



Able Marine Energy Park

Material Change 2

Comments on Relevant

Representations



**ABLE MARINE ENERGY PARK MATERIAL CHANGE 2 (AMEP MC2)
APPLICANT'S COMMENTS ON THE RELEVANT REPRESENTATIONS**

December 2021



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1. **Introduction**

- 1.1 This document consists of the comments of Able Humber Ports Ltd ('the Applicant') on the 14 Relevant Representations received by the Planning Inspectorate on the Applicant's application for a Material Change (MC2) to the Able Marine Energy Park Development Consent Order (AMEP DCO) ('the Application').
- 1.2 While the Applicant believes that the information provided with its Application is sufficient for it to be examined and determined, it acknowledges the concerns raised by the parties making representations and has accordingly provided additional information in response to them. It should be noted that the additional information supports the conclusions reached in the Updated Environmental Statement (UES) and other application documents and does not change the project in any way. This additional information is provided in a series of supplementary documents that are included in the appendices listed above.



2. **Representation No. 1 – Corporation of Trinity House of Deptford Strond**

Relevant Representation

- 2.1 The following representation was received by the Infrastructure Planning Commission from Corporation of Trinity House of Deptford Strond on 27th July 2021.

Dear Sir / Madam

We refer to the above application for development consent. Trinity House is the General Lighthouse Authority for England, Wales, the Channel Islands and Gibraltar with powers principally derived from the Merchant Shipping Act 1995 (as amended). The role of Trinity House as a General Lighthouse Authority under the Act includes the superintendence and management of all lighthouses, buoys and beacons within its area of jurisdiction. Trinity House wishes to be a registered interested party due to the impact the development may have on navigation within Trinity House area of jurisdiction. It is possible that we may have further comments to make on the application and the draft Order during the application process. Please address all correspondence regarding this matter to myself at [Redacted] and to Mr Steve Vanstone at navigation.directorate@trinityhouse.co.uk

Yours faithfully, Russell Dunham ACII Legal Advisor.

Applicant's Comments

- 2.2 No comment necessary



3. **Representation No. 2 – North East Lindsey Drainage Board**

Relevant Representation

- 3.1 The following representation was received by the Infrastructure Planning Commission from North East Lindsey Drainage Board on 2nd August 2021.

Dear Sir/Madam Able Marine Energy Park Development Consent order 2014 – S.I. 2014 No. 2935 Able Marine Energy Park Material Change 2

Thank you for the opportunity to comment on the above amendment. The site is within the North East Lindsey Drainage Board area. There are a number of Board maintained watercourses within the site that are being re-aligned and re-profiled as part of the drainage requirements for the new pumping station which is currently being constructed. The Landscape Plan indicates planting within the maintenance access strips for the watercourses serving the new Pumping Station. This is unacceptable as they need to be clear of all obstructions for a full 7m in order to allow access for the heavy maintenance plant.

Plans now show a realignment of watercourse Marsh Drain Branch 1 (10A) between Area J & K (or Plot T1 & Plot B2) that is different to the Drainage Strategy. It is essential there is no reduction in design standard or loss of volume in the drainage system. Any realignment needs to be agreed with NELDB and consent is required. Plans now show development of Area K (Plot T2), the Drainage Strategy shows within this area a widened berm to provide storage for the pumped drainage system. It is essential there is no reduction in design standard or loss of volume in the drainage system. Any change or realignment needs to be agreed with NELDB and consent is required.

As there are now proposed changes to the site layout and watercourse alignment that are different to those within the agreed Drainage Strategy (Nov 2017) an amendment or addendum to the Drainage Strategy to address the impact of any revisions to include:

- *An assessment to confirm that design standards and design flood levels are not increased*
- *Any attenuation within the drainage system lost because of revisions is provided within the system at alternative locations.*
- *Evidence that any proposed amendments do not have a negative effect on third parties*

Now the new pumping station is under construction and development proposals are being worked up in more detail further detailed drainage assessment work needs to be carried to ensure the proposals allow for the existing drainage for all land draining to the pumped drainage station and appropriate access for all parties to be able to maintain all watercourses, either Board maintained or riparian.



