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Our ref: 376288
Your ref: ExQ1



The Planning Inspectorate
AbleMarineEnergyPark@planninginspectorate.gov.uk

Customer Services
Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

BY EMAIL ONLY

T 0300 060 3900

Dear Sir / Madam

Able Marine Energy Park Material Change 2: Examiner's written questions ExQ1

Please see below Natural England's responses to the Examiner's written questions.

AMEP Material Change 2 written questions ExQ1

Q5.0.1 Is NE content with the particular qualifying features of the Humber Estuary Special Protection Area (SPA), Humber Estuary Special Area of Conservation (SAC) and Ramsar sites for which the Applicant has identified a Likely Significant Effect (LSE) and taken forward for appropriate assessment? If not, please explain why.

There are two species which are listed in Part 1 Table 11 of the applicant's shadow Habitats Regulations Assessment Report updated October 2021 (hereafter referred to as sHRA) as being present at Killingholme Marshes and Foreshore in significant numbers (more than 1% of the Humber Estuary population) and are not listed in sHRA Part 1 para 9.4 as being excluded from likely significant effect, but do not appear to have been considered in the Appropriate Assessment in sHRA Part 2. These are little ringed plover and sanderling. These species are qualifying species of the Humber Estuary SPA and Ramsar site as they are part of the waterbird assemblage, which includes all internationally important, regularly occurring migratory species, the Annex I wintering species referenced in the citation, and species occurring at levels of more than 1% of national populations or whose populations exceed 2,000 individuals. Natural England advises that it should be clarified by the applicant why these species have not been taken forward to Appropriate Assessment.

NE is content with all other qualifying features that have been taken forward for appropriate assessment.

Q5.0.2 The ExB notes NE's position in its RR that an Adverse Effect on Integrity (AEoI) cannot be ruled out, but that it considers this is due to lack of information and is capable of being overcome with further information. On a without prejudice basis, if these matters can be overcome, does NE agree with the App that there would be no harm to any European sites from the project in combination with other plans or projects? If not, please explain why.

Natural England considers that there remains outstanding information to demonstrate that there will not be an adverse effect on the integrity of European sites resulting from the project alone. This includes the potential impacts from dredging and disposal at sea, and the potential impacts on SPA birds of noise and lighting as a result of the quay realignment. It will not be possible to determine whether there will be an adverse effect on European sites in combination with other plans and

projects until this outstanding information has been provided.

Q5.0.3 Please respond fully to the points made by NE in their RR dated 23.8.21, particularly section 2.3 and Part II generally. Please report on progress towards agreement.

Please see Natural England’s response in the below table for ease of reference.

| Relevant reps reference | Point raised by NE | Reference in updated HRA and comments |
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| 3.3.1 | Clarification is needed about the change in habitat loss as a result of the design changes to the quay and the change in baseline habitats as a result of accretion and saltmarsh establishment at Killingholme Foreshore. Whilst Natural England acknowledges that the compensatory habitat at Cherry Cobb Sands will remain adequate it is important to have an accurate audit trail of habitat losses and gains related to the development. In addition, all the relevant documents need to be consistent in this respect to assist with future consultations. | We note that the habitat change figures are included in updated Environmental Statement (hereafter referred to as uES) Appendix UES11-2, sections 3.4.2 and 3.4.3, and that immediate habitat losses have been included in the Part 2 of the sHRA, Table 11. However, we advise that the sHRA and UES11-2 should be updated with information on medium and long term changes, which were detailed in the sHRA for the original scheme. It should also be clarified how figures for habitat change have been calculated, particularly for functional loss. |
| 3.3.2 | The HRA contains insufficient assessment of the impacts of the additional dredging disposal required within the Humber Estuary and changes to vessel movements as a result of dredge disposal. The ES appears to have been updated with information about the impacts of additional dredge disposal but not the HRA. Additional mitigation for dredging impacts should be included in the Appropriate Assessment where they relate to avoiding or reducing impacts to European site features. | <p>The total number of dredge vessel movements is detailed in the Navigation Risk Assessment ('NRA') at Appendix UES14-1 of the updated ES (APP-147). It is noted that the Scoping Report (Appendix UES 5-1) and the Preliminary Environmental Information Report (PEIR) considered an increased number and duration of vessel movements compared to the original EIA and this was associated with an increased usage of deposit sites within the Humber Estuary. This reflected the fact that in the consented scheme, 1.1M tonnes of dredged clay was to be disposed of to terrestrial areas landward of the existing Killingholme Marshes flood defence wall, whereas it is now proposed that this material is disposed of within the Humber Estuary. Subsequent review has determined that vessel movements associated with the construction phase and disposal of dredged materials are equivalent or slightly reduced when compared to the movements considered in the consented scenario (paragraph 14.6.27 of the original ES).</p> <p>The Applicant has confirmed that dredging volumes required are as assessed in chapters 8 (APP-079) and 10 (APP-081) of the UES, and are very similar to those in the original ES, with no change in the effects on aquatic ecology (as set out in chapter 10 of the updated ES). However, we still do not consider that this has been adequately addressed in the sHRA. At 3.5 of the Appropriate Assessment, it states that <i>"This second part of the HRA therefore focuses on these species and their supporting habitats. The specific likely significant effects on the SAC (as agreed in the SoCG) were as follow:... The effects of capital</i></p> |

