

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

Your Ref

Our Ref
ACL/ADW/124645.0009

Date
17 September 2018

By email and by hand

Dear Sir

**The Able Marine Energy Park Development Consent Order 2014 (S.I. 2014 No. 2935)
Application for a Non-Material Change**

On behalf of our client, Able Humber Ports Limited ('Able'), we enclose an application for a proposed non-material change to The Able Marine Energy Park Development Consent Order 2014 (the 'DCO').

This application has been prepared in accordance with the Planning Act 2008 (the '2008 Act') and the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 as amended (the '2011 Regulations'). In order to assist the Secretary of State's consideration of the application, we have appended to this letter a checklist of the requirements set out in regulation 4(2) of the 2011 Regulations.

Proposed Change

In summary, the proposed change is to move an area proposed for ecological mitigation to a new site outside the order limits next to two other areas being used for ecological mitigation, which will allow the three areas to operate as a single unit. The DCO only allows such changes within the order limits, which is why an amendment is needed.

The DCO included approval of the siting of two ecological mitigation areas - Mitigation Areas A and B. In granting the DCO, Able was also 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 and B were provided for within the DCO Order limits. Halton Marshes lies outside of the Order limits and Able sought planning permission to be able to deliver the Over Compensation. Planning permission was granted by North Lincolnshire Council on 8 May 2017 (planning reference PA/2016/649).

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50 Broadway London T +44 (0)20 7227 7000
SW1H 0BL United Kingdom F +44 (0)20 7222 3480
DX 2317 Victoria W www.bdb-law.co.uk



Able is seeking approval to make a non-material change to Requirement 6(a) 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, adjacent to the Over Compensation. The site is also adjacent to a mitigation area required to be provided for another Able project, the Able Logistics Park. No amendments are proposed to be made to Mitigation Area B.

The drawings are to be revised so as to remove Mitigation Area A from where it is currently shown and to introduce a new plan showing the re-sited Mitigation Area A at Halton Marshes. Able is also seeking approval for a consequential, non-material amendment to Schedule 1 to confirm that the ecological mitigation will be provided in accordance with the environmental monitoring and management plans but to reflect the fact that the re-sited Area A will be outside of the Order limits.

Able owns the land currently identified as Mitigation Area A and also the new site at Halton Marshes. No compulsory acquisition powers are therefore required.

Further details of the proposed change are set out within the enclosed Application Statement.

Materiality of proposed change

There is no statutory definition of what constitutes a 'material' or 'non material' change for the purposes of Schedule 6 to the Planning Act 2008 and Part 1 of the 2011 Regulations. Able does not consider the proposed change to be material for the purposes of the 2011 Regulations for the reasons set out below.

1. The re-sited area will replicate the functional requirements of the current area.
2. The re-siting gives rise to no material change in the impacts associated with the construction or operation of Able Marine Energy Park.
3. The re-siting is not considered to give rise to any new significant effects that were not identified in the Environmental Statement for the authorised project.
4. The re-siting is not considered to give rise to any materially different effects compared to those set out in the Environmental Statement for the authorised project.

These reasons are set out in detail in the enclosed Application Statement.

In reaching this view, Able has considered guidance from the Department for Communities and Local Government (now known as the Ministry of Housing, Communities and Local Government) entitled "Planning Act 2008: Guidance on Changes to Development Consent Orders" (December 2015).

Enclosures

The application is made up of the following:

1. Application Statement Incorporating Environmental Information
2. Draft Amendment Order
3. Substitute Plans
4. Application Notice

5. Application Fee

In order to assist the Secretary of State, we have set out details of each element of the application below.

1. Application Statement Incorporating Environmental Information

This document includes details of the proposed change, environmental information, and stakeholder engagement and contains the following appendices:

- Appendix A: 'Halton Marsh Wetland Feasibility Study', JBA Consulting, April 2016
- Appendix B: Consented Planning Drawings for Halton Marshes
- Appendix C: Appropriate Assessment for Halton Marshes
- Appendix D: Natural England response to consultation on Outline Design Reports for Mitigation Area A and HMWG
- Appendix E: Consultation Responses to the Planning Application for HMWG
- Appendix F: Draft TEMMP

2. Draft Amendment Order

The enclosed draft Amendment Order makes the amendment referred to in the Application Statement.

