The Planning Inspectorate

Environmental Services
Central Operations
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: AbleMarineEnergyPark@planninginspectorate.gov.uk

[redacted]
Able Ports Ltd

Your Ref:

Our Ref: TR030005

Date: 06 January 2020

Dear [redacted]

Planning Act 2008 (as amended) and The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) – Regulation 8

Application by Able Humber Ports Ltd for the Able Marine Energy Park Material Change Application

Subsequent EIA Screening Opinion

Thank you for your letter of 21 December 2020 which responds to my letter of 16 December 2020 and the subsequent EIA screening opinion contained therein. Your letter presented reasons supporting your view that the subsequent EIA screening opinion reached was both wrong and irrational because, fundamentally, the material change application proposed would not include changes which constitute 'development' for the purposes of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations).

I have taken into consideration your letter, the reasons provided, and the decision reached in the subsequent EIA screening opinion of 16 December 2020. It is particularly relevant that the proposed material change is restricted to only that which relates to the timescales for compulsory acquisition. Accordingly, I consider that the conclusion reached in the subsequent EIA screening opinion was wrong and it is therefore withdrawn.

Your letter also requested that the screening decision be retaken. I have therefore considered the subsequent EIA screening request afresh taking into account all of the information provided, including the reasons in your letter of 21 December 2020. Having done so and in accordance with Regulation 8 (8) and having taken into account the matters listed in Regulation 9 (2), I find that the proposed material change application is not an application which requires further environmental information or an updated environmental statement in order for it to be determined. I consider that the proposed material change application to change the deadline for compulsory acquisition of the identified parcel of land is confined to that matter alone and does not comprise any

development nor would it result in consequential change to any development and is therefore outside of the scope of the EIA Regulations.

This subsequent EIA screening opinion supersedes that of 16 December 2020.

If you have any queries, please do not hesitate to contact us.

Yours sincerely

David Price

David Price
Head of Operations
on behalf of the Secretary of State

BDB PITMANS

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Head of Operations
The Planning Inspectorate
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Your Ref
TR030006
Our Ref
ADW/124645.0014
Date
21 December 2020

By Email

AbleMarineEnergyPark@Planninginspectorate.gov.uk

Mr [redacted]

Planning Act 2008 (as amended) and The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (the EIA Regulations) – Regulation 6
Application by Able Humber Ports Ltd for the Able Marine Energy Park Material Change Application
Request for further information following a request for a Screening Opinion

Thank you for your letter of 16 December 2020. It is not clear if the letter is a screening opinion or a request for further information, but in any event, it states that to extend compulsory acquisition powers over one parcel of land, which involves no development at all, involves no change to the operation of the development and requires no change to any deadlines for development, requires a comprehensive updated environmental statement for the entire project.

This conclusion is wrong and irrational and unless it is either (a) withdrawn, (b) retaken to declare that the EIA regulations do not apply because the project is not development, or (c) retaken to declare that the project is screened out from EIA, our client reserves the right to seek a judicial review of your decision.

There are several reasons for this. First, you cite paragraph 13(1) of Schedule 2 to the 2017 EIA Regulations. This states that a change to a development is EIA development where *'the change …. may have significant adverse effects on the environment'*. Since this proposed application is to change a deadline for compulsory acquisition of land and leaves the deadlines relating to development in the DCO intact and categorically does not seek any new or different intervention in the environment that has not already been assessed, it cannot have any new adverse effects on the environment, never mind significant adverse ones, and it is irrational to conclude that it does or even may.

You then cite the 2009 Baker judgment, which effectively struck out the words *'and not to the development as changed or extended'* from the 1999 EIA regulations as they applied to town and country planning; these words do not appear in the 2017 regulations. The crux of the judgment is at paragraph 44, which states that EIA may be required '*to see whether the whole, as modified, has or is likely to have other significant effects which need to be taken into account and may require an environmental impact assessment, albeit they do not fall themselves within the criteria*'. In this case, the project is not *'modified'* at all, and so it cannot have '*other*' significant effects (that is other than those already assessed and reported), when combined with this particular change. The Baker judgment cannot be taken as meaning that a whole project must be reassessed when a change is sought that does not actually change what has been previously assessed and consented and may, in fact, still be lawfully implemented. To emphasise the point, if the Applicant was to acquire the parcel of land by negotiation, it could then carry out the development without being in breach of the 2017 Regulations, so how can they be relevant merely because the parcel is proposed to be procured by compulsory acquisition? It is plainly an irrational decision.

You then refer to the change in EIA regulations since the original DCO (we accept that the 2017 regulations now apply). A change in regulations cannot affect the environmental impacts of a project - even if more would now have to be assessed, it does not mean that they have changed. It is irrational to conclude that a change in the law changes the environmental effects of a project. Indeed, this line of argument would preclude the granting of any non-material change to any EIA development since the coming into force of the 2017 Regulations.

Finally you refer to the changes in the baseline ('the receiving environment') that have occurred in the interim as justification for the submission of a full new environmental statement. While there have of course been changes to the baseline since it was originally assessed, the DCO that was granted in 2014 already anticipates that situation. It allows the development to take place whatever changes occur to the baseline, and contains controls that the Secretary of State saw fit to include, by way of requirements in Schedule 11 and other parts of the DCO, to accommodate changes in the baseline that may occur. Examples include paragraph 15 of Schedule 9 and paragraphs 18, 20 and 25 of Schedule 11. The project as varied would be subject to exactly the same obligations and controls as it currently is. Indeed, even as any change application is being considered, the baseline that exists now could lawfully change significantly during the examination period pursuant to the permission already in place.

This decision is also inconsistent with other decisions of the Secretary of State, such as that taken on 27 July 2020 to extend the deadline for tidal works to take place that had been limited to five years since the grant of the DCO; this did not need any reassessment of environmental impacts.