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| | | <p><i>and maintenance dredging on estuarine habitats and intertidal mudflats</i>". However, there does not appear to be any section within the sHRA providing a clear justification that there will be no additional impacts on Humber Estuary SAC/Ramsar designated features due to the increase in dredging disposal volumes.</p> <p>We note the reference in Table 12 of sHRA "<i>the effects of capital and maintenance dredging and disposal on sub-tidal habitat and benthic communities are subject to ongoing discussion</i>". Whilst we note that this is a reference to the original ES and SoCG, we advise that it is clarified in the sHRA that these discussions have now concluded, and what conclusions were reached.</p> <p>Chapter 8 of the UES at 8.5.2 also indicates that alternate or addition mitigation is proposed. We recommend that this is considered in terms of the implications on the Humber Estuary designated features within the sHRA.</p> |
| 3.3.3 | <p>Further assessment is required on the potential change in operational effects due to changes to the design of the quay. This change could increase noise disturbance levels at North Killingholme Haven Pits (NKHP), particularly from vessel traffic and port activity. This information should be provided in the HRA in addition to the Updated Environmental Statement.</p> | <p>The HRA Part 2 paras 8.11 states that "<i>the quay redesign will not change the operational phase effects of the Development</i>" and para 8.12 states "<i>There would be no change in the extent of the operational noise disturbance resulting from the proposed material change.</i>" However, there is no justification or evidence provided for how this conclusion has been reached and we advise that this should be clarified in the sHRA.</p> <p>Section 8.12 states: "<i>There would be some change to the planned lighting regime in order to accommodate the new quay alignment, but lighting levels are subject to approval under Schedule 11 of the extant DCO, Requirement 24 and require consultation with Natural England before being approved by the local planning authority.</i>" We advise that further clarification is also required as to the potential impacts from lighting as a result of the changes to the quay design.</p> |
| 3.3.4 | <p>The compensation site at Cherry Cobb Sands (CCS) is mentioned several times within the HRA, reference to provision of compensation for the adverse effects that will arise as a result of the Able MEP development (e.g. HRA1 table 13, 9.7 and HRA2 5.8 and 9). Compensation measures should not be identified within the Appropriate Assessment. The Appropriate Assessment should identify the likely adverse effects and identify the mitigation measures that will avoid or reduce these adverse effects. The document should include an assessment of the effectiveness of mitigation measures. Discussion of compensation</p> | <p>Natural England is satisfied that references to compensation are no longer included in the Appropriate Assessment. Section 10.8 refers to compensation ratios for habitat lost in UES Technical Appendix 11-2. We advise that details of compensatory habitat should either be included in the updated sHRA, or reference should be made to such details in the sHRA for the consented scheme.</p> |

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| | measures should be set out in a separate section making it clear that compensation measures should not be considered at the Appropriate Assessment stage. In addition, predicted changes at the Cherry Cobb Sands site are also mentioned which are not relevant to the material changes at the Killingholme development site. | |
| 4.1. | HRA2 Table 12 refers to ongoing discussions about the impacts of dredging. If there are additional mitigation measures that have been agreed to address the impacts of dredging on the Humber Estuary SAC, then this needs to be incorporated within the HRA. | See 3.3.2 above. |
| 4.2 | Ascertain if 4000 vessel movements across the estuary to dredge disposal sites adds additional impacts to the consented DCO. | See 3.3.2 above. |
| 4.3 | Additional mitigation for dredging impacts should be included and discussed in the Appropriate Assessment where they relate to avoiding or reducing impacts to European site features. | See 3.3.2 above. |
| 5.1 | Further explanation within the appropriate assessment to demonstrate operational effects of alteration to the design of the quay and the effects of increased vessel movements on intertidal SAC habitats and disturbance to SPA/Ramsar features. | See 3.3.2 and 3.3.3 above. |

Q5.0.8 Does NE agree with the Applicant's conclusion of no AEol for the grey seal, sea lamprey and river lamprey?

