

Hornsea Project Three
Offshore Wind Farm



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Response to the Secretary of State's Consultation
Appendix 1, Annex D: IROPI Case Studies

Date: February 2020

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Orsted

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Appendix 1, Annex D: IROPI Case Studies - Able Marine Energy Park, Little Cheyne Wind Farm

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1. Able Marine Energy Park

- 1.1 In 2011 Able Humber Ports Limited (**Able**) made an application to the Secretary of State for the Able Marine Energy Park (**AMEP**) DCO. The AMEP DCO application sought development consent for the construction of a marine energy park comprising a new quay, together with facilities for the manufacture, assembly and storage of marine energy components, primarily offshore wind turbines, on the Humber Estuary at Killingholme in North Lincolnshire, together with associated development¹.
- 1.2 The AMEP development site overlapped with (and had a likely significant effect on) qualifying features of the Humber Estuary SAC and the Humber Estuary SPA and Ramsar site and thus an appropriate assessment was required.
- 1.3 In the AMEP DCO decision, the Secretary of State found that the AMEP development would likely have an AEIOI on the Humber Estuary SPA and Ramsar site. It was therefore necessary for the Secretary of State to consider the derogation provisions, including whether there were IROPI to justify the AMEP development.
- 1.4 The Secretary of State (agreeing with the Examining Authority on the topic) found that there were IROPI for the development which outweighed the harm it would cause to the SPA. The Secretary of State found there would be no AEIOI on the Humber Estuary SAC.
- 1.5 The Secretary of State granted the AMEP DCO on 18 December 2013.
- 1.6 A short case study on the IROPI aspects of the AMEP DCO decision is set out below.

Background facts

- 1.7 The Secretary of State's appropriate assessment found that the AMEP development was likely to have a significant adverse effect on the Humber Estuary SPA and Ramsar site, having regard to the core purpose of their designations, namely the protection of habitats of importance for migratory birds. This was due to a finding that the construction impacts of the new quay would lead to a reduction in the extent and distribution of estuarine and inter-tidal habitat, including the loss of food supply from 31.5 hectares of inter-tidal mudflat; and that an additional 11.6 hectares of mudflats is likely to have reduced functionality as a result of disturbance. This was found to have an impact on the "internationally important" population of Black Tailed Godwit. See paragraph 11 of the **Appropriate Assessment** at Annex 1 of the Secretary of State's Decision Letter dated 18 December 2013².
- 1.8 In relation to the Humber Estuary SAC, the Secretary of State found the AMEP development would have only a minor impact on the site:

¹ As described in Letter from Department for Transport dated 28 August 2013 - https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR030001/TR030001-002153-130828_Norman%20Baker%20Minded%20to%20Approve%20Letter.pdf

² <https://infrastructure.planninginspectorate.gov.uk/document/TR030001-002225>

“having regard to the size of the SAC, the loss of ecological function as a result of the AMEP development will be small, and that the habitats are types that are found over a wide area”.

- 1.9 No derogation case (and thus IROPI) was therefore considered in relation to the Humber Estuary SAC³.

Examining Authority’s Report

- 1.10 In its Report dated 24 February 2013, the Examining Authority considered the evidence put forward by Able in its DCO application and concluded that it:

“fully demonstrates adequately that there are IROPI for allowing the development to proceed”⁴.

- 1.11 The evidence put forward by Able (and referred to by the Examining Authority in its report) was based around the following topics:

- The need to decarbonise the world energy production;
- The importance to the UK of energy security;
- The importance of developing large capacity offshore wind turbines;
- Socio-economic benefits by enabling the growth of the renewable energy sector; and
- Benefits to the primary importance for the environment by enabling a necessary transition to low carbon energy production.

- 1.12 The Examining Authority quoted Able’s assertion that these imperative overriding needs:

“are both certain and immediate and the project will make a significant contribution towards them over a long period of time.”⁵

- 1.13 The Examining Authority found that there were IROPI for the AMEP development and referred to its ability to make:

“a major contribution to employment and the economy while supporting sustainable development”⁶.

Secretary of State’s decision on IROPI

- 1.14 The Secretary of State agreed with the Examining Authority that the evidence provided by Able demonstrated that there were IROPI allowing the AMEP development to proceed. In the Appropriate Assessment appended to the Decision Letter the Secretary of State found at paragraph 17 that:

“the applicant has made a compelling case that 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 together outweigh the loss of 45 hectares of a Natura 2000 site. He is satisfied that the AMEP development will make a significant contribution to meeting these imperative needs in the long term and will provide benefits for society as a whole. In this context, he agrees with the

³ See paragraph 10 of the Appropriate Assessment

⁴ See paragraph 10.45 of the Examining Authority’s Report

⁵ See paragraph 10.41 of the Examining Authority’s Report

⁶ See paragraph 10.44 of the Examining Authority’s Report

Panel that the AMEP site provides a unique opportunity to support the offshore renewable energy industry while making a major contribution to employment and the economy.”

2. Little Cheyne Court Wind Farm

- 2.1 In 2002 Npower Renewables Limited applied to the Secretary of State for a section 36 consent to construct and operate a 78 MW onshore wind farm at Little Cheyne Court in the County of Kent, and for deemed planning permission to be granted for that development.
- 2.2 The Little Cheyne Court development was located in the vicinity of (and had a likely significant effect on) qualifying features of the Dungeness to Pett Level SPA.
- 2.3 Following objections from the relevant planning authorities, the Secretary of State held a public inquiry into the application.
- 2.4 On 13 May 2005, the Inspector appointed to hold the Inquiry submitted his report. The report recommends that there would be no AEOI of the Dungeness to Pett Level SPA⁷. However, it also considers the derogation provisions, should the Secretary of State make a different conclusion on AEOI.
- 2.5 The Inspector found that if the development was found to have AEOI, there were IROPI for it to proceed which outweighed the risk of harm to the SPA⁸. The Secretary of State ultimately found that the proposed development would not have AEOI of the SPA and granted consent on 18 October 2005⁹.

Inspector's Report

- 2.6 The Inspector considered whether grounds for IROPI exist and found that they did. At paragraph 461 the Inspector reported to the Secretary of State:

“I accept the need for renewable energy is urgent and in the public interest, particularly where there is a significant lack of other proposals to meet the Government’s country-wide and regional targets by 2020. Whether that public interest can properly be characterised as “imperative” and “overriding” depends on the degree of harm. EN [as Natural England then was]/RSPB do not assert any ecological harm; they merely argue that it cannot be shown that harm will not occur. Given the purposes of the scheme are not merely social or economic but also seek to further the aims of Community environmental policy, I am satisfied that imperative reasons of overriding public interest have been shown.”

Secretary of State's decision

- 2.7 As noted above, the Secretary of State concluded there would be no AEOI of the Dungeness to Pett Level SPA and so it was not necessary for the Secretary of State to consider the derogation provisions.

⁷ Little Cheyne Court Inspector's Report submitted on 13 May 2005 at paragraph 458

⁸ Little Cheyne Court Inspector's Report submitted on 13 May 2005 at paragraph 461

⁹ Little Cheyne Court Secretary of State Decision Letter dated 18 October 2005 at paragraph 6.6