lock access allows one to go in and out at appropriate states of the tide. Even putting that on one side, looking at the simple export of turbines, they’re doing that over 600 metres of quay, and it just happens to be 600-odd metres of quay. The odd metres, for my purposes, don’t matter, though Mr Bird will say if he takes a different view. That just happens to be inherited from a previous proposal. But there – if ABP and Siemens are happy to look at doing a capacity of 500 over a 600 metre-plus quay it is difficult, certainly at this stage impossible, to reach any conclusion other than that the 1200 metres odd quay proposed by Able, even taking – and taking account of the right angle berths – can begin to represent an efficient use of land.

806. And I stress the word, ‘Efficient’ for a number of reasons. First, insofar as the habitat regulations are concerned, it is more efficient, less intrusive, to use less land to achieve the same, or to meet the same demand or need. That is what ABP’s evidence shows. But also there’s a commercial dimension to this. If one builds a piece of infrastructure which is bigger than is required to meet the assessed need or demand, the capex, the capital investment upfront, is necessarily larger than it would be for the more efficient, smaller scheme.

807. The private sector will always be looking to recover that capex by charges, and to make a profit. If one starts with a higher capital investment because one’s building a larger scheme than is needed, one is hampering one’s ability to deliver cost efficient schemes, and operating directly contrary to the government’s injunction to bring the cost of renewable energy provision down. Of necessity one’s hamstringing oneself at the outset.

808. I now move, having dealt with the first test, is the land required, to whether or not there is a compelling case in the public interest for their acquisition? If the Committee is with Associated British Ports on the question of whether the land can be considered

to be required at this stage, then ABP succeeds on the first test, and also succeeds – although it doesn't alter matters – on the public interest point, for obvious reasons. But even were the Committee, at this stage, not satisfied that ABP had shown that the – or convinced them that the acquisition of the quantum of land Able proposes was unnecessary, i.e. it was too ambitious, even then there is a balance in the overall public interest to be weighed. That is the point Mr Rowell was making, and Mr Whittaker this picks up the question you asked Mr Rowell. He gave his answer and I took the liberty of intervening as well to identify that, in those circumstances, if the land is not required and the compromise can do the business, then the overall public interest in favour of the Able scheme – and I've already accepted, including today, that the policies support an appropriate provision at AMEC. No part of ABP's case say it shouldn't occur, but it should occur only on the quantum of land proposed. If the compromise is accepted, then the triangle land, any development of jetty-able proposals from there, also enjoy the overriding public interest. And the public interest proceeds in exactly the same direction. It's only if the Committee has, at this stage, some residual doubts on the question of whether the land is required, that there is a potential – not, in my submission actual, but a potential tension between the public interest, and there there is the balancing exercise that includes the need for the IWDJ in compromised form, spoken to by Mr Cooper, and including within that the knock-on effects insofar as they occur in the main part of the Port of Immingham - and I refer there in particular to the optionality, as Mr Cooper put it, of the hit three proposal. Those, of themselves, are sufficient to tip the public interest in favour of ABPs case. The more so bearing in mind that, as Mr Rowell identified and was not contradicted on this, the importance of Immingham is both national, and it is a strategically important piece of marine infrastructure.

809. But even assuming that the Committee wholly rejects the IWDJ case and the associated optionality of hit three, nonetheless, one comes back to the elbow room point, and the requirement to meet the various demands, to which I've already spoken and which I won't repeat.

810. One can also test it in this way: As Mr Rowell identified, the statutory development plan expressly includes – or draws a boundary around – various bits of land which are, in the non-technical sense, safeguarded or identified for use as part of the statutory undertaking of Immingham. Statutory development plans, as members of the Committee will be aware, require to go through a number of processes before they

are finally approved or adopted, and it is, in my submission, inconceivable that such a policy would be promoted, much less adopted, and become part of the statutory development plan as it still is, if the relevant planning authorities did not regard the importance of the triangle land, with its access to deep water, as being extremely important.

811. One does not put policies in the statutory development plan to protect Mrs Miggins' allotment. What one does is identify what's important. In 4A, or IN4A, forgive me, does precisely that. There is no other conclusion which can be reached. There is an ongoing debate in the context of the emerging development plan, which will, in due course, become the statutory development plan. But the position now is absolutely clear and, were this a planning application, then the decision would have had to accord with the development plan, unless other material considerations weighed in the balance, and dictated a different conclusion. They would have to be cogent. And, for all the reasons I've set out already, those cannot be shown here.

812. I come now to – forgive me, one other point on this. I put, in re-examination of Mr Cooper the question of compulsory acquisition. As a matter of law, it would have been open to Able, in promoting the DCO, the Development Consent Order, to promote compulsory acquisition of land to compensate ABP for the loss of the triangle land. They chose not to do that. Importantly, they have also thus far – notwithstanding, and it probably flows from the negative cross-examination which has been done, or the negative cross-examination on a negative basis – again, I stress I am not seeking to be, nor do I wish to be seen as criticising Mr Bird. I entirely understand the reasons why he put the cross-examination in that fashion. But the position remains that Able has failed to identify any land which, they say, could fill the boots of the triangle with its riparian rights. Had they been able to identify such land it is, in my submission, inconceivable that they would not have identified that to the Committee. Indeed, they ought to have identified it to the Panel and, at an even earlier stage, they ought to have recognised the importance of the triangle site and sought to acquire that other land they'd identified. They did none of those. Thus, to that extent, Able can properly be characterised as being the architects of their own downfall if, indeed, downfall it be.