Natural England agrees with this conclusion.

Q5.0.9 The HRA Part 1 Report, at 9.6, notes that LSE was excluded in respect of the effects of lighting on the remaining intertidal habitats at KMFS. Is this conclusion still valid, given the probable lighting requirements for tall structures such as the 200m cranes? Please comment on the potential for visual disturbance to Humber Estuary and Ramsar bird features.

We note that the EX19.1 lighting lux plan referred to at sHRA Part 1 para 9.6 is dated June 2012. However, the sHRA states in para 8.7 that "*There would be some change to the planned lighting regime in order to accommodate the new quay alignment*". Therefore it is currently not clear to NE, whether this conclusion is still valid. Natural England considers that the applicant is best placed to advise on whether the conclusion made in HRA Part 1 para 9.6 remains valid given the requirement for lighting tall structures, and the justification for this.

Q5.0.10 Mitigation and compensation areas – HRA Part 2, para 9.4, movement of the location of Mitigation Area A to Halton Marshes and WFD Assessment section 2.6, Habitat compensation scheme.

- How are the mitigation and compensation sites, including the East Halton overcompensation site, intended to operate in conjunction with each other?
- How would each be suitable for particular species?
- Would there be overlapping time frames?
- How would the monitoring provisions operate?

- **Can we be sure that any time lag in providing ecologically functioning habitat in relation to the progress of the works would not be harmful?**

Natural England considers that the applicant is best placed to update on this question. We will be able to comment further on any additional information provided by the applicant.

Q5.0.11 Please provide evidence that the compensation habitat provisions would remain appropriate over the decades to come. What maintenance plans would be in place to ensure that they do?

Discussions remain ongoing between the applicant, Natural England and the Ecological Steering Group on the design and management of the mitigation and compensation sites. Natural England will be able to comment when the applicant has given an update on these discussions. Natural England considers that potential changes as result of these discussions will make the sites more likely to be successful in future years.

Q5.0.12 HRA Part 2, Table 12 states that the effects of capital and maintenance dredging and disposal on subtidal habitat and benthic communities are subject to ongoing discussions. NE indicates that additional mitigation for dredging impacts may be required to avoid or reduce impacts on European site features. What is the state of progress in the discussions?

As noted in the table above under 3.3.2, Natural England notes that the reference in HRA Part 2 Table 12 is to discussions that were ongoing at the time of the original Environmental Statement, but that these discussions have now concluded. However, we advise that the sHRA is updated to clarify what conclusions were reached.

Q5.0.15 Please summarise the ways in which the Proposed Changes in the geometry of the quay and in the construction processes and sequencing would affect habitats and species (through, for instance change in the location of noisy activities during construction and operation, changes in the areas of excavation activity, and so on). Would there be an impact on bird activity at North Killingholme Haven Pits through, for instance, the relocation of vessel movements and crane operations to the north of the quay (UES 16.4.10)?

Natural England considers that the applicant is best placed to answer this question. We will be able to comment further on any additional information provided by the applicant.

Q5.0 16 UES 4.3.9 to 4.3.11, notes that despite an additional 1.1M tonnes of clay now to be deposited at sea rather than on land as originally intended, the estimated marine construction vessel movements would remain within the figures set out in paragraph 14.6.27 of the original ES. We are told this is because, upon review, it was found that the figures reflected the deposit of all excavated material in the estuary. Does this also apply to the effects on biodiversity identified within the ES envelope or would the additional deposition give rise to further effects? Would changes to the Marine Environmental Management and Monitoring Plan (MEMMP) and further assessment within the HRA consequently be required?

We would like to clarify that this question refers to any additional effects on biodiversity resulting from deposition at sea. If so, we consider that the applicant is best placed to answer this question.

Q9.0.10 UES 22.4.4 notes that the potential for bird activity to migrate towards Humberside Airport because of the taller cranes is deemed MAJOR/intermediate. However, UES 22.5.2 (first bullet) tells us that birds displaced would be likely to move to the compensation site and mitigation site, both of which are further away from Humberside Airport. Accordingly (fourth bullet) the risk would be reduced to neutral. Please provide evidence that this would be so. Is NE content with this aspect?

Natural England is content that birds displaced from the application site would be more likely to move to the proposed mitigation and compensation sites than to Humberside Airport, as both

mitigation and compensation sites are closer to the application site than the airport.

Q13.0.6 Has the scheme to create a managed realignment site at the Outstrays to Skeffling site and the South Humber Gateway strategic mitigation site been included in the assessments?

These schemes are included in HRA Part 2 para 8.15.

Yours faithfully

James Walsh
Yorkshire and Northern Lincolnshire Team