Applicant's Comments

- 3.2 The matters raised by NELDB do not relate to the Application for the material change, given that the material change application does not include changes to planting proposals or to the drainage strategy for the AMEP project. This is acknowledged by NELDB in the signed Statement of Common Ground (TR030006/SOCG/NELDB) which was submitted at Deadline 1.

Planting within pumping station maintenance access strips

- 3.3 NELDB expressed concerns regarding planting locations identified on the indicative Landscape Plan that accompanied the Application. The application for a material change does not include any changes to planting and consequently this representation does not relate to the Application.

- 3.4 In any event, the planting proposals shown on the Indicative Landscape Plan submitted with the Application (APP-012) have not been amended from those shown on the [approved Indicative Landscape Plan](#) which formed part of the original DCO application. Furthermore, Schedule 11 paragraph 7 of the DCO provides for a written landscaping scheme for each stage of the development to be submitted to and approved by the relevant planning authority. The written landscaping scheme for the drainage ditches managed by NELDB was approved by North Lincolnshire Council on 24 May 2017, and the approved planting proposals provide for grass seeding only on the maintenance strip (see Appendix 1 to SoCG with NELDB).

Adherence to the drainage strategy

- 3.5 NELDB expressed concerns that the plans submitted by the Applicant showed a discrepancy from the approved drainage strategy. The Parties agree that the application for a material change does not include any changes to the drainage strategy and that consequently this representation does not relate to the Application.
- 3.6 The alignment of the drainage ditches in the Application has not been amended from that shown on the approved plans submitted with the original application.
- 3.7 In any event in accordance with Schedule 11 paragraph 13, the detailed surface water drainage strategy for each stage of the development is subject to subsequent approval by the local planning authority. The surface water drainage strategy for the main drainage ditches and pumping station was approved by the local planning authority on 5 August 2020, refer to UES Appendix 13-3.



4. **Representation No. 3 – Public Health England**

Relevant Representation

- 4.1 The following representation was received by the Infrastructure Planning Commission from Public Health England on 5th August 2021.

Thankyou for your consultation regarding the above development.

Public Health England (PHE) welcomes the opportunity to comment on your proposals at this stage of the project. With respect to Registration of Interest documentation, we are reassured that points raised by us on 26th February 2021 have been addressed. In addition, we acknowledge that the Environmental Statement (ES) has not identified any issues which could significantly affect public health and have nothing further to add to our response to the Preliminary Environmental Information Report (PEIR) of 7th May 2021.

Following our review of the submitted documentation we are satisfied that the proposed development should not result in any significant adverse impact on public health. On that basis, we have no additional comments to make at this stage and can confirm that we have chosen NOT to register an interest with the Planning Inspectorate on this occasion. Please do not hesitate to contact us if you have any questions or concerns.

Applicant's Comments

- 4.2 No comment necessary



5. **Representation No. 4 – South Killingholme Parish Council**

Relevant Representation

- 5.1 The following representation was received by the Planning Inspectorate from South Killingholme Parish Council (SKPC) on 5th August 2021.

Able UK have still not paid the CPO on land belonging to [Redacted]. How can they change use on it? Able UK have environmentally [Redacted] the area of Station Rd cutting ancient hedgerows at nesting time. South Killingholme Parish Council believe the diversion around the railway track would be too far for wheelchair users and recommend a bridge instead. Given one of the reasons Able UK wanted [Redacted] to remove cars from his home was so disabled individuals could access the sea wall we expect the same curtesy. We have photographic and video evidence of points made and happy to share.

Applicant's Comments

Compulsory acquisition of land and hedgerow removal

- 5.2 Neither the compulsory acquisition of land nor the removal of historic hedgerows are matters which relate to the material change application. The material change application does not include any new compulsory acquisition powers. No hedgerows are to be removed as a result of the proposed material change.
- 5.3 Notwithstanding the lack of relevance to the application, the Applicant makes the following comments in respect of its compulsory acquisition of land and removal of historic hedgerows.
- The compulsory acquisition of land by the Applicant has followed the relevant legal processes set out in the AMEP DCO and relevant legislation. The Applicant is paying compensation to affected persons as required by the compensation code and the provisions of the DCO.
 - Chapter 18, Figure 18.1 of the original ES¹, records the location of historic hedgerows on the AMEP site. Those that have been removed to date (Site No's 48 and 49) have been removed pursuant to planning permissions granted by North Lincolnshire Council (planning references PA/2014/0512 and PA/2018/114). Also, pursuant to PA/2018/114 Condition 9, the Applicant has agreed a Biodiversity Management Plan with the LPA.

