

Able Marine Energy Park Development Consent Order (“Project”)

Application for non-material change (“Application”)

C.RO Ports Killingholme Limited – Consultation Response

C.RO Ports Killingholme Limited (C.RO) is the operator of C.RO Ports Killingholme (also known as Humber Sea Terminal, a roll-on roll-off ferry terminal adjacent to the Project.

C.RO has a number of concerns about the Application. In summary:

1. the proposals require an updated environmental statement: this means they are not a non-material change;
2. the environmental information is incomplete. It only assesses the consolidation of mitigation at Halton Marshes. It does not assess the impacts of any development on the land freed up; and
2. the Applicant (Able UK) is using processes under the Planning Act 1990 and the Planning Act 2008 to materially change the nature and details of the Project approved in its 2014 development consent order without proper scrutiny. The Applicant is using the benefit of its development consent order to progress a project that is not in itself a nationally significant infrastructure project. In the alternative, such changes need to be approved as a material change, which requires proper assessment.

1. Need to provide an environmental statement

C.RO does not consider that the proposals in the Application constitute a non-material change.

Environmental information

The Planning Act 2008 Guidance on Changes to Development Orders sets out at paragraph 12 that “a change should be treated as material if it would require an updated Environmental Statement ... to take account of new, or materially different, likely significant effects on the environment.” Further, at paragraph 14, “a change to a development consent order is likely to be material if it would invoke a need for a Habitats Regulations Assessment.”

It is understood that the Applicant proposes to relocate an area of required mitigation from within the order limits – Mitigation Area A – to a site at Halton Marshes. This site has planning permission for provision of mitigation, which was obtained by the Applicant in May 2017 (PA/2016/649) to discharge a condition in its planning permission (PA/2015/1264) for Able Logistics Park.

The rationale given for the proposed relocation of “Mitigation Area A” from within the order limits to Halton Marshes - is that it will allow “the optimization of mitigation and compensation measures” at the Halton Marshes site, and “optimization of land for Economic Development” within the Project’s order limits.

Therefore, the Application envisages the consolidation of mitigation, and additional development on the Project site. The extent of the changes means that the environmental statement relating to the Project

needs to be updated. That means that these proposals should be considered a material change, even if the net effect is positive – which is not established.

2. Environmental information is incomplete

In any event, the Applicant's environmental information is incomplete. It would be unlawful to approve a change to the Project (whether non-material or material) without fully understanding the consequences.

It is acknowledged that currently there is no consent for development on the site of Mitigation Area A. However, this is clearly contemplated. The relocation of the mitigation means that there will be land within the order limits that is available for other development. The Applicant alludes to "the optimization of land for Economic Development" but does not explain what that means, or what development it involves.

The amendment proposed in the Application opens the door to additional development within the Project order limits. Even if it is accepted that a further consent would be required, it leaves open a question of the nature and environmental impact of the overall development.

The environmental information does not address the impacts of developing this additional land. The applicant should specify what development it proposes, to also provide a proper justification for moving this mitigation. Such development would inevitably have construction and operational environmental impacts, including on ecology.

Any decision based on such an approach would be flawed because it allows an incremental approach to consenting, that seeks to avoid appropriate environmental impact assessment of the proposals in their entirety.

3. Changing the Project without proper scrutiny

The proposals are not only a material change because of the need to provide an updated Environmental Statement. As stated above, they open the door to a change in the details of the Project by providing additional land for development without explaining what such development would involve.

This gives rise to some fundamental concerns about the Applicant's general approach, and the effect of allowing the sorts of changes proposed in the Application without proper scrutiny. This indicates that the Application should properly be for a material change to the Project development consent order, providing full details of the development now proposed.

The Project was originally promoted as a quay-walled harbour facility to support the construction and operation of offshore wind projects in the North Sea. However, ultimately it did not secure contracts from the projects or the original equipment manufacturers to support its development. Its future serving that industry is unclear. Notwithstanding this, the Applicant has been discharging the pre-commencement requirements of its development consent order.

Over time, the Applicant has obtained planning permission for development on the Project site for port-related storage. This does not involve the use of the land as a port (and not under the Project – there are no port facilities) but serves local ports by providing space to store vehicles that are imported/exported via local ro-ro facilities. See the aerial view on Plan A. These include temporary

planning permissions. The Applicant's strategy is to use the land for other purposes – perhaps temporarily, or perhaps in such a way that establishes the acceptability of the temporary uses so that they permanent consent can be obtained in time.

The Applicant currently has pending planning applications for car storage facilities on land within the Project order limits (PA/2018/114) and a railway siding (PA.2018/1416), which is adjacent to the site of Mitigation Area A, and also for similar development on land outside but adjacent to the order limits (PA2017/2141) – see attached Plan B.

Proposals for the site of Mitigation Area A are not available but the strategy to date suggests that the Applicant may seek to make a planning application for any use. Whilst that would be assessed on its own terms, and may require an environmental impact assessment, it calls into question what development is really being promoted on the Project site. Further, it calls into question why the Applicant has not specified what alternative development it will carry out on the site of Mitigation Area A.

It is a matter for the Applicant how it develops its land and what applications for consent to make. However, the Applicant's approach to date suggests that fulfilment of the original purpose of the Project – a marine energy park – looks remote.

Clearly, there is no need to move Mitigation Area A if the Project will not proceed, as the Applicant would not be required to provide the mitigation. However, it is necessary to move Mitigation A if alternative development is proposed for that land and the Applicant wants to use its powers under the development consent order in relation to development under the development consent order for the Project.

It is not at all clear what the Applicant is seeking to do, or what development it is actually progressing. This raises questions about the robustness of any environmental impact assessment. In this respect the deficiencies in the environmental assessment are stark, as it is not possible to assess the effects of a development if it is not known what the development is.

Because it is not possible to understand what development is proposed, and the context of the Application, it cannot be established whether the changes are material or non-material, or an entirely different development. The full scope and consequence of changes to a development consent order need proper scrutiny.

Furthermore, it is not possible to carry out effective environmental impact assessment of an incremental approach to development. The underlying development is a nationally significant infrastructure project which cannot lawfully be broken up into components, with each incremental change assessed in vacuum. A change to one element of the Project necessarily requires that the whole Project is assessed, unless that is appropriately screened out.

As it stands, it appears that approach being progressed by the Applicant has the effect of using powers under the development consent order for the Project and other planning consents to progress an entirely different development, which of itself does not constitute a nationally significant project. Further, where (as here) the Applicant is seeking to amend the Project details, it has not carried out a full environmental impact assessment.

The powers in a development consent order, and the processes under the Planning Act 2008, cannot be used to promote development that is not a nationally significant infrastructure project. Over time, this is likely to be the effect of the Applicant's approach, whereby it relies on development consent powers to support a different development that is not a nationally significant infrastructure project but the nationally significant infrastructure project itself does not materialise.

Conclusions

1. The Application for a non-material change should be rejected;
2. The proposals in the Application should be submitted as a material change with full details of the development proposed and an updated Environmental Statement, to be assessed in an examination; or
3. The Applicant should not be using this process to promote an entirely different development.

C.RO Ports Killingholme Limited

29 October 2018

PLAN A –

AERIAL VIEW, AMEP

(google earth screenshot, 25 October 2018)



PLAN B – Planning Applications