813. I turn to my third head, and that is, 'Can the land be taken without serious detriment to ABPs Immingham undertaking?' I've explained the triangle land. You've heard, much more cogently and importantly, not from me but from the Chief Executive of Associated British Ports, the way in which they regard the triangle land. And, on the

basis of the evidence at this stage it is, in my respectful submission, impossible for the Committee to be satisfied that this land can be taken without detriment.

814. I turn to my fourth, subordinate heading, which is the question of Environmental Impact Assessment. We called two witnesses to deal with coastal processes and with ecology, on the basis that those were the areas where it appeared the biggest potential for there being a significantly different likelihood of significant effect as between the compromise AMEP scheme and the full AMEP scheme. And you heard Mr Rowell's indication of the checking of other areas. It was not necessary there to call any evidence on it.

815. The evidence before the Committee at this stage is clear. First, that no further environmental information is required. Even were the Committee or, in due course, others, to take a view that further environmental information was required, that could be done comparatively shortly because there is here no requirement to go out and acquire further information. For instance, in relation to ecology, if one needs to do further surveys they often have to be taken at a particular time of year in relation to a breeding season, or something like that. But all the broad data is here and, even if there were some requirement for environmental information to confirm matters, it can proceed essentially on a desk-based approach, and it is also relevant to note that Able has been on notice of this point for some time, since the petitions were lodged, and it would have been perfectly open to them to have carried out some concurrent activity.

816. That brings me, subject to my checking with those who sit behind me, as to whether I've missed something, to the position whereby ABP has shown more than a *prima facie* case here. It warrants further investigation, and the Committee will then be able to form the view overall, a concluded view as opposed to a preliminary view, in the light of such evidence as Able chooses to call. In the words of Mr Cooper, he said, and I quote, 'We need it. They don't. And there is a compromise.'

817. Now I'm very rudely now going to turn my back on the Committee for a moment while I just make sure, as I say, I've missed nothing. My lord, unless I can assist the Committee in any other way, that concludes the submissions I need to make.

818. CHAIRMAN: Thank you, Mr Newcombe. Do any members of the Committee have particular points they would like to address to Mr Newcombe at this stage? Mr Whittaker has a point for you, Mr Newcombe.

819. MR WHITTAKER: Could I just ask you to address one question, which I may not have just picked up on. You said, and we heard, Mr Cooper said that he considered

other sites for the deep water jetty. What I didn't think – what I don't appear to think in my own head that we got, was evidence of how that was evaluated? Was there any evidence supplied, or have I just missed it?

820. MR NEWCOMBE: The evidence of the full IWDJ, insofar as the parties have thought it necessary to burden the Committee with it, is in the core documents. I think, from memory, in volume two. It matters not.

821. MR WHITTAKER: Okay.

822. MR NEWCOMBE: Mr Cooper was there reporting process of the environmental statement, which is a weighty document and includes consideration of all matters, including alternatives, if and insofar as relevant and was, in any event, reporting the internal processes which ABP had carried out. Not least because, in pursuing any sensible business opportunity, any operator such as ABP, and the ports industry or, indeed, any other transport industry, will look at the alternative ways of meeting the need. They'll frame the need or demand in the first instance, and then say, 'Right, how can we meet this?' And ABP went through that process before proposing the IWDJ, and decided, maybe rightly, maybe wrongly - that is a matter not for me but for the Committee and for the Secretary of State in due course - that none of the alternatives considered actually met the demand need appropriately and/or involved different environmental impacts.

823. MR WHITTAKER: Sorry, just for clarity for me again, I understand that there would have been a process to go through. Is there evidence of that process in these bundles?

824. MR NEWCOMBE: No. But the evidence you have, and which was not challenged is – although Mr Bird took Mr Cooper through various points and said, 'What about here? What about there?' The evidence you have is Mr Cooper's identification of the process through which ABP went. And that's why – and you'll recall that the Panel's conclusion started from the fact that they understood, wrongly, that ABP itself had accepted there were alternatives, and that point, at the very earliest moment of the Panel's consideration, then infected all their downstream reasoning. And that's the reason why the Chief Executive was simply able to say, 'No, the Panel misunderstood.'

825. MR WHITTAKER: I understand that point, and that's why I'm asking you. Because you've made that very clear that you've been challenging the Panel's decision along the way, and my question to you was based on the fact that okay, Mr Cooper's

said that, but where is the evidence to say that exercise has been carried out for other sites, and I think what you've said to me is that there isn't any evidence in the pack?

826. MR NEWCOMBE: Not unless I'm reminded of it, my lord.

827. MR WHITTAKER: Okay. Thank you.

828. MR NEWCOMBE: But that's because the starting point is ABP's conclusion, and whether or not they accepted there were and, as a matter of fact, that's simply wrong. It may be, had – were the IWDJ to run the full course, supposing AMEP said, 'We decided we're not going to do it' and went out immediately, there would still be an application for the full IWDJ before the MMO and, logically, they would start considering it. It is, for my purposes, irrelevant whether, in due course, they agreed with ABP that there were no alternatives or said, 'No, we know you take a different view, but we can identify an alternative here.' It...

829. MR WHITTAKER: It might, if I may Lord Chair. Mr Newcombe, I understand what you're saying, but you've gone through a process this afternoon of explaining to the Committee that, in your opinion, the Panel that have considered this prior to us have come to the wrong conclusion. My question to you was that where is the evidence to say that, with the exception of Mr Cooper telling the Panel that you've been through that process, where is the evidence to suggest that ABP has been through that process?