It is no exaggeration to say that the knock-on effects of this decision would be devastating to the planning system. The implication of this decision is that it must generally be the case that applications decided under the 2009 EIA regulations (or 2011 regulations in the case of town and country planning), or at least whose decisions were a few years ago, must be wholly reassessed when an application to make a change to them, however minor and possibly involving no development, is made. This will affect every application for a non-material or material change to a DCO in that situation, and also every application for a variation of a planning condition under section 73 of the Town and Country Planning Act 1990. It will place an unnecessary burden on developers and add delay and expense to thousands of developments.

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At our meeting on 17 December I was asked to consider whether it was possible to extend the time limit after it had expired. In my view this is clearly the case. A parallel could be drawn with the time limit for taking decisions on Development Consent Order applications by the Secretary of State. To take one of several examples, the Lake Lothing DCO application decision deadline was originally 5 December 2019; this deadline came and went with no announcement of an extension by the Secretary of State; the deadline was eventually extended to 5 May 2020 by means of a written ministerial statement published on 29 April 2020. The tidal works extension referred to above was also applied for after the deadline had expired and was granted by the Secretary of State with no issue (or, relevantly, any requirement for further environmental assessment, as were two variations to the DML granted by the MMO).

The issue is somewhat irrelevant, since the application could be considered as a new request to acquire this parcel of land compulsorily rather than an amendment to the previous request, and it could be so characterised if that would be preferred: doing so would have no effect on the application.

Please can you reply to this letter by 6 January 2021 as the Applicant must submit its application to BEIS in connection with the Offshore Wind Manufacturing Investment Scheme (OWMIS) on 8 January 2021. The OWMIS is a bidding competition that will select a single recipient to receive a c. £70m contribution to enable the development of a large-scale manufacturing cluster. The cluster would significantly enhance the extent of UK content within the emerging offshore wind sector which, of course, is a key element in the Government's strategy for post-Covid 19 economic recovery. As the applicant, Able must provide details of their programme and the core subject of this letter will need to be referenced.

Yours sincerely

[redacted]

[redacted]
Partner
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The Planning Inspectorate

Meeting note

Project name	Able Marine Energy Park Material Change 1 and Material Change 2
File reference	TR030005 and TR030006
Status	**Final**
Author	The Planning Inspectorate
Date	17 December 2020
Meeting with	BDB Pitmans and Able Humber Ports Ltd (The Applicant)
Venue	Microsoft Teams
Meeting objectives	Project Inception Meeting for Material Change 2 and project update on Material Change 1
Circulation	All attendees

Summary of key points discussed and advice given

The Planning Inspectorate (the Inspectorate) advised that a note of the meeting would be taken and published on its website in accordance with section 51 of the Planning Act 2008 (the PA2008). Any advice given under section 51 would not constitute legal advice upon which applicants (or others) could rely.

Project overview

The Applicant stated that although some enabling works had taken place work had not yet started on the made Able Marine Energy Park (2014) Development Consent Order (DCO), noting works must commence by October 2021.
The Applicant confirmed their intention to make two separate material change requests to the made Order:

- Material Change 1 (MC1): An application to authorise an extension of time limits permitted under the 2014 Order for the Compulsory Acquisition of a single plot of land.
- Material Change 2 (MC2): An Application consisting of two main elements, including;
    - changes to the quay design / alignment, and;
    - diversion of Footpath 50 around the North Killingholme branchline (which has subsequently been downgraded to a railway siding).

The Applicant confirmed the enabling works that had taken place (within the order limits of the DCO) had been authorised through separate applications under the Town and Country Planning Act 1990, these include ground raising, vehicle storage, an access road and a pre-delivery facility. Works at the Cherry Cobb Sands compensation site have not yet begun.

The Inspectorate queried whether the intended use for the Proposed Development remained the same as in the made Order. The Applicant confirmed that the Proposed

Development is still intended for the manufacturing of renewable energy infrastructure i.e the intended use remained the same as in the made Order.

Proposed programme and timescales

MC1 – Following the Inspectorate's EIA Screening Opinion, the Applicant is considering next steps.

MC2 - Following submission of its Scoping Report, the Applicant anticipates receiving a Scoping Opinion by the end of January 2021 and intends to produce its Preliminary Environmental Impact Report in mid-February 2021, and submit the application at the beginning of May, with an aim to have a decision on MC2 by the end of March 2022. Although these timescales are subject to the comments on the scoping process noted below.

- The Inspectorate asked the Applicant, to help with its understanding of the anticipated applications, to explain its approach in submitting the two Material Change requests in separate applications. The Applicant advised it has taken this approach as the extension to CA powers (proposed MC1) is required earlier than the changes proposed in MC2 (changes to the quay design / alignment, and diversion of Footpath 50).

Inspectorate update on EIA screening and scoping process

The Inspectorate asked questions about the relationship between MC1 and MC2 and the EIA screening and scoping processes including consideration of cumulative impacts.

MC1 – The Applicant explained they had received the Inspectorate's subsequent EIA Screening Opinion but does not agree with the legal basis for the opinion and would write to the Inspectorate setting out their position.

MC2 - The Inspectorate explained that the Scoping Report provided with the Applicant's request would need to be considered in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations 2017). The Inspectorate expressed the view that there were additional matters which should be addressed in the scoping report in light of the EIA Regulations 2017. The Inspectorate advised the Applicant that a request for additional information was likely and suggested that the Applicant might withdraw the request in order to prepare and resubmit a report incorporating this additional information.

