



Able Marine Energy Park Material Change 2 Case Team
National Infrastructure Planning
AbleMarineEnergyPark@planninginspectorate.gov.uk

By email only

MMO Reference: DCO/2013/00020
Planning Inspectorate Reference: TR030006

14 December 2021

Dear Sir or Madam,

Planning Act 2008 and the Infrastructure Planning Regulations - Application by Able Humber Ports Ltd for a Material Change to the Able Marine Energy Park Development Consent Order 2014

Deadline 1 Submission

On 29 September 2021, the Marine Management Organisation (MMO) received notice under Planning Act 2008 that the Planning Inspectorate (PINS) had accepted an application made by Able Humber Ports Ltd (Applicant) for determination of a Material Change 2 to the development consent order (DCO) for the construction and operation of Able Marine Energy Park (The Able Marine Energy Park Development Consent Order 2014) (MMO ref: DCO/2013/00020; PINS ref: TR030006).

The Applicant seeks authorisation for a Material Change 2 to the Able Marine Energy Park Development Consent Order 2014. This will consist of the following changes:

- a realignment of the proposed quay (within its existing limits of deviation) to remove a berth pocket at the southern end and introduce a setback at the northern end;
- changes to the construction methodology to allow the relieving slab at the rear of the quay to be at the surface as an alternative to being buried or to be omitted altogether, and the use of anchor piles as an alternative to flap anchors;
- consequential changes to dredging; and
- unrelated to the quay changes, the realignment of a footpath diversion to the north west of the site to go round the end of a railway track instead of crossing it

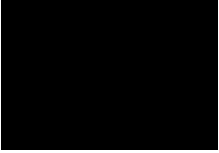
The MMO received a Rule 8 letter on 19 October 2021. In response to this letter, the MMO submits the following:

1. Comments on Relevant Representations
2. Summary of Relevant Representation
3. Summary of Written Representation for Deadline 1
4. Written Representation for Deadline 1
5. Responses to the Examining Authority's (ExA's) first round of written questions

6. Notification of wish to make oral representations at the Issue Specific Hearings
7. Notification by Statutory Parties of wish to be considered as an Interested Parties (IP) by the ExB
8. Notification of wish to have future correspondence electronically

The MMO has drafted a Statement of Common Ground (SoCG) with the Applicant, which will be submitted by the Applicant at Deadline 1.

Yours faithfully



Katherine Blakey
Marine Licensing Case Officer



██████████@marinemanagement.org.uk

Copies of Deadline 1 response have been sent to:

Adam Tillotson (MMO Case Manager) – ██████████ [@marinemanagement.org.uk](mailto:██████████@marinemanagement.org.uk)

Chris Turner (MMO Senior Case Manager) – ██████████ [@marinemanagement.org.uk](mailto:██████████@marinemanagement.org.uk)

AMEP MC2 Project Team (Able Humber Ports Limited) - amepmc2@ableuk.com

Richard Cram (Engineering Director) - ██████████ [@ableuk.com](mailto:██████████@ableuk.com)

Annette Hewitson (Environment Agency Principal Planning Adviser) -

██████████ [@environment-agency.gov.uk](mailto:██████████@environment-agency.gov.uk)

Lauren Forecast (Natural England Advisor) - ██████████ [@naturalengland.org.uk](mailto:██████████@naturalengland.org.uk)

Annex 1

1. MMO Comments on Relevant Representations (RR)

Natural England [Examination Library Reference RR-007]

1.1. The MMO has reviewed Natural England's RR and supports their request for further information. The MMO defer to Natural England as the Statutory Nature Conservation Body (SNCB) regarding the Habitat Regulation Assessment (HRA) and for impacts to any habitats or species, both terrestrial and marine. The MMO will review future Natural England submissions and will provide comment in future where necessary.

Environment Agency [Examination Library Reference RR-004]

1.2. The MMO has reviewed the Environment Agency's RR and supports their request for further information. The MMO has provided comments on the Environment Agency's representation that related to hydrodynamics and sedimentary regime including dredging and deposition in section 5 of this response. The MMO will review future Environment Agency submissions and will provide comment in future where necessary.

Maritime and Coastguard Agency (MCA) [Examination Library Reference RR-006]

1.3. The MMO notes the MCA states that it will be invited to comment on any marine licence application related to the works. Although this is correct, the MMO will not consult the MCA on the DCO Material Change 2 (MC2) as the marine licence application process is different to the DCO application procedure. The changes to this DCO Material Change will be assessed via the examination process only, which is led by PINS and the MCA should contribute to this process separate to the MMO, rather than wait to be invited to comment by the MMO.