830. MR NEWCOMBE: Well, sir, you've already had my answer to that question and none of what I've said, forgive me for being pedantic about this, none of – my opinion is wholly irrelevant. Everything I'm saying here is submission, based upon the evidence. Your point is absolutely right. If the Committee has a question about it, we could no doubt dig it out. But for present purposes, given that the Panel started from a mistaken view as to what ABP's conclusion had been, you've heard from the Chief Executive what that conclusion, right or wrong, was, and that is sufficient to found the point which I advance.

831. CHAIRMAN: Okay. Mr...

832. MR NEWCOMBE: My lord, please forgive me literally just one moment. My brain is trying to insert something in my left ear. My lord, I'm reminded by my junior that Core Document 10 is the URS assessment of the IWDJ, which specifies various alternatives there considered, and forgive me, I had forgotten that, and my answer to Mr Whittaker's question would have been materially shorter and more cogent had I recalled that fact. I'm grateful to my junior for reminding me. The section, it's 2.25, and headed, 'Need and alternatives.'

833. MR WHITTAKER: Sorry, could we have the reference again?

834. MR NEWCOMBE: I'm told it's in Core Document 10, chapter 02.

835. CHAIRMAN: 10, and then you broke it down further?

836. MR NEWCOMBE: It's page 2-9, my lord, in Chapter 2. You'll recall I did take Mr Cooper I think at one point to paper 2.1 which sets out, 'The summary of alternative sites considered in the environmental statement' dated November 2013.

837. CHAIRMAN: Sorry, we are struggling with our volumes here.

838. MR NEWCOMBE: The Environmental Statement itself should have Volume 1, May Report, if you've got the same document that I have. That's the starting position. And it's Chapter 2 and it's got, 'URS' in the top left hand corner of that document. I apprehend the problem the Committee may be having is that, for some reason, this has been inserted in the file other than in correct order. And I think it may – I'm grateful for learned counsel. My lord, yes it's Volume 2 of the fact bundles. Core Document 10. For whatever reason, whoever assembled these bundles did not do it in sequential order and the best I can do – this is the totality of the document, it's just under half the way through, and one needs to go to the page numbers, which start 2-1, 2-2 etc. That's the proposed development, and if one goes to page 2-0, at page 5, 'Need and Alternatives' and then on to 2-5 and following. And that confirms the position, as expressed by the Chief Executive, and evidences an importance with the Environmental Impact Assessment Regulations the consideration of alternatives.

839. CHAIRMAN: Okay.

840. MR NEWCOMBE: My apologies. I'm grateful to my junior. I apologise for making heavier weather of that than was necessary.

841. CHAIRMAN: Thank you, Mr Newcombe. Mr Bird.

842. MR BIRD: My lord. My submission, you've heard this afternoon from my learned friend an awful lot of dead wood, which I'm going to need to clear out of the way and identify for you what is actually sound territory for you to consider when assessing the issue of whether or not there is a case to answer.

843. The starting point, of course, is that the onus rests on ABP to make out their case on the petitions. There's no onus on Able in these proceedings. And it is for them, therefore, to establish the limbs of their case as they've been identified which, as I understand it, are firstly whether the disputed plots are required. Whether there is a compelling case in the public interest for the acquisition, and then, finally, whether the land can be taken without serious detriment to ABP's undertaking. They bear the onus

on all of those in these proceedings, and the reason for that is because, of course, the development consent order has been through the planning process. It has the recommendation of support from the Panel. It has the approval and the making by the Secretary of State for Transport, and therefore it's entirely appropriate, given that ABP have been involved throughout that process, that if they still seek, after all of it has been gone through, to seek to challenge the findings of the process, they bear that onus.

844. Now, my lord, I don't accept the criticisms made either of the Secretary of State's decision letter or, indeed, the Panel report, for reasons I will touch upon in a moment, have been made out. Equally, it's quite wrong to say that this Committee starts from a de novo position, untrammelled by the previous processes. In my submission, it must take, and pay due account, of the lawfully made decision of the Secretary of State to make the Development Consent Order.

845. But if I could turn to the issues, whether the disputed plots are required, and touch upon the evidence. There are two strands to ABPs case in relation to that first issue. Firstly, whether the need for the scheme has been exaggerated by AMEP or Able, and whether or not the scheme could be provided in terms of its objectives, and meeting the need on a reduced area, and secondly, there's the contention that the triangle land is going to be put to some sort of low-key or trivial use. Those are the two essential parts of the case made by ABP, and I'll start with the claim of exaggerated need. But, of course, that depends on two pieces of evidence that you've heard in these proceedings. Firstly, it depends on Mr Stark's need evidence, and secondly it depends on Mr Galbraith's evidence which is, in turn, informed by Mr Stark's evidence.

849. But of course, Mr Stark's evidence, in my submission, is fundamentally flawed. Firstly, it represents short-term thinking. Principally a 2020 horizon based on current levels of subsidy, with no ambition in terms of achieving more into the future. I've just been corrected by my learned friend, it's Slark not Stark. I apologise to Mr Slark. As far as his evidence is concerned, however, it is short-term thinking. It was a – demonstrated a reactive approach and, of course, it did not address – and, importantly, did not address a significant element of the market potential available to the AMEP scheme, namely the European export market. So the export of components for deployment elsewhere, and what could be achieved in that respect. It also, of course, was entirely unsupported by the example of what is happening at Green Port Hull, across the Humber, where Siemens have an anticipation of delivering 300 turbines per year from their scheme and this, as Mr Slark realised ultimately in cross-examination,

his evidence is clearly inconsistent with the view that Siemens themselves have formed of the potential of this market. Because his projections, if you recall, from this document ABP 13 were – for my lords and joint committee looking that up in due course, if you look at those projections, the total contestable market available to the AMEP scheme on his analysis is far below the 300 turbines which Siemens are expecting to do.