Future working relationship

The Inspectorate highlighted its preference for meeting with Applicants prior to any formal requests being made. This would ensure that questions can be asked, information can be gained, and advice can be given to improve the overall process. The Inspectorate offered to engage regularly and proactively with the Applicant as part of its pre-application commitment. The Applicant confirmed that they would like to have regular engagement with the Inspectorate going forward. The Inspectorate suggested a meeting in January although reminded the Applicant that during the scoping period it could only

discuss general approach, process and next steps, and not specific points relating to its scoping opinion.

The Inspectorate confirmed that the webpages for the proposed material changes are now available on the National Infrastructure website.

Specific decisions/ follow-up required?

The following actions were agreed:

- Further project update meeting to be arranged for January.

The Planning Inspectorate

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[redacted]
Able Ports Ltd

Your Ref:

Our Ref: TR030006

Date: 16 December 2020

Dear [redacted]

Planning Act 2008 (as amended) and The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (the EIA Regulations) – Regulation 6

Application by Able Humber Ports Ltd for the Able Marine Energy Park Material Change Application

Request for further information following a request for a Screening Opinion

Thank you for your letter of 2 December 2020 in response to my letter of 13 November requesting additional information in accordance with Regulation 8 (7) of the Infrastructure Planning Environmental Impact Assessment Regulations 2017 (the 2017 EIA Regulations). The additional information has now been considered and in accordance with Regulation 8 (8) of the 2017 EIA Regulations the Inspectorate considers that further information is required to enable the determination of a subsequent application. Consequently, the submission of the subsequent application should be accompanied by an updated Environmental Statement.

In accordance with Regulation 8 (10) the Inspectorate is required to provide the main reasons for its conclusion with reference to relevant criteria listed in Schedule 3 of the EIA Regulations. The Inspectorate has undertaken the subsequent screening opinion having regard to the proposed development in accordance with paragraph 13 (1) of Schedule 2 to the EIA Regulations. The Inspectorate considers that in accordance with relevant case law, Baker [2009] EWHC 595, it is necessary to conduct the screening process having regard to the development as changed or extended. The Inspectorate understands that although the Applicant states that the proposed application does not affect the development contained within the extant Able Marine Energy Park DCO the requirement for the screening process is to consider the development as changed. The Inspectorate notes that the original ES which accompanied the Able Marine Energy Park DCO was produced in accordance with the Infrastructure Planning Environmental Impact Assessment Regulations 2009 (the 2009 EIA Regulations). The Applicant should be aware that 2009 EIA Regulations have now been replaced by the 2017 EIA

Regulations. Therefore, the material change application will be considered in accordance with the 2017 EIA Regulations. The Inspectorate is aware that the 2017 EIA Regulations include additional requirements applicable to information contained within the original ES and which may have changed since the original decision on the DCO was taken e.g. risks to human health, major accidents and disasters and climate change. The Inspectorate also considers that alterations to the characteristics of the receiving environment which have occurred since the DCO was granted may affect the likely environmental effects the development has on relevant receptors e.g. due to cumulation with other existing and approved development. It is the Inspectorate's opinion that this information is material to the decision as to whether the proposed development is likely to have significant effects on the environment. The Inspectorate considers that having regard to Schedule 3 namely the characteristics of the proposed development as changed, its location and the potential impacts associated, including cumulation with other existing development, there is a likely significant effect and an updated ES, with additional information should be provided.

The Applicant should be aware of their duties in accordance with Regulation 22 of the EIA Regulations 2017 regarding preparation of the updated ES and publication of a notice of the subsequent application.

The Applicant will also be aware of Regulations 10 (2) and 10 (4) which allow for the Applicant to ask the Inspectorate to provide an opinion as to the scope, and level of detail, of the further information to be provided in the updated Environmental Statement. The Inspectorate requests that before doing so the Applicant arranges to meet the Inspectorate in order to discuss the proposed application. The Applicant should also ensure that they take into account the advice provided by the Inspectorate in its Advice Notes particularly that in Advice Note 7 as it relates to requests for an EIA Scoping Opinion.

Once the above has been submitted, we will acknowledge receipt and confirm whether this provides the additional information required.

If you have any queries, please do not hesitate to contact us.

Yours sincerely

Mr David Price

Mr David Price
Head of Operations
on behalf of the Secretary of State

BDB PITMANS

The Planning Inspectorate
National Infrastructure Planning
Temple Quay House
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Bristol
BS1 6PN

Our Ref
KDP/124645.0014

Date
2 December 2020

Dear [redacted]

Screening Opinion

We write on behalf of Able Humber Ports Limited (the '**Applicant**') in response to the request for further information received from the Planning Inspectorate (the '**Inspectorate**') on 13 November 2020.

We first provide an overview of the works on parcel 03023 (the '**Parcel**'). which were authorised under the Able Marine Energy Park DCO 2014 (the '**DCO**'), and the effect of the proposed material change to the DCO to extend the time limit for the exercise of the Applicant's compulsory acquisition powers over the Parcel. Following this general overview, we will go on to address in turn each of questions included in the Inspectorate's request for further information.

1 Development authorised on the Parcel by the DCO

1.1 The Parcel comprises a small strip of land running along the flood defence bank of the Humber, as shown in the land plans for the DCO. The same location is shown in the works plans for the DCO. The enclosed drawing (**Appendix A**) shows the location of the Parcel in more detail, along with the proposed development on the Parcel.

1.2 In summary, the development on the Parcel which was authorised under the DCO comprises:

- a small section of the reclamation behind the quay wall (Work No. 1 in the DCO);
- a small section of the on-site manufacturing and storage area (authorised under the DCO as associated development in the district of North Lincolnshire);
- the outfall for the surface water pumping station (authorised under the DCO as associated development in the district of North Lincolnshire).

1.3 This development is described in paragraphs 4.4.9, 4.4.36 and 4.4.38 of chapter 4 (Description of the Development) of the Environmental Statement for the DCO (the '**ES**').