1.4. If necessary, the MMO will contact the MCA to discuss the DCO Material Change 2, and will comment on any MCA requests relating to the Deemed Marine Licence (DML).

1.5. The MMO will consult the MCA on the pumping station outfall channel DML variation request, when it is received (see response to Q2.0.3), and will consult the MCA on the MC2 DML variation request when the Applicant confirms that they want it to be progressed. The MMO will consult the MCA if deemed necessary when documents are submitted by the undertaker post-consent to discharge Returns/conditions. The MMO will consult the MCA on any separate marine licence application that is received and includes activities that are licensable under the Marine and Coastal Access Act 2009 (MACAA).

2. Summary of the MMOs Relevant Representation [Examination Library Reference RR-005]

2.1. The following is a summary of the MMO's RR dated 19 August 2021, not exceeding 1500 words. Please note that some of the issues below have now been resolved and the details of this will be contained in the SoCG. Further comments

have been provided to the Applicant since the MMO submitted its RR, and these are contained in its Written Representation in sections 3 and 4.

Development Consent Order /Deemed Marine Licence matters [Examination Library Reference APP-005]

- 2.2. The DCO includes an arbitration process outlined in Part 6, Article 50. The MMO considers that the described process shifts the responsibility of decision making from the regulator to an independent arbitrator, which would be contrary to the intent of Parliament set out in MACAA and would usurp the role of the MMO as a regulator. The MMO requested in our relevant representation [Examination Library Reference RR-005] that this provision be removed from the DCO. Once the DCO is granted, the DML falls to be dealt with as any other marine licence, and any decisions and determinations made once a DML is granted fall into the regime set out in MACAA. Any decisions or actions the MMO carries out in respect of a DML should not be made subject to anything other than the normal approach under MACAA. To do so introduces inconsistency and potentially unfairness across a regulated community. In the case of any disagreement which may arise between the Applicant and the MMO throughout this process, there is already a mechanism in place within MACAA to challenge a decision through the appeal routes under Section 73 MACAA.
- 2.3. The term '*licence holder*' has been used on 59 occasions in the current DML. The MMO has moved away from using '*the licence holder*' on standard marine licences and advise that this phrase be replaced when referenced with '*the undertaker*'.
- 2.4. The MMO noted that any mitigation discussed in the Environmental Statement (ES) must be secured through conditions in the DML. These conditions should pass the MMO's five tests, as detailed in point 2.6 of this representation.

Environmental Statement ("ES") [Examination Library Reference APP-071-APP-153]

- 2.5. The MMO made several comments on the updated Environmental Statement to acknowledge and/or confirm agreement with conclusion regarding impacts on aquatic ecology and coastal processes, as well as comments on the data to inform these conclusions.
- 2.6. The MMO stated that we were unable to provide detailed comments on Chapter 26 cumulative impacts without reviewing the specific activities and licence conditions associated with the other developments.

3. Summary of the MMO's Written Representation – Deadline 1

- 3.1 See below a summary of the MMO's Written Representation, dated 14 December 2021, not exceeding 1500 words.
- 3.2 The MMO note a number of points raised in our RR [RR-005] and outline how these have been responded to by the applicant. Further detail and amendments are needed within the East Marine Plan Policy Assessment.
- 3.3 The MMO has had a positive discussion with the applicant regarding amendments to the DML, including changing timeframes for post consent submissions, in most cases, from 4 weeks to 13 weeks and also that conditions should not be removed

from the DML without robust justification. The MMO will provide further comments to PINS at the next deadline following further review and discussion with the applicant.

3.4 The MMO have been in discussion with the applicant in regard to the Statement of Common Ground and, at the time of submission of Deadline 1, are in agreement with the content.

4. MMO Written Representation – Deadline 1

4.1. In Section 4.12 of our relevant representation [RR-005], the MMO noted that *'The MMO has previously suggested that if the formation of discrete mounds due to disposal via split-hopper barge appear to be hindering dispersal (as discussed in the appendix "Erosion of Placed Clay"), the subsequent use of a plough dredger to 'cap' the mounds and fill the adjacent troughs is a potential mechanism to aid dispersal of inerodible material and reduce potential risk associated with safe navigation. This is a potential mitigation measure which is not listed in Section 8.5 of the ES.* The MMO do however note that the Applicant has stated in Table 8.2, "whilst a plough dredger could be used as a last resort to redistribute any high spots arising from disposal operations, extensive plough operations at the disposal site are not proposed". The MMO agree with this response, in that plough dredging should not be a primary mitigation measure, however, we would recommend that it still be added to the list of formal mitigation measures, in order to keep the option available, should it be deemed necessary by the MMO following subsequent monitoring'.

