

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

Your Ref

Our Ref  
ADW/124645.0009

Date  
5 June 2018

Dear Sir

### **Consultation for Non-Material Change to Development Consent Order**

We act for Able Humber Ports Limited (“Able”). Able was granted the Able Marine Energy Park Development Consent Order 2014 - S.I. 2014 No. 2935 in January 2014 (the “DCO”).

Since the DCO came into force in October 2014, Able has been working to ensure that the Project is delivered effectively and efficiently. As a result of this process, Able is intending to seek consent from the Secretary of State to make a non-material change to the DCO in respect of some of the land to be used to provide ecological mitigation for the Project.

In accordance with Regulation 7 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (SI 2011/2055) (as amended) (“the 2011 Regulations”), Able must consult specified persons about its non-material change application. Regulation 7(3) states that the applicant (in this instance Able) need not consult a specified person or authority if they have obtained the written consent of the Secretary of State.

We are therefore writing to you to request, in accordance with your powers under Regulation 7(3), that Able consult a targeted list of consultees as this is considered to be reasonable and proportionate in light of the non-material change proposed.

#### ***Non-material Change***

The DCO included approval of the siting of two ecological mitigation areas - mitigation Areas A and B (refer to Figure 1.1 attached). In addition, in granting the DCO Able was required to provide grassland at Halton Marshes as part of a package of compensation measures for Black-Tailed Godwits. This is referred to as the ‘Over Compensation’.

Mitigation Area A comprises a 16.7 ha core area of wet grassland habitat surrounded by a 150m wide buffer strip and was identified as needed to provide habitat for the use of feeding and roosting birds, and also farmland birds. Mitigation areas A & B were provided for within the DCO Order Limits. Halton Marshes lies outside of the Order Limits and therefore Able sought planning permission to be able to deliver the Over Compensation. Planning permission was granted by North Lincolnshire Council on 8 May 2017.

Able is seeking approval to make a non-material change to Requirement 6 in Schedule 11 of the DCO to amend the application drawings referred to in that requirement so as to re-site Mitigation Area A to

Halton Marshes. The drawings are to be revised so as to remove Area A from where it is currently shown and to introduce a new plan showing the re-sited Area A at Halton Marshes.

Plans can be substituted for others under the terms of the DCO but any land involved must be within the existing order limits, whereas the land in this case is outside such limits.

Able owns the land currently identified as Mitigation Area A and also the new site at Halton Marshes.

### ***Reason for the Non-material Change***

In addition to permission to construct the Able Marine Energy Park under the DCO Able has secured planning permission to construct the Able Logistic Park (consented by North Lincolnshire Council on 1 February 2016, planning reference PA/2015/1264).

The principal purposes of the application for the non-material change to re-site Area A to Halton Marshes is to place the follow three areas of ecological mitigation in one location:

- The re-sited Area A, as part of the DCO
- The Over Compensation, as part of the DCO; and
- Mitigation required in the Able Logistic Park planning permission.

Following discussions with North Lincolnshire Council and Natural England, a planning application was made to North Lincolnshire Council to create an area of 52ha of core ecological habitat at Halton Marshes for the above three areas of mitigation. Planning permission was granted on 8 May 2017 and this development is known as Halton Marshes Wet Grassland ("HMWG"). Please see attached Figure 1.3 for more information.

The principal factors driving the proposed non-material change can be summarised as follows:

- *Optimisation of Disparate Mitigation and Compensation Measures* - Able considers that relocating Area A to within Halton Marshes would offer the same benefits to those assessed as part of the environmental assessment for the DCO but would also offer a more attractive habitat for species overall than three individual and smaller parcels of land. In discussions with North Lincolnshire Council and Natural England this approach was supported.
- *Optimisation of land for Economic Development* - If mitigation was to be provided as three separate areas then the land required to buffer these individual areas is significantly greater than if the core areas were combined. By combining the three core areas, a greater amount of land is available for economic development by Able.

### ***Consultation on Non-material Change***

Able requests that the Secretary of State give consent under Regulation 7(3) of the 2011 Regulations such that Able only needs to consult those persons included in the attached list. Able makes this request on the basis that the proposed changes do not give rise to any new or materially different likely significant environmental effects to those considered in the Environmental Statement submitted with the DCO application. This will be set out in the supporting information which will accompany the application for the non-material change.

Regulation 7(2)(b) requires consultation with 'each person' who was notified about the accepted application under s.56 of the Planning Act 2008 when the original application was accepted. The nature of the non-material change is specifically related to the location of mitigation to be provided. As such, Able has identified in the attached list such of those persons notified under s.56 (highlighted in green) as are relevant to the more localised nature of this proposed application, and whom it therefore considers should be consulted. Those highlighted in red are considered to not be directly affected by the changes proposed, either by being too geographically distant or being a body whose area of



BIRCHAM DYSON BELL

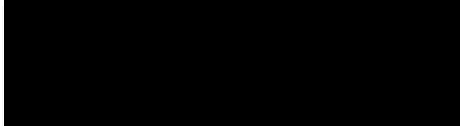
concern is unrelated to environmental mitigation, and therefore Able does not consider they should be consulted.

Able would note that the public and others who will not be consulted under Regulation 7 of the 2011 Regulations will still be able to make representations because of the publicising requirements under Regulation 6 of the 2011 Regulations and the opportunities to respond which that affords.

Able considers the attached list to be a reasonable and proportionate approach to consultation under Regulation 7 and requests that the Secretary of State agrees that it may limit consultation to those persons highlighted green.

Should you require any further information in respect of this request under Regulation 7(3) please do not hesitate to contact us. An early response would be appreciated.

Yours faithfully



**Bircham Dyson Bell LLP**

T +44 (0)20 7783 3441

M +44 (0)7973 254187

F +44 (0)20 7222 3480

E [anguswalker@bdb-law.co.uk](mailto:anguswalker@bdb-law.co.uk)