1.4 Part of Footpath 50, of which the DCO authorised the diversion (in Schedule 5), is also located on the Parcel. The Applicant requires no further powers in relation to the diversion of Footpath 50. Similarly, the land interest pertaining to Danny Revill, listed in the Book of Reference (see extract enclosed at Appendix B), has already been acquired by the Applicant.

1.5 As noted in our letter of 2 November 2020 requesting a screening opinion (the '**Screening Request'**), the proposed material change to the DCO would not involve any change to the development authorised under the DCO. If the proposed material change to the DCO were made, the works to be carried out on the Parcel and the timetable for these works would remain within the timescales in the DCO and the environmental impact assessment undertaken at the time of the original application.

2 Effect of the proposed material change

2.1 As detailed in the Screening Request, the proposed material change would extend the time limit for the Applicant's exercise of compulsory acquisition powers over the Parcel; it would not extend the time for carrying out the works on the Parcel. The proposed material change consists of a proposed amendment to article 33 of the DCO to extend the time limit for the exercise of authority to acquire land compulsorily over the Parcel, as shown in the new draft text attached at Appendix C. This is because the Applicant became aware after the expiry of its compulsory acquisition powers under article 33 of the DCO that an interest in the Parcel pertaining to Associated British Ports (**ABP**) had not been acquired. The proposed material change is required in order for the Applicant to be able to acquire this interest and thus to carry out the development on the Parcel which was consented by the DCO.

2.2 In determining that an application for a material change was necessary in order to make the proposed amendment to article 33 of the DCO, the Applicant had regard to "*Planning Act 2008: Guidance on Changes to Development Consent Orders*" (the '**2015 Guidance'**).[1] The Applicant notes that paragraph 15 of the 2015 Guidance states as follows:

"*A change should be treated as material that would authorise the compulsory acquisition of any land, or an interest in or rights over land, that was not authorised through the existing Development Consent Order. This is because consideration of the need for compulsory acquisition must include a right for the person whose land or rights are being acquired to express their views at a hearing, and this is not provided for under the 2011 Regulations governing non-material changes (where there is no examination).*"

2.3 It was on this basis alone that the Applicant concluded that, despite the proposed change having no effect on the works consented under the DCO, the change should be treated as material in terms of the application process. The other factors highlighted in the 2015 Guidance as likely to make a proposed change material do not apply in this case; in particular, as noted in paragraphs 1.5 and 4.1 of this letter, the proposed change will entail no new significant effects on the environment (or indeed any new effects on the environment).

[1] Department for Communities and Local Government, December 2015

3 Subsequent EIA screening opinion

3.1 The Applicant notes the Inspectorate's request that the Applicant provide an explanation as to the legal basis on which it considers a subsequent EIA Screening Opinion for the proposed material amendment can be formed, given the Applicant's view that the proposed material amendment does not constitute development. In responding to this request the Applicant has had regard to the 2011 Regulations and the 2017 Regulations, as well as to the Inspectorate's Advice Note 7 on Environmental Impact Assessment.

3.2 The Applicant notes that, under regulation 2 of the 2011 Regulations, "*EIA development*" has the same meaning as given by regulation 2(1) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the '**2009 Regulations'**). The 2017 Regulations have since replaced the 2009 Regulations, with "*EIA development*" defined in regulation 3(1) as "*development which is either— (a) Schedule 1 development; or (b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location".*

3.3 As set out in the Screening Request, the proposed material change to the DCO involves no building, engineering, mining or other operations in, over or under land, or the making of any material change in the use of any buildings or other land (i.e. the definition of development in section 55 of the Town and Country Planning Act 1990), nor does it involve any of the activities set out in sections 32(2) and (3) of the Planning Act 2008. Therefore the Applicant considers that it does not constitute development, and as such it cannot fall within the definition of "*EIA development*" set out above.

3.4 The Applicant notes that any change to a Schedule 1 development (such as that authorised under the DCO) may fall within paragraph 13 (1) of Schedule 2 of the 2017 Regulations:

"Any change to or extension of development of a description listed in Schedule 1 to these Regulations…. where that development is already authorised, executed or in the process of being executed, and the change or extension may have significant adverse effects on the environment;"

3.5 As noted above, the Applicant considers that the proposed material change does not constitute development. It therefore does not represent a "*change to or extension of development*" such as might fall under paragraph 13(1). In the alternative, if the Inspectorate takes the view that the proposed material change is capable of falling under paragraph 13(1), the proposed material change would not be Schedule 2 development given that it would result in no changes to the effects on the environment.

3.6 The Inspectorate has asked the Applicant to provide an explanation of how it believes a subsequent screening opinion can be formed on the proposed material change application, given its view that the proposed material change does not constitute "development". As noted above, the Applicant considers that the proposed material change clearly does not fall within the definition of "*EIA development*" in the 2017 Regulations. On this basis, the Inspectorate may be of the view that it is not necessary for it to form a subsequent screening opinion in relation to

the proposed application. If this is the case, the Applicant would ask the Inspectorate to confirm this.

3.7 Alternatively, the Applicant notes that the definition of "subsequent screening opinion" in regulation 3(1) of the 2017 Regulations, unlike the definition of "screening opinion", does not explicitly state that the relevant authority must consider whether "development" is "EIA development":

""*subsequent screening opinion" means a written statement of a relevant authority as to whether further information is required to enable it to determine a subsequent application*."

3.8 The Applicant therefore considers that the Inspectorate could form a subsequent screening opinion on the proposed material change, regardless of the fact that it does not constitute development. So that the Inspectorate can form a subsequent screening opinion on the proposed material amendment, if required, the Applicant has provided further information regarding the development authorised under the DCO, and the development authorised on the Parcel in particular, as requested in the Inspectorate's request for further information.