4.2. The applicant has shared a copy of the updated draft DML on 12 November 2021, in which they have added *'3) The undertaker is permitted to carry out plough dredging at deposit sites HU081 and HU082 to even out deposited material above a level of -5.3 metres Chart Datum.'* This is a welcomed addition to permit this activity, however condition 31 will remain on the DML, which requires a detailed method statement, for each stage of the works, to be submitted before works commence. The applicant will be expected to detail in the relevant method statement how and when this measure would be implemented.

4.3. In section 4.15 of our relevant representation [RR-005], we included the following comment: *'The MMO note that Chapter 26 of the ES states that no substantive deleterious cumulative impacts have been identified from multiple developments in the Zone of Impact from those addressed in the original ES and concludes that there are no additional significant cumulative effects arising from the development. The MMO and our advisors are unable to provide detailed comments on this point without reviewing the specific activities and licence conditions associated with the other developments'.* The applicant has signposted the MMO to relevant information regarding cumulative impacts. The MMO has considered and reviewed these documents and are satisfied that any potential cumulative impacts associated with the proposed construction activities for AMEP have been appropriately considered.

4.4. In section 4.7 of our RR [RR-005], we note that we will review and comment on the East Marine Plan Compliance Table in subsequent responses. The MMO have now reviewed the submitted East Marine Plan Compliance Table [Examination Library Reference APP-105] and consider there are some amendments required. We note the following:

- Policy BIO2 – The MMO does not consider that the applicant has fully understood the policy. The policy states that '*where appropriate, proposals for development should incorporate features that enhance biodiversity and geological interests*'. The applicant has noted that they have identified the sensitive receptors that relate to marine ecology, biodiversity and geological conservation and assessed the magnitude of change (impact) and significance of effect of the development. The MMO would expect to see here how the applicant has incorporated features that enhance biodiversity and geological interests, and if they have not, to state that they have not and why.
- Policy CC1 – The MMO note that the assessment of the plan policy is not complete and request that the response is updated to demonstrate compliance with the policy.
- Policy EC1 – The MMO note that the assessment of the plan policy is not complete and request that this is completed and identifies how the project is compliant with this policy.
- Policy GOV1 – The MMO does not consider that the applicant has provided enough information to show compliance with this policy. The policy states that '*appropriate provision should be made for infrastructure on land which supports activities in the marine area and vice versa*'. The applicant has stated that the updated ES considered whether there is an appropriate infrastructure in place to support the on-site activities in the marine area but should expand here and explain what the outcome of this consideration was.
- Policy GOV2 – The MMO does not consider that the applicant has provided enough information to show compliance with this policy. The policy states '*Opportunities for co-existence should be maximised wherever possible*'. As above, the applicant has stated that the updated ES considered the impact of the development proposals on the surrounding area, and aims to maximise opportunities for coexistence, however the MMO would expect the conclusion of this consideration to be put in here.
- Policy GOV3, MPA1 and TR2 – The MMO does not consider that the applicant has provided enough information to show compliance with these policies. As noted above, the applicant needs to expand on their assessment and conclude what the consideration of the ES has shown.

4.5 The MMO note that within Chapter 14: Commercial and Recreational Navigation of the Updated Environmental Statement [[Examination Library Reference APP-085](#)], it notes in section 14.5.7 that a number of alternate or additional risk control measures have been identified for navigation within the draft DML which were informed by stakeholder consultation, aimed at further reducing the residual risk during the construction and operation phases of the Project. The MMO are aware of these measures, notably the potential need for additional surveys of the study area to monitor sedimentation within and in vicinity of the AMEP berths, and consider that it may be necessary to add appropriate condition/s on the DML. The MMO would also like to note, that we have had sight of a more up to date DML than is currently in the examination library.

4.6 The MMO note that the applicant has made the required changes which were suggested in our written representation [Examination Library Reference RR-005] and the MMO has since had a positive discussion with the applicant about further changes which we require. This includes us noting that conditions which are currently secured on the DML should not be removed without a robust justification and final agreement with the MMO. It also includes that the timeframes set for the MMO to respond to post consent submissions, in most cases, should be amended to 13 weeks, rather than 4. This is to allow for the MMO to review submitted documents, consult on them if necessary, and discharge the condition once it has been satisfied. There are also several non-material changes to the DML that have been suggested by the MMO to ensure current terminology is included. The MMO will review the DML internally and discuss any proposed changes further with the applicant. We will provide further comments at the next deadline.