850. So there's a mismatch there, which demonstrates in my submission the pessimism and unrealism of his evidence. But it does not begin to demonstrate that the need for the project as a whole, or the business that it has a prospect of handling, is any sense overstated by AMEP.

851. I need at this point, if I may, to turn to the environmental assessment issues which have been raised, because they too are similarly bad in every respect. Indeed, in my view, in my submission, it demonstrates the weakness of the ABP position, that they have to descend to the level that they have, in terms of their arguments based on the environmental statement.

852. My lords and joint committee, could I take you please to volume three of the agreed volume of documents, and go back to tab 12 in there. Within that, if we could go first please to page 2-3 at the bottom, in chapter two, in paragraph 2.2.11. You'll see that, in terms of 2.2.11, what it says is, 'As shown in Figure 4.1, parts of AMEP have been divided into separate land parcels, within these parcels parameters are fixed as to appropriate levels of development with respect to height, massing and density. These parameters provide an envelope for assessing the impacts of the development, and these parameters are detailed in figure 4.2.'

853. Could I then invite the joint committee to go to the very end of section four. So just before page 5-1. There are two figures, and figure 4.2 there appears. Now at A4 it's a little difficult to read, but at the legend on the right hand side identifies what are called limits of deviation, for the siting of the buildings, and in terms of the plan itself, it identifies the requisite parameters for the built form itself.

854. That is what figure 4.2 is doing. It is referring back to the parameters established by 2.2.11. It's not fixing the layout, the particular occupiers of the scheme in those positions, what they might be doing; it's fixing the buildings and the heights and the density of the development.

855. So the notion that in some sense, that the questions put at this joint committee have indicated that the scheme has changed in some material way, to something which

hasn't been environmentally assessed, is in my submission a nonsense. Nothing which has been put is inconsistent with the parameters identified in the environmental statement.

856. We need then also to go, if we could, to chapter four of the environmental statement, which the submissions of Mr Newcombe were principally based. And that starts at page 4-1. And if we could go to 4.4.2 first, you'll see that the site plan is there referred to, and it's emphasised that it is an indicative site plan. And the principle elements are described below, and chapter two is identified that it incorporates the necessary degree of flexibility.

857. So indicative means, unsurprisingly, indicative but within those parameters. So the attempt to muddy the waters this afternoon, to suggest that something is now being proposed which was never previously proposed and assessed, is in my submission an unfair characterisation. And if we go on in the document, to 4.4.26, on page 4-8, you'll see again that that very point is made.

858. The particular mix of manufacturing facilities couldn't be fixed prior to the application. So the heavy component manufacturing site was based on an indicative development proposal. But as I pointed out during the course of the committee hearings, 4.4.27 is the quay. It's the gross weight of goods manufactured which has been taken forward to assess the environmental effects, both in terms of the transportation, the vessel movements etc., so that the full and worst case environmental effects have been assessed.

859. And then if we could go on to 5.10.14, in chapter five of the environmental statement, just to nail once and for all the quay length issue. And this is 5-51. Probably just need to touch on the content of 5.50, and paragraph 5.10.12, where there is the reference to the 500 turbines, four lines up from the bottom of that page, as part of an indicative assessment.

860. But it leads, importantly, to the conclusion in 5.10.14 as to the need for five construction quays of 1000 metres overall length, and a dock capable of stern loading, to enable future technologies, coupled of course with the import, export quay, 1279. It is still 1279. The figure of 290, which I put in cross-examination, I thought I'd made clear was the average requirement of all of those who've made enquiries, you divide the overall length of quay which they've all sought, by the number of the enquiries, you get 290.

861. There's no proposal, no current proposal within the scheme to alter it at all, and if you go to the most recent bundle of Able exhibits, you are taken to ABP – sorry, Able 14, which shows on the north-eastern side, or right-hand side, various blue arrows pointing out from the quay, and you'll see four construction quays, and then there's the foundation quay, which is for construction and import, export, the import, export quay of 200 metres, and the 79 metres specialist berth. 1279 divided in accordance with the environmental statement.

862. So when you actually pare away the submissions, which in my submission are bad submissions, that you've heard on the environmental statement, you can see that there's absolutely no point there at all. I can then, I think, move to the issue of mutualisation of the quay, and there the only evidence called was from Mr Galbraith.

863. Well, Mr Galbraith, as you heard, was a project manager – that was his experience – of Logistics and Transport, in relation to existing projects. Not experienced in terms of bespoke projects, and not experienced in terms of what would be required in terms of delivery of off-shore wind turbines, at a cost which would meet the government's objectives in terms of reduced subsidy. So his experience is not comparable with that required for what is a bespoke facility, to service what is potentially a global market.

864. But importantly, you will recall that he accepted that, as far as the delivery offshore of 400 wind turbines per annum, that would require 4 quays of 200 metres. He struggled, and indeed could find no answer at all, as to why, if the requirement was for 500 offshore wind turbines, that did not equally require a quay length – sorry, a further quay of five quays of 200. That was pretty telling, in my submission, and you may find that pretty telling, in terms of his evidence, that he was unable to explain, rationally, why his evidence did not lead to the conclusion that the scheme was justified.

865. And indeed, in terms of his contention that more could be done over a lesser quay length, of course the quay issue is whether or not more can be done over a lesser quay at a cost which meets the government's objectives. And on that he could give no evidence at all. So there's no evidence from ABP that the need identified, which Able is to meet, can be met by either of their compromises.