4 Criteria in Schedule 3 to the 2017 Regulations

4.1 The Applicant notes the Inspectorate's request that it explain how the criteria in Schedule 3 to the 2017 Regulations have been taken into account in reaching the conclusion that there are no aspects of the environment likely to be significantly affected by the development which were not identified at the time the order granting development consent was made. Given the Applicant's view that the proposed material amendment (a) does not itself constitute development; and (b) makes no change to the development consented under the DCO, the Applicant did not consider that these criteria were directly relevant in compiling the information set out in the Screening Request. Nevertheless, the Applicant has noted the criteria and taken them into account to the extent they are relevant, as shown in the table below:

CRITERIA IN SCHEDULE 3	APPLICANT'S COMMENTS
1. Characteristics of development	The Applicant has had regard to the criteria listed at Schedule 3(1) (a)-(g). The proposed material amendment to the DCO does not itself constitute development, and does not change the development authorised to take place on the Parcel by the DCO (given that the works to be undertaken, and the timetable for these works, have not changed).
The characteristics of development must be considered with particular regard to— (a) the size and design of the whole development; (b) cumulation with other existing development and/or approved development;	

(c) the use of natural resources, in particular land, soil, water and biodiversity; (d) the production of waste; (e) pollution and nuisances; (f) the risk of major accidents and/or disasters relevant to the development concerned, including those caused by climate change, in accordance with scientific knowledge; (g) the risks to human health (for example due to water contamination or air pollution).	
2. Location of development The environmental sensitivity of geographical areas likely to be affected by development must be considered with particular regard to— (a) the existing and approved land use; (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground; (c) the absorption capacity of the natural environment, paying particular attention to the following areas— (i) wetlands, riparian areas, river mouths; (ii) coastal zones and the marine environment; (iii) mountain and forest areas; (iv) nature reserves and parks; (v) European sites and other areas classified or protected under national legislation	The Applicant has had regard to the criteria listed at Schedule 3(2) (a)-(c). The Applicant notes that there would be no change in the location of development as a result of the proposed material amendment.

(vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure; (vii) densely populated areas; (viii) landscapes and sites of historical, cultural or archaeological significance	
3. Types and characteristics of the potential impact	The Applicant has had regard to the criteria at Schedule 3(3) (a)-(h). The proposed material amendment to the DCO does not itself constitute development, and does not change the development authorised to take place on the Parcel by the DCO (given that the works to be undertaken, and the timetable for these works, have not changed). The proposed material amendment would not result in any new or different effects on the environment from the development authorised by the DCO.
The likely significant effects of the development on the environment must be considered in relation to criteria set out in paragraphs 1 and 2, with regard to the impact of the development on the factors specified in regulation 5(2), taking into account— (a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected); (b) the nature of the impact; (c) the transboundary nature of the impact; (d) the intensity and complexity of the impact; (e) the probability of the impact; (f) the expected onset, duration, frequency and reversibility of the impact; (g) the cumulation of the impact with the impact of other existing and/or approved development; (h) the possibility of effectively reducing the impact.	

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5 Use of the Parcel

5.1 The Planning Inspectorate has asked the Applicant to explain if there is any difference in the use of the Parcel between that consented in 2014 and that proposed as a result of the proposed material amendment. As set out in more detail in paragraphs 1.1 and 2.3 of this letter, there would be no difference in the use of the Parcel as the result of the proposed material amendment.

6 Significant environmental effects associated with the authorised development on the Parcel

6.1 We have undertaken a careful review of the ES submitted with the DCO in order to identify any significant environmental effects associated with the authorised development on the Parcel. A table showing references in the ES to the development authorised on the Parcel under the DCO is at Appendix D. As noted above, the proposed material change is not associated with any change to the development authorised on the Parcel nor any changes in its environmental effects.

6.2 As noted in the table at Appendix D, the outfall to be constructed on the Parcel is referred to in the ES as a measure to improve drainage of the site and mitigate potential impacts from uncontrolled site run-off. The improved drainage system of which the outfall forms part is identified as having a significant (major beneficial) environmental impact. Our review of the ES identified no significant environmental effects associated specifically with the small section of the reclamation and on-site storage and manufacturing area located on the Parcel.

6.3 The development on Parcel represents a small part of the development authorised under the DCO, and will therefore contribute a small part to significant environmental effects identified in relation to the construction and operation of the development as a whole. Significant environmental effects identified in relation to the development as a whole are reported under “residual impacts” in each chapter of the ES. However, the contribution of the development authorised on the Parcel to these overall environmental impacts is trivial.

7 Likely significant environmental effects associated with the proposed material change

7.1 As detailed in paragraphs 1.5 and 4.1 of this letter, there are no likely significant environmental effects associated with the proposed material change, given that there is no change in the use of the Parcel and no change from the likely environmental effects set out in the ES and considered during the DCO application process.

8 Relationship between the proposed material change and the development consented in the DCO

8.1 As noted in paragraph 2.1 above, the proposed material change relates only to an extension of the time limit for exercising compulsory acquisition powers over the Parcel (see proposed

amendment to article 33 of the DCO, enclosed at Appendix C). The proposed material change would not make any other change to the development consented in the DCO.

9 Need case for the DCO and for the proposed material change

9.1 The Statement of Reasons submitted with the application for the DCO set out the need case for the DCO and the compelling case in the public interest justifying the inclusion of powers of compulsory acquisition within the DCO. The Applicant's objectives for the Able Marine Energy Park (**AMEP**) are set out at paragraphs 3.5 to 3.8 of the Statement of Reasons, while the need for AMEP is set out at paragraphs 3.9 to 3.28.

9.2 Section 122 of the Planning Act provides that an order granting development consent may only authorise compulsory acquisition if the decision maker is satisfied that two conditions are met. The first condition ('**Condition 1'**) requires one of three criteria to be met, as follows: (i) the land is required for the development to which the consent relates; or (ii) is required to facilitate or is incidental to the development; or (iii) is replacement land to be given in exchange for land which is open space or common land. The second condition ('**Condition 2**') is that there is a compelling case in the public interest for compulsory acquisition.