4.7 The MMO would also like to note that we have had a positive discussion in regard to the Statement of Common Ground (SoCG) which we have reviewed and currently agreed with. We do, however, reserve the right to amend the SoCG and move certain matters which are currently agreed back into “under discussion” where we see fit. No matters are identified as ‘not agreed.’

5. Responses to the ExA’s first round of Written Questions

5.1. The MMO have submitted our responses to the ExA’s Written Questions in Table 1 below.

Table 1: MMO Responses to the ExA’s Written Questions (ExQ1) [Examination Library Reference PD-003]

<p>Q2.0.3 The Draft Amendment Order (DAO)</p>	<p>The MMO The Applicant</p>	<p>Has an application for a variation to the deemed marine licence (DML) been submitted? Please report on progress.</p>	<p>Able Humber Ports Ltd (the Applicant) submitted to the MMO a request to vary the deemed marine licence (DML) on 29/08/2021. The variation request relates to the changes described in Material Change 2 (MC2). Before the variation request was submitted, the Applicant contacted the MMO to highlighted that it would be necessary to submit a separate DML variation request relating to the pumping station outfall channel (PSOC). The MMO clarified that two variation requests cannot be processed at the same time. The Applicant subsequently requested that the MMO did not progress the MC2 DML variation request until a determination had been made on the PSOC DML variation request. The PSOC DML variation request was</p>
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			received by the MMO on 9 December 2021 and is currently under review.
Q4.0.1 Hydrodynamics and Sedimentary Regime including Dredging and Deposition	The MMO The Applicant Environment Agency	Please respond to the EA's, MMO's and other parties' concerns set out in their RRs and report on the current state of agreement.	<p>The MMO has considered the RRs outlined by other parties and notes the Environment Agency's (EA) concerns in relation to hydrodynamics and sedimentary regime including dredging and deposition.</p> <p>With regards to Hawkins Point, the MMO have no comments to make in relation to hydrodynamics sedimentary regime.</p> <p>The MMO notes that the EA states that currently there is no time limit specified in 8.5.2 of Chapter 8 Hydrodynamic and Sedimentary Regime for monitoring aspects and that they require this to be for a minimum of 10 years. The current Marine Environmental Management and Mitigation Plan (MEMMP) which was consulted on and approved on 15 May 2021, notes in section 1.3.3 that the default duration for monitoring is 10 years following construction, and therefore the MMO consider this aligns with the EA's comment.</p> <p>The EA note in their RR that further mitigation is required and that this needs to be set out and secured using the appropriate mechanism. The MMO consider that the appropriate mechanisms could be updating the MEMMP and submitting a new version that includes any new mitigation.</p> <p>The MMO support the EA's comments, but have nothing further to note.</p> <p>The MMO will review future Environment Agency submissions and will provide comment as necessary.</p>
Q13.0.2 Cumulative and in-	The Applicant The MMO	The MMO states at 4.15 in its RR dated 19.8.21 that they	The Applicant has signposted the MMO to relevant information regarding cumulative impacts. The

combination Effects		cannot provide detailed comments regarding cumulative impacts without reviewing the specific activities and licence conditions associated with other developments. Please discuss and resolve this point with MMO.	MMO has considered this and reviewed these documents and are satisfied that any potential cumulative impacts associated with the proposed construction activities for AMEP have been appropriately considered.
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6. Notification of wish to make oral representations at an Issue Specific Hearing (ISH)

6.1. If considered necessary at the time, the MMO wishes to make oral representations at the ISH that discuss topics within its remit. At this stage the MMO does not know which topics will be discussed at each ISH and as such cannot confirm all of the dates at present. The MMO note that the ExA will notify all Interested Parties of any hearings scheduled as part of the Examination at least 21 days in advance of them taking place, and so the MMO will notify the ExA at this stage if we wish to make oral representations.

7. Notification by Statutory Parties of wish to be considered as an Interested Parties (IP) by the ExB

7.1 The MMO wishes to be considered as an IP by the ExB.

8. Notification of wish to have future correspondence electronically

8.1. The MMO wishes to receive all future correspondence electronically. Please can all correspondence be sent to the following:

- Chris Turner, MMO Senior Case Manager, email:
[REDACTED] [@marinemanagement.org.uk](mailto:[REDACTED]@marinemanagement.org.uk)
- Adam Tillotson, MMO Case Manager, email:
[REDACTED] [@marinemanagement.org.uk](mailto:[REDACTED]@marinemanagement.org.uk)
- Katherine Blakey, Marine Licensing Case Officer, email:
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