3. Substitute Plans

- Indicative Masterplan (Plan ref: AME-02006, Rev C)
- Indicative Landscape Masterplan (Plan ref: AME-02007, Rev C)
- Building Key Plan (Plan ref: AME-02008, Rev B)
- Footpath No. 50 Diversion Section Locations (Plan ref: AME-02010, Rev B)
- Halton Marshes Wet Grassland Layout Core Area & Buffers (Plan ref: ALP-002-00011, Rev A)

4. Application Notice

We enclose the notice publicising the Application, which will be published in the Grimsby Telegraph and the Scunthorpe Telegraph on 20 and 27 September 2018 as required by regulation 6 of the 2011 Regulations. The deadline for receipt of responses by the Secretary of State has been set for 11:59pm on Monday 29 October 2018 being not less than 28 days following the date when the newspaper notice will be last published.

In light of the non-material change proposed and in accordance with regulation 7(3) of the 2011 Regulations, Able has obtained the written consent of the Secretary of State to consult a targeted list of consultees.

The Consultation and Publicity Statement, as required by regulation 7A of the 2011 Regulations will follow after publication of the second regulation 6 notice on 27 September. This statement will confirm that Able have publicised the application and consulted the specified persons in accordance with the requirements in regulations 6 and 7 of the 2011 Regulations.

5. Application Fee

We confirm that the application fee of £6,891 will be transferred to the Department for Transport as required by Regulation 5 of the 2011 Regulations.

We would be grateful if you could please acknowledge safe receipt of this letter and its enclosures.

If you have any questions or require any further information please contact us using the details below.

Yours faithfully

Bircham Dyson Bell LLP

Bircham Dyson Bell LLP

T +44 (0)20 7783 3437

F +44 (0)20 7233 1351

cc Planning Inspectorate

enc



Regulation 4(2) 2011 Regulations Checklist

Regulation 4(2)	Response
(a) name and address of the applicant	Able Humber Ports Limited, Ogier House, The Esplanade, St Helier, Jersey, JE4 9WG and whose UK Asset Manager is Able UK Limited, Able House, Billingham Reach Industrial Estate, Billingham TS23 1PX
(b) name and address of an agent, if appointed	Bircham Dyson Bell LLP of 50 Broadway, London, SW1H 0BL
(c) the Secretary of State's reference for the development consent order to which the application relates;	The Able Marine Energy Park Development Consent Order 2014 (SI 2014 No. 2935) PINS Ref: TR030001
(d) details of the change being applied for	Able is seeking to re-site Mitigation Area A to Halton Marshes. The drawings referred to in the DCO are to be revised so as to remove Mitigation Area A from where it is currently shown and to introduce a new plan showing the re-sited Mitigation Area A at Halton Marshes. Further details of the proposed change are set out within the enclosed Application Statement.
(e) any documents and plans considered necessary to support the application	The Application Statement Incorporating Environmental Information, Draft Amendment Order, Substitute Plans, and Application Notice are enclosed. The Secretary of State is requested to confirm that the above documents are sufficient for determination of the Application. The Consultation and Publicity Statement will follow once the newspaper notices have been published.



Regulation 4(2)	Response
<p>(f) a statement that the applicant is either:</p> <p>(i) the person who applied for the development consent order to which the application relates or a successor in title;</p> <p>(ii) a person with an interest in the land to which the development consent order relates; or</p> <p>(iii) any other person for whose benefit the development consent order has effect;</p>	<p>In accordance with regulation 4(f)(i), Able Humber Ports Limited was the applicant who applied for the development consent order to which the application relates.</p>
<p>(ff) the consultation and publicity statement referred to in regulation 7A</p>	<p>The Consultation and Publicity Statement will be provided following publication of the application notice on 27 September 2018.</p>
<p>(g) details of the applicant's interest in the land</p>	<p>Able own the freehold to the land</p>
<p>(h) if requested by the Secretary of State, 3 paper copies of the application and other supporting documents and plans</p>	<p>One hard copy of the application and supporting documents and plans has been sent to the Department of Transport, and electronic copies have been provided to the Planning Inspectorate. Please advise us if further copies are required.</p>