9.3 Paragraphs 5.9 to 5.11 of the Statement of Reasons address how AMEP meets Condition 1. In summary, the Parcel falls under criterion (i) of the first condition, as the land is required for the development to which the DCO relates. The purpose for which the Parcel is required is summarised in the table at paragraph 5.11 of the Statement of Reasons as "on site manufacturing and storage". As detailed above, a small section of the reclamation behind the key wall will be on the Parcel. The Parcel is also required for the construction for the pumping station outfall

9.4 Paragraphs 5.14 to 5.16 of the Statement of Reasons, together with the paragraphs covering the need case highlighted above, address how AMEP meets Condition 2. The Applicant notes that the compelling case in the public interest has strengthened since the DCO application was made.

9.5 In March 2019, the Offshore Wind Sector Deal was announced, which maximised the advantages for the industry from the global shift to clean growth[2]. The deal is set to drive the transformation of offshore wind generation, making it an integral part of a low-cost, low-carbon, flexible grid system. Also in June 2019, the UK passed laws that require it to bring all greenhouse gas emissions to net zero by 2050[3]. Further in October 2020, the Prime Minister announced his government's plans to ensure offshore wind will produce more than electricity to power every home in the country by 2030, boosting its target from 30GW to 40GW[4]. This is

[2] https://www.gov.uk/government/publications/offshore-wind-sector-deal (Accessed on 30/11/2020)

[3] https://www.gov.uk/government/news/uk-becomes-first-major-economy-to-pass-net-zero-emissions-law (Accessed on 30/11/2020)

[4] https://www.gov.uk/government/news/new-plans-to-make-uk-world-leader-in-green-energy (Accessed on 30/11/2020)

reflected in the Ten Point Plan[5] and the National Infrastructure Strategy[6]. These developments demonstrate the urgent need for AMEP to be built in order to support the expansion of off-shore wind energy generation.

9.6 The Applicant has also considered in the relation to the Parcel the general matters which the promoter of a nationally significant infrastructure project must be able to demonstrate to the satisfaction of the decision maker so as to justify a DCO, as set out in Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land.

All reasonable alternatives to compulsory acquisition have been explored

9.7 Able will continue to seek to acquire ABP's interest in the Parcel by agreement, as supported by DCLG guidance, but must rely on compulsory purchase powers as a backstop to ensure that the project will not be thwarted by a failure to acquire land.

9.8 The development to be undertaken on the Parcel forms a critical part of the AMEP project, and could not be reasonably undertaken on alternative land. In particular, the land in which ABP has an interest is necessary for the construction of the outfall on the Parcel. As detailed above the outfall is an important mitigation measure and will also contribute to delivering a significant (major beneficial) environmental effect.

The proposed interest in the land is for a legitimate purpose and is necessary and proportionate

9.9 This matter is addressed at paragraphs 5.20 and 5.21 of the Statement of Reasons.

How Able intends to use the land which it is proposing to acquire

9.10 This matter is addressed at paragraphs 1.1 to 1.5 of this letter.

The requisite funds for the compulsory acquisition

9.11 The Applicant has funds in place to cover the costs of the proposed compulsory acquisition. The Applicant and ABP are already in negotiations over the Applicant's acquisition of ABP's other interests under the powers of the DCO and this would add a small amount to that larger total.

Compulsory acquisition of land is legitimate and sufficiently justifies interfering with the human rights of those with an interest in the land affected

9.12 This matter is addressed in paragraphs 5.25 to 5.29 of the Statement of Reasons. In addition, the Applicant notes that Danny Revill's interest in the Parcel has been acquired, and as such there are no land interests pertaining to identified individuals remaining in the Parcel.

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[5] https://www.gov.uk/government/publications/the-ten-point-plan-for-a-green-industrial-revolution (Accessed on 30/11/2020)

[6] https://www.gov.uk/government/publications/national-infrastructure-strategy (Accessed on 30/11/20)

We hope that the above information assists in reaching a decision on the Screening Request and look forward to hearing from you. If there is any further information which you require we would be grateful if you could let us know as soon as possible.

Yours sincerely

[redacted]

For and on behalf of BDB Pitmans LLP
T +44 (0)20 7783 3441
[redacted]
[redacted]@bdbpitmans.com

enc Appendix A: Indicative Masterplan Showing Plot 03023
Appendix B: Extract from book of reference
Appendix C: Proposed amendment to AMEP DCO
Appendix D: Table of references

Plot: SP1
Area: 4.5ha
Plot: SP2
Area: 2.8ha
Plot: SP3
Area: 4.0ha
Plot: SP4
Area: 6.0ha
Plot: SP5
Area: 5.2ha
Plot: SP7
Area: 5.6ha
SP6
2.1ha
SP8
2.0ha
SP9
1.3ha
Overspill Low Level Storage 1
Area: 9.3ha
Overspill Low Level Storage 2
Area: 9.1ha
Overspill Low Level Storage 3
5.2ha
Plot: N2
Area: 21.2ha
Plot: N3
Area: 19.3ha
Plot: F1
Area: 17.4ha
Plot: B1
Area: 20.4ha
Plot: B2
Area: 21.7ha
Plot: T1
Area:17.4
Plot: T2
Area: 11.7ha
Plot: N1
Area: 15.3ha
External Storage
Quay Storage 45.0ha
SPMT Area
Nacelles
Blades
Towers
Foundations
54 Spaces
46 Spaces
20 Spaces
162 Spaces
361 Spaces
384 Spaces
383 Spaces
River Humber
-11.00m CD
Approach Channel and Turning Area (-9.00m CD)
Killingholme Marshes
Burkinshaw's Covert
Oil Refinery
Killingholme North (disused) Signal Station
The Lookout
03023

Enlarged Plan
Scale 1:1500

1:5000 100m 0 100 200 300

Key & Notes

Notes

1. Do not scale from this drawing. If in doubt - Ask.
2. All dimensions are in metres (m) unless noted otherwise.
3. All levels are in metres (m) above Ordnance Datum (mAOD) unless noted otherwise.