866. And of course, one only has to look at Green Port Hull, to see why he was in some difficulty. Because there we know that Siemens are proposing 300 wind turbines over a 600 metre quay. It may very well be that they think it might have a higher capacity. But in terms of the normal operation of that quay, the evidence is that they

are proposing 300 over 600, which is exactly the same ratio as is being proposed at AMEP.

867. And that of course is a purpose design but assembly port. It doesn't include the manufacturing operations, and therefore the import, export requirements which the AMEP scheme is likely to require. Hence the import, export quay. And of course neither Mr Galbraith, nor Mr Slant, took any account of the need for every turbine to have a foundation. Somehow the foundations, other than 50 foundations which were expressly mentioned in the environmental assessment, were in a sense to materialise out of nowhere on the ABP case.

868. So when you actually pare away what in my submission are the bad points, you are left with the residual position that the ABP evidence properly analysed on the need case, actually supports the Able and AMEP scheme. So on that point, there is clearly, in my submission, no case to answer.

869. I then turn to the issue of the use of the triangle site, which has been relied upon. There have been very little evidence. My lord and the joint committee, you are entitled to draw a distinction between what might be called assertion and what may be called evidence. And that's an important distinction. It would be important given the stage we're at in the process, given the cost and the effort which AMEP have been through in order to get the DCO, it's important that when you're looking at what is said, that you look to see that it is supported by evidence, and sound evidence. That is only fair to Able.

870. And then let's just look at the triangle site. So other than the criticism that the indicative drawing shows it used for low-level, i.e. low-height storage, and a pumping station, and the assertion by Mr Cooper that that is a trivial use, no case has been advanced that there is not a reasonable requirement for the triangle site.

871. As far as the pumping station is concerned, Mr Cooper's evidence, you'll recall, on the first day of the hearing, was that – his advice was that it would cost somewhere in the order of £5 million to relocate. You'll note from the note which was produced today, that that is now reduced to some £1.5 million.

872. But £1.5 million, added to the cost of a scheme which is designed to reduce the costs of the deployment of offshore wind, is not frankly to be sneezed at, you may feel. It is an additional cost, which should not be incurred. And that of itself is sufficient.

873. But of course there's no sound evidence to contradict the findings of the panel assessment of the value of the triangle site. And here I will turn to deal with the

criticism made of the panel report. If we could go – and this is in the core reference bundle – to document four. When you have core reference document four, if you could go first to page 131. And paragraph 18.155, to which my learned friend has made repeated reference before the joint committee.

874. Because he criticises the panel for saying that it could only deal with the scheme before it, and says well that's, as it were, an error or flaw. It's a cardinal error. But in fact the panel didn't, as it were, then exclude from their consideration whether or not the triangle was properly included within the site, having regard to the need, which is the principle criticism directed at them.

875. If you in fact go on in the report, to 18.204 and 205, which are on page 138, in those two paragraphs which I referred to with Mr Rowell earlier on today, that of course is the very issue that they're considering at that stage. They're looking to see how valuable is the triangle site to the scheme; what would be the effects of excluding it.

876. And you have to read panel reports as a whole. You don't cherry pick sentences here and sentences there. So in terms of the substance of the criticism, did they exclude from their consideration the effect of excluding the triangle site from the scheme, and therefore consider the scheme without that, the answer is no. What they were saying, in 18.155, is that we'll assess the overall balance by reference to the scheme as a whole, but having taken into account the part played by the triangle within it.

877. So this claimed fundamental error of law simply doesn't exist. It's a smoke screen. And of course, once you've reached that conclusion, you're left with almost no criticisms, no valid criticisms, of the panel report as far as ABP are concerned. We're left with the concern expressed by Mr Cooper, repeated by Mr Rowell, that they don't think they had a fair opportunity to test the Able case, in terms of the triangle site and other issues.

878. But of course both of them acknowledged that the planning process is a paper process. It's an inquisitorial process. And effectively the hearings for compulsory purchase are focussed hearings to enable the panel to hear the issues which they think are going to be of most use to them. It doesn't mean that the merits of the triangle site weren't properly considered.

879. ABP had and took every opportunity they needed to advance their case, in terms of the triangle site. And nothing, in my submission, has been advanced by way of the ABP case, which would justify this committee reaching a different view, as to the importance of the triangle site to the AMEP scheme.

880. And you'll note, for example, that the elbow room or resilience, which ABP place such reliance upon, is apparently to be denied the Able scheme, despite the fact that the ABP witnesses accept this is an innovative and fast-changing business. There is an internal inconsistency between the submissions made by ABP and their own case.

881. Can I then turn to the issue of compelling case in the public interest for acquisition? And here, could I invite the joint committee just to take up the Secretary of State's decision letter, which is in that first volume of core reference documents, and it's document three. If you go, just in passing, to paragraph 42 briefly. You'll note in passing that the second sentence there – 'the Secretary of State notes that on 20 November 2013, ABP applied to the Marine Management Organisation, MMO, for a harbour revision order under the Harbours Act, to authorise the Immingham western deep-water jetty, which would use the triangle site.'

882. So ABP did not miss the opportunity to draw to the Secretary of State's attention that it had applied for a harbour revision order to create or authorise the construction of the IWDJ. And therefore, in terms, for example, of the assessment of alternatives etc., the Secretary of State would have been aware of those.

883. But moving on to paragraph 51, which is the overall conclusion, in the light of the submissions I have already made on the general need case and the need for the triangle site, in my submission there is no credible or sound evidence, which would justify this joint committee reaching a different view, in terms of how to perform the balance, as between the AMEP scheme and the other considerations, including the acquisition of land from ABP, than that struck in this decision.