- Limit of deviation for siting of building up to 45m high.
- Limit of deviation for siting of building up to 25m high.
- Limit of deviation for siting of building up to 15m high.
- 48 Space Car Park
- Stone Surfacing
- Landscaping
- Rock Revetment
- Existing Lighting Column (21-30m High)
- Proposed Lighting Column (50m High)
- Existing Cooling Water Intake
- Existing Cooling Water Outfall
- Existing Building
- Proposed Building
- Electric Substation
- HMRC Office
- Berthing Pocket
- Waste Recycling & Transfer Facility
- Able Approach Channel & Turning Area
- Proposed Pumping Station

Rev.	Date	Comments	Drn	Chk	App
A	01/12/2020	Preliminary Issue	DJA	RC	RC

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Fax: +44(0)1642 655655
www.ableuk.com

Project: ABLE Marine Energy Park

Client: ABLE UK Limited

Drawing Title: Indicative Masterplan Showing Plot 03023

PRELIMINARY

Scale:	Drawn By	Checked By	Approved By
1:5000@A1 UNO	D Almeida	R Cram	R Cram
Date:	01/12/2020	01/12/2020	01/12/2020

Drawing No: AME-008-00075 Revision: A

Number on Plan	Description of Land	Category 1[1] owners	Category 2[2] owners
03020	All interests in 47886.48 square metres of land comprising trees, shrubbery, hedgerows, grassland (Killingholme Marshes), drains and beds thereof, Killingholme Marshes, South Killingholme, Immingham.	Associated British Ports Aldwych House 71- 91 Aldwych London WC2B 4HN	
03021	All interests in 1441.97 square metres of land comprising private access road (Station Road), verges and hardstanding, to the south of Killingholme Marshes, South Killingholme, Immingham.	Associated British Ports Aldwych House 71- 91 Aldwych London WC2B 4HN	Danny Revill The Lookout Station Road South Killingholme DN40 3ED Gillian Catherine Harper North Low Lighthouse Station Road South Killingholme DN40 3ED
03022	All interests in 1495.09 square metres of land comprising grassland to the west east of Killingholme Marshes, South Killingholme, and Immingham.	Unknown	
03023	All interests in 4200.45 square metres of land comprising public footpath (FP 50), sloping masonry and river wall, private road (Station Road), hardstanding, drain and bed thereof, to the east of Killingholme Marshes, South Killingholme, Immingham.	North Lincolnshire Council (in respect of public footpath) Pittwood House Ashby Road Scunthorpe North Lincolnshire DN16 1AB	Danny Revill The Lookout Station Road South Killingholme DN40 3ED
03024	All interests in 1200.02 square metres of land comprising lighthouse (Killingholme North Low Lighthouse), trees, shrubbery, grassland and premises, Station Road, South Killingholme, Immingham.	Gillian Catherine Harper North Low Lighthouse Station Road South Killingholme DN40 3ED	Alliance & Leicester plc Carlton Park Narborough Leicester LE19 0AL
03025	All interests in 986.07 square metres of land comprising residential premises (The Lookout), garages, trees, shrubbery and grassland, Station Road, South Killingholme, Immingham.	Danny Revill The Lookout Station Road South Killingholme DN40 3ED	
03026	A right to occupy 512.70 square metres of land comprising private trackway for access to Killingohlme High Lighthouse, to the south of Killingholme Marshes, South Killingholme, Immingham.	Unknown	

1. A person is within Category 1 if the applicant, after making diligent inquiry knows that the person is an owner, lessee, tenant (whatever the tenancy period) or occupier of the land; see section 57 (1) of the Planning Act 2008.
2. A person is within Category 2 if the applicant, after making diligent inquiry knows that the person-
   (a) is interested in the land
   (b) has power-
      (i) to sell or convey the land
      (ii) to release the land; see section 57 (2) of the Planning Act 2008

APPENDIX C: Draft of amended article 33 in the Able Marine Energy Park Order 2014

Text to be inserted in the Able Marine Energy Park Order 2014 as follows (changes from original article 33 tracked for ease of reference):

"Time limit for exercise of authority to acquire land compulsorily

33.—(1) After the end of ~~the period of 5 years beginning on the day on which this Order is made~~ the relevant period —

(a) no notice to treat is to be served under Part 1 of the 1965 Act; and

(b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 36 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(b).

(2) The authority conferred by article 40 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), but nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

(3) Subject to 33(4) the "relevant period" means the period of 5 years beginning on the day on which this Order was made.

(4) In relation to parcel number 03023 the "relevant period" means the period of 1 year beginning on the day on which the Able Marine Energy Park (Amendment) Order 202[ ] is made."

Article 2 (Interpretation) will be amended to include an additional definition as follows:

""parcel number 03023" means the parcel shown as number 03023 on the land plans."

APPENDIX D: TABLE OF REFERENCES

Environmental impacts associated with parcel 03023	ES Reference
The outfall to be constructed on parcel 03023 is one of the mitigation measures proposed for the project as a whole in relation to surface water run-off. "*Site run off and stormwater will be disposed of through surface water drainage via an outfall pipe in to the Humber. This will drain through gravity at low tide and via a new pumping station at high tide, to be installed as part of the proposed scheme for upgrading the Killingholme Marshes drainage system* [….]"	Volume 1, Chapter 9: Water and Sediment Quality, paragraph 9.8.23
The outfall on parcel 03023 is part of the implementation of an engineered surface water drainage system which is identified as resulting in a significant (Major Beneficial) environmental impact: *"Implementation of an engineered surface water drainage system will significantly reduce fluvial flood risks to the site resulting in a Major Beneficial impact."*	Volume 1, Chapter 13: Drainage and Flood Risk, paragraph 13.6.4

Further details of the surface water drainage system and the contribution of the outfall on parcel 03023 to this are set out in Annex 13.1 – Flood Risk Assessment and Drainage Strategy.	See in particular Annex 13.1: Flood Risk Assessment and Drainage Strategy, Chapter 6 – Surface Water Drainage Strategy
Although a potential impact on habitats was identified as a result of the creation of the new outfall, no significant residual impact was identified. *"The creation of a new outfall will result in the creation of a new channel across the intertidal habitat which will cause a change in the ecological functionality of that habitat locally."*	Volume 1, Chapter 13: Drainage and Flood Risk, paragraph 13.6.5 Volume 1, Chapter 13: Drainage and Flood Risk, section 13.8 (Residual Impacts)

The Planning Inspectorate

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[redacted]
BDB Pitmans LLP
One Bartholomew Close
LONDON
EC1A 7BL

By email only

Your Ref: ADW/124645.0014

Our Ref: TR030001

Date: 13 November 2020

Dear [redacted]

I write further to your letter 2 November 2020 on behalf of Able (UK) Ltd (the Applicant) of 2 November 2020, requesting a subsequent Screening Opinion in accordance with Regulation 8 (2)(a) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations 2017). The request relates to a proposed material amendment to the Able Marine Energy Park Development Consent Order 2014.

The Planning Inspectorate has had regard to your request and in accordance with Regulation 8 (7) of the EIA Regulations 2017, considers that insufficient information has been provided in order to adopt a Screening Opinion. Therefore, additional information is required in relation to the request and in order to sufficiently inform a subsequent Screening Opinion.

The letter requesting the subsequent Screening Opinion clearly states the Applicant's view that the proposed material amendment does not constitute development and that the development to be considered is the development proposed in the amendment to the DCO rather than the development authorised by the original DCO.

In response to this position and taking into account the criteria specified in Schedule 3 to EIA Regulations 2017, applicable in accordance with Regulation 8(6), please will the Applicant provide an explanation as to the legal basis on which it considers a subsequent EIA Screening Opinion for the proposed material amendment can be formed.

The Planning Inspectorate would ask the Applicant to explain if there is any difference in use between the use of the plot of land between that consented in 2014 and that proposed as a result of the proposed material amendment and to provide precise references (ie document, chapter, paragraph number) to the information that assesses the significant effects of the development associated with the proposed material amendment identified at the time of the order granting development consent.

Finally, the Planning Inspectorate also requests that information is provided to explain the Applicant's assertion that the proposed material amendment will not have any

likely significant environmental effects that were not identified and assessed at the time the DCO was granted. In doing so, the Applicant is asked to explain the relationship between the proposed material amendment and the development consented in the DCO and the need case as it relates to the tests applicable to compulsory acquisition.

If you have any further queries, please do not hesitate to contact me.

Yours sincerely

David Price

David Price
Head of Operations

BDB PITMANS

For the attention of Richard Hunt
Secretary of State for Transport
c/o The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Your Ref
TR030001

Our Ref
ADW/124645.0014

Date
2 November 2020

Dear Sir

Able Marine Energy Park Development Consent Order
Application for a subsequent screening opinion

This is an application made on behalf of Able (UK) Ltd (the Applicant) for a subsequent screening opinion for a proposed material amendment to the Able Marine Energy Park Development Consent Order 2014 (the DCO), under regulation 8(2)(a) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the 2017 Regulations), which is applied to a material amendment by regulation 17 of the Infrastructure Planning (Changes to and Revocation of Development Consent Orders) Regulations 2011 (as amended, the 2011 Regulations), noting that the reference to regulation 6 in the 2009 EIA Regulations corresponds to regulation 8 of the 2017 Regulations.

The material amendment consists of a proposed amendment to article 33 of the DCO to extend the time limit for the exercise of authority to acquire land compulsorily over a single parcel of land, and no other changes. It involves no building, engineering, mining or other operations in, over or under land, or the making of any material change in the use of any buildings or other land (i.e. the definition of development in section 55 of the Town and Country Planning Act 1990), nor does it involve any of the activities set out in sections 32(2) and (3) of the Planning Act 2008. As such the Applicant considers that it does not constitute development and that therefore no environmental impact assessment is required.

The Applicant considers that references in regulation 8(4) of the 2017 Regulations to 'the development' mean the development proposed in the amendment to the DCO rather than the development authorised by the original DCO, otherwise the nature of the change to the DCO would not feature in the information required to be supplied to the Secretary of State. The Applicant notes that regulation 8(4) as drafted only applied to the discharge of requirements and pre-commencement approvals, and regulation 17(2)(b) of the 2011 Regulations suggests that the subsequent application replaces the original application in the relevant references in the 2017 Regulations.

Accordingly, the information to be provided under regulation 8(4) is as follows:

- the reference number for the original DCO is TR030001. A reference number for the proposed material amendment application has not yet been issued;
- the Applicant considers that there are no aspects of the environment likely to be significantly affected by the subsequent development which were not identified at the time the order granting development consent was made; and
- the Applicant considers that there are no likely significant effects on the environment not identified at the time the order granting development consent was made resulting from—
    - (i) the expected residues and emissions and the production of waste, where relevant; and
      (ii) the use of natural resources, in particular soil, land, water and biodiversity.

We look forward to hearing from you.

Yours faithfully

[redacted]

[redacted]
Partner
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