884. The benefits of AMEP are unchallenged. The only issue which has been raised is, 'Well, will you fully realise them?' In my submission they have – ABP have failed to discharge the onus of proof in demonstrating that those benefits are not capable of being realised. And of course, they're only basis for that contention was Mr Slark's evidence, which, as I have said, is fundamentally flawed.

885. Then there's the issue of, 'Well there are no alternatives to the IWDJ.' And in my submission that has not been fairly or accurately presented to you, in terms of the handling of the alternatives by the panel. If you could go back to core document 4, the panel report, please, and within that to page 92, paragraph 13.8, criticism is made of the findings of the panel in terms of the availability of the alternatives.

886. But of course, the evidence which ABP put before the panel as to alternatives was their master plan. And the panel has that master plan in volume three of the documents,

at tab 11. And you'll be able, in due course, to consider the content of that master plan, in the light of those panel conclusions, and to form a view.

887. But just to give you a couple of references, if we go to page 43 of the master plan, which, as I say, is core reference document 11, at 5.65, you will see reference on page 43 – that is paragraph 5.65 – you'll see reference there to 'the port needs to equip itself to service this increasing demand through its existing liquid bulk facilities, at the IOT and East and West jetties.' How can the panel possibly be criticised for referring to the East or West jetties, or indeed the Immingham oil terminal, when the ports own master plan identifies that there is capacity to increase through those?

888. Equally, if we go onto page 64 – we just need to keep a finger in 63, because that's where the heading appears – 'Immingham Oil Terminal Developments' on page 63. But on page 64, at the end of paragraph 7.38, you'll see part of this proposal, i.e. that effectively relates to the Humber International Terminal Berth Three, is to transfer this operation to the western deep-water jetty, and/ or IOT.

889. So again, how can the panel be criticised for concluding, given that the port itself was saying we have alternatives, for saying, 'You have alternatives.' It is not a fair criticism. And of course it's not a fair criticism of the panel, and the evidence before this committee does not begin to demonstrate that there are no alternatives to the IWDJ. It doesn't begin to demonstrate that. And this is where you need to pare away assertion from the actual evidence.

890. The master plan itself throws up a host of alternatives. The environmental statement extract that you were referred to a little earlier, I invited the joint committee to read that in due course, because that has been clearly used to create Mr Cooper's note, which again I asked questions about today. A number of alternatives are simply ruled out because of, for example, ABP, shock horror, might actually have to acquire someone else's rights. Well that's not a reason for not pursuing an alternative.

891. Alternatively, it may be that it actually requires a jetty to be re-provided, or infrastructure to be replaced. Well, so what? It's not demonstration that there are no reasonable alternatives to the IWDJ. There is no convincing or compelling, or indeed sound, evidence that the objectives of IWDJ could not be met elsewhere. What you get is the chief executive of ABP giving a very high level, often inconsistent with the master plan, view of what might or might not be possible, but without any rigour, in my submission.

892. And indeed then that is compounded by a claim that the triangle has unique advantages. Those unique advantages are that it's close to the GPSS system and also close to the gas storage cabins operated by Calor. The difficulty there, of course, is the ABP has no evidence that they could service the triangle site by means of the GPSS system, and they have no rights and no ability to use the cabins, even if there were any capacity to use them. And there's no evidence there is any such capacity.

893. So paring away at those issues, you can see that the triangle has no unique advantage. If it has no unique advantage, why can't it go elsewhere? Well you're left wondering, in my submission, why can't it go elsewhere, because there is no sound evidence to the contrary, to that which is set out in the master plan.

894. And then turning back to the IWDJ, the next issue is, well, have ABP actually shown that it is deliverable on the triangle site in any event? Well, there's no sound evidence that it is. Again, a series of assertions from Mr Cooper which effectively reduced to him arguing that, yes, there were constraints but he was confident they could all be resolved.

895. That would be fine if there was some evidence that they could be resolved, but importantly resolved at a cost which the market would bear for the storage of liquid bulk facilities. Well, there's no evidence of that kind at all.

896. So you've got hollow assertions from a reactive port operator, but a reactive port operator where the market evidence which is contained in the IHS report, that's Able document 12, shows there's no obvious market for additional liquid bulks. Mr Cooper couldn't actually say how he'd fill his 4 million tonnes per annum tankage. No evidence as to how that might actually happen. No evidence of any increased storage requirement from existing occupiers, which they were unable to meet on their existing facilities, or by rationalising their existing facilities, which one might have expected to see.

897. And that's before you get to the constraints on the site itself, on which there have clearly been no assessments undertaken. So no modelling to demonstrate that the site could actually achieve the throughput which ABP have identified for it. No evidence that in terms of the land area required it could actually provide the health and safety requirements of the relevant bodies, in terms of hazardous substances and the like. And of course, in terms of the access to the GPSS system, an entirely unknown quantity, as far as ABP are concerned.

898. So it has no consent as a project, there's no evidence that it has any realistic prospect of ever getting a consent as a project, and yet it's also suggested by Mr Rowell today, and by Mr Newcombe a few moments ago, that AMEP should have been required to seek compulsory purchase rights within their DCO, in order to acquire land to provide for the IWDJ facility somewhere else.

899. But why on earth, given what you've heard about the IWDJ, would that have been a sensible course? Undeliverable project, no evidence of market demand, hardly likely to succeed in acquiring other people's land to provide for it on the basis of the ABP evidence to date.

900. And then I think I can turn to the issue of HIT3. And of course the position has morphed in relation to HIT3. The starting position before the panel was that the IWDJ needed to be relocated in order to facilitate the increased size of HIT3 to provide for biomass. Well now HIT3 is only an option in the future.

901. And that's unsurprising, and I'd invite the joint committee to look at the Tolvik report, which is Able's document 10, which demonstrates by forecasting and therefore evidence, as to why HIT3 is now self-evidently on the back burner. The conclusions of the report are telling.

902. When one has to regard to the likely reduction in coal importation, whilst it may well be that HIT1 and 2 are operating near to capacity at the moment, in the very near future, clearly there's going to be a reduction in the through-put, having regard to these figures.

903. And that of course is – makes no allowance for the ability of Tarter, in terms of their site, to accommodate coal for the benefit of others. So no allowance is included in those figures in relation to that. And there's been no material challenge to the broad thrust of the Tolvik report.

904. But of course even if there is a need for additional bulk biomass importation, again, just up the Humber at Hull, there is a live proposal by ABP for their renewable bulk terminal. So again, no evidence that there is not an alternative available to ABP.

905. So when you come then to look at the balance which the Secretary of State performed, and has to be performed, you're left really with the argument that, 'Well, ABP would like to keep some elbow room.' Well in that context, could I just invite the joint committee to take up the ABP documents which were put in today, and ABP 28, as an extract from the local plan.

906. And at the very back of the file, which is the smaller white file, the second of the white files, the very last document in the smaller white file is a copy of the proposals map. And that's the map which shows the land allocation set out in the development plan for the area, and the development plan does go to the previous page of text, as the date of it at the bottom, 2003.

907. So it's a 2003 local plan. And it sets out in the quay you can see, there's a proposed industry which is, sort of, the pink hatching, which extends all the way up to East Fulton. There's a line just seen in the Humber Estuary itself. And you can see where the existing port is, you can see where the refineries are. But a vast tract of land identified for a proposed industry connected with the Humber, which has been available to ABP to acquire, if it so wished, in terms of elbow or other room, from 2003, if not before, with a fair wind policy framework. And they have done nothing on the evidence, in terms of that, at all. So that puts that in context. So when the Committee comes to strike this balance, I'd invite you not to strike the balance in the way Mr Rowell suggests you should strike it. I appreciate we're here at the interim stage, but just recall his evidence. His evidence was: "Well, you should ignore the export benefits of the AMEP scheme because there's no reference to European markets in the environmental statement." He says, "Well, Immingham is a strategic port for the UK—the most important port in the UK—and therefore necessarily it should be given priority in terms of its requirements over AMEP." But just drill down to see what that balance actually involves. There is the AMEP scheme with 4,000-odd jobs and the IWDJ with 50, even if it were capable of being delivered. But 50 jobs that could be provided elsewhere on the evidence—or, at least, ABP have not demonstrated they could not be provided elsewhere—on the port.

908. When you come to look at and consider Mr Rowell's evidence and whether or not that would really support at all a different striking of the balance to that undertaken by the Secretary of State, you will, in my conclusion, reach the conclusion that it is a skewed balance. It exaggerates the benefits of the triangle land to ABP without any evidence, and it underestimates very significantly the dis-benefit to the public interest in further delaying the AMEP scheme in order to accommodate the so-called claimed compromise.

909. I can then turn, I think finally, to the issue of serious detriment. And the issue is, well, serious detriment for whom. As far as ABP are concerned, they have appeared en masse in support of the ABP brand and as the national statutory undertaker ABP—

that's when it suits. But, of course, when we're talking about serious detriment, they would have you look exclusively at Immingham. My submission is that it doesn't matter whether you look at ABP as a whole or just Immingham on its own—whichever you look at, there is no serious detriment. There is no credible evidence of serious detriment, as being advanced by ABP. I go back to the beginning: the onus is on them. The Secretary of State has ruled that there would be no serious detriment for perfectly valid reasons, as set out in his decision, as we have seen. Unsurprisingly, given the benefits of the AMEP project, he has taken the view that, in terms of the onus—sorry, in terms of the standard of proof—he would need to be satisfied that the IWDJ would be certain to progress before any issue of serious detriment could arise. That, in my submission, is an entirely appropriate test and it is not a standard that has been discharged by ABP in this case.

910. So you're left, really, with the loss of future opportunity to do something that might, in fact, be done somewhere else, or, indeed, there's no evidence could not be done somewhere else. There's no evidence of any impact on any existing business in terms of jobs, employment, spend or investment, and no one has said that if the triangle were lost to ABP, they would leave, close or scale down their activities at Immingham. There is simply no evidence, therefore, of the serious detriment that is claimed when you look at the evidence as a whole. ABP's case does not, in my submission, get off the starting grid. My Lord Chairman, unless I can assist you any further, those are my submissions on the evidence at this stage.

911. CHAIRMAN: Thank you, Mr Bird. Have members of the Committee got any questions to put to Mr Bird at this stage? No. Thank you very much, Mr Bird. Mr Newcombe, would you like a last word?

912. MR NEWCOMBE: Irresistible for a barrister. I can reassure the Committee that I have eight short points. I don't intend to traverse the majority of what Mr Bird said. You have my submissions. They fall to be considered side by side with his—eight points. I stand by the considerations de novo and, as I expressly accepted in opening, the panel report and the Secretary of State's decision letter in this are clearly material considerations. Indeed, ABP itself has sought to rely on them and has directed the panel's attention expressly to various areas.

913. Second, so far as concerns onus, in due course if this SPP continues, I will address the question of onus at the end of the case. At the moment, I entirely understand that this is a prima facie case, looking at the evidence ABP has called. I

make only one point in relation to onus, that is: you have my submissions on section 127 and Mr Bird's. I merely invite the Committee to look at what section 127 actually says: the indication there that there must be satisfaction that it can be taken without material detriment. That is materially different from the way Mr Bird puts it. I apologise for repeating the point, but it's an important one.

914. Third, Mr Bird provides no adequate or, indeed, any response to the fact that the Leviathan identified for the purposes of environmental assessment was 400 turbines not 500. The fourth point: Mr Galbraith's experience. It is no part of my case to puff any of my witnesses. Since Mr Galbraith's experience and thus judgment has been called in question in this way in which it was not called in question in cross-examination, I merely invite the Committee to consider the position whereby I introduced Mr Galbraith and he explained his experience. And, subsequently, members will recall that he referred back to it, identifying, for instance, where he'd worked with Siemens and others. But that is a matter for the transcript references and I merely invite the Committee to form their own view in the light of the way Mr Bird now puts Able's case.

915. Fifth point: where Mr Bird was referring to four quays of 200 and Mr Galbraith's acceptance of that. Again, I invite the Committee to look at how the point was actually put in terms of whether it was reasonable to do that. Also, I remind the Committee of the fact that Mr Galbraith's evidence remains clear: namely, that to do 500 turbines worth of trade requires 600 metres, in his judgment.

916. Sixth point: assertion versus evidence. I entirely agree. And, in so far as that is concerned, I invite the Committee to consider the way in which my witnesses have been perfectly properly cross-examined but in a negative sense, whereby none of the evidence to back up the propositions being put has been put before them. The Committee will remember that, on a number of occasions, I invited Mr Bird—although invariably without success—to put in the figures or to put in the evidence in so far as he was putting the proposition. I don't recall having succeeded at any stage. An example of that is that, at end of his cross-examination of Mr Galbraith, he had not sought to suggest any different figures from Mr Galbraith's figures for quay and berth utilisation. I invited Able, through Mr Bird, that if they took a different view of those figures, even if only as a simple matter of arithmetic, those figures should be put; they weren't.

917. Seventh point: I entirely accept and endorse—indeed, I recall making the point myself on more than one occasion—that it is all too easy to cherry-pick in relation to

considering any document but of necessity in proceedings such as this, there has to be an element of selectivity. This is the only document that I invite the Committee to go to in my closing submissions: that is volume 1 of the fact documents. We will need to look at the Secretary of State's decision letter and the panel report. So far as concerns my seventh point, we need to go to tab 3 which is the panel report—sorry, forgive me, tab 4—and go straight to page 138, whither Mr Bird took the Committee.

918. I entirely accept, indeed, I could not be in a position to deny, that there is an express section of the report headed "Triangle Site," where the panel considered the triangle site and its requirement, and whether there was a clear case—we see that at the beginning of paragraph 18.205 under section 122. However, the substance of my point still stands, because the panel only considered it in the context of a scheme of the size Able promoted, without having carried out the necessary antecedence step as to whether or not the totality of the land sought was required to meet the demand or need. I mention the antecedent point because, clearly, if at stage one, the panel had considered and concluded that the totality of the site was required—contrary to ABP's case—then this consideration here would have been unnecessary. It would simply have referred to the fact that they had already considered this and that therefore the triangle site should go. What happened before was that the panel did not look at the antecedent question—essentially, taking it as a given that this scheme was the size it was. Then, it simply looked at the triangle site as a part of that overall land acquisition. It's a fundamentally different approach, with a missing antecedent step.

919. The final point I make requires us to go back—this is my eighth and last—to tab 2—forgive me, tab 3 in the bundle. I take you to the same paragraph that Mr Bird took you.

920. LORD ARMSTRONG: Which document is it in?

921. MR NEWCOMBE: It's the same volume, My Lord. It's the previous tab—tab 3.

922. LORD ARMSTRONG: Tab 3—the Secretary of State's decision.

923. MR NEWCOMBE: Indeed. It's paragraph 42 of the main letter, not the annex—paragraph 42. This is the question of whether or not the panel was or was not correct in its understanding of the approach to alternatives in the context of the IWDJ. The port masterplan emerged in 2010 in consultation form and the final version is 2012. That shows this has been identified—an iterative progression—and that that progression continued beyond the close of the panel process, or the examination process. The Secretary of State fairly and accurately notes at paragraph 42 of his decision letter—

again, at the risk of cherry-picking, I will go to the last three lines on the page. Mr Bird read the previous bits, noting that ABP had applied to the MMO for a harbour revision order. It continues: while he recognises the progress made by ABP in its development of this project—pausing there; that’s my iterative process—since the close of the examination, he remains of the view that it is appropriate to issue the section 127 certificate. Thus, even if my criticism—or rather, properly, Mr Cooper’s criticism of the panel—is considered to be wrong—I don’t resile from the submission, but, even were that submission wrong, none the less, the Secretary of State was clearly seized with the point and was required to consider it in the context of whether or not the section 127 certificate should ensue. My Lord, those are the eight points, to which I wish to refer. That concludes the reply I need to make in response to Mr Bird’s submissions.

924. CHAIRMAN: Thank you, Mr Newcombe. I think the next step is for the Committee to go into private session. I would suggest that we do that immediately. Then we can call the parties back and give them our decision. The Committee is going into private session.

Sitting suspended

On resuming—

925. CHAIRMAN: The Committee is now in public session again. The Committee has concluded, by a majority of five to one, that there is no case to answer on both petitions. So I would like to thank all those who have taken part in these proceedings, including members of the Committee, and the Committee stands adjourned.