Footpath diversion

- 5.4 Wheelchair users will still be able to enjoy access to FP50 where it runs along the sea wall, except for that part of FP50 which is being stopped up to enable the construction of the AMEP Quay. This has not changed as a result of the Application.
- 5.5 The change to the diversion proposed by the Applicant in the Application would not change the standard of the diversion route as a whole from that which is authorised under Schedule 5 of the original DCO and shown on the original approved Rights of Way Plans. The new diversion route is shown in the updated Rights of Way Plans (APP-053). As set out in paragraph 15.1.7 of chapter 15 of the UES (APP-086), the amendment to the agreed diversion route to Footpath 50 around the AMEP site is proposed to avoid crossing the operational Killingholme

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Branch line. The proposed new route would, by means of a 440m diversion, relocate the path over a closed section of railway land where there is an existing agricultural crossing and no track. The addition to the length of the route is offset by the benefit to its users of removing a possible footbridge, especially to the ambulant disabled.

- 5.6 The diversion route was consulted on by North Lincolnshire Council's Rights of Way Officer and attracted no adverse comments, refer to Appendix UES 21-1 of the UES. North Lincolnshire Council's response to the Scoping Opinion consultation notes that the proposed amendment to the diversion of Footpath 50 has been discussed and agreed with NLC's Public Rights of Way officer.



6. **Representation No. 5 – Environment Agency**

Relevant Representation

- 6.1 The following representation was received by the Planning Inspectorate from the Environment Agency on 13th August 2021.

1.0 The Environment Agency's Role

1.1 The Environment Agency ("the Agency") is an executive non departmental public body, established under the Environment Act 1995.

1.2 The Agency was established to bring together responsibilities for protecting and improving the environment and to contribute to sustainable development. We take an integrated approach in which we consider all elements of the environment when we plan and carry out our work. This allows us to advise on the best environmental options and solutions, taking into account the different impacts on water, land, air, resources and energy.

1.3 We help prevent hundreds of millions of pounds worth of damage from flooding. Our work helps to support a greener economy through protecting and improving the natural environment for beneficial uses, working with businesses to reduce waste and save money, and helping to ensure that the UK economy is ready to cope with climate change. We will facilitate, as appropriate, the development of low carbon sources of energy ensuring people and the environment are properly protected.

1.4 The Agency has three main roles:

- We are an environmental regulator – we take a risk-based approach and target our effort to maintain and improve environmental standards and to minimise unnecessary burdens on businesses. We issue a range of permits and consents.*
- We are an environmental operator – we are a national organisation that operates locally. We work with people and communities across England to protect and improve the environment in an integrated way. We provide a vital incident response capability.*
- We are an environmental adviser – we compile and assess the best available evidence and use this to report on the state of the environment. We use our own monitoring information and that of others to inform this activity. We provide technical information and advice to national and local governments to support their roles in policy and decision-making.*

1.5 The Agency takes action to conserve and secure proper use of water resources, preserve and improve the quality of rivers, estuaries and coastal waters and groundwaters through pollution control powers and regulating discharge permits.

1.6 The Agency has regulatory powers in respect of waste management and remediation of contaminated land designated as special sites. We also encourage remediation of land contamination through the planning process.

1.7 The Agency is the principal flood risk management operating authority. It has the power (but not the legal obligation) to manage flood risk from designated main rivers and the sea. The Agency is also responsible for increasing public awareness of flood risk, flood forecasting and warning and has a general supervisory duty for

flood risk management. We also have a strategic overview role for all flood and coastal erosion risk management.

2.0 Scope of these representations

2.1 These Relevant Representations contain an overview of the project issues, which fall within our remit. They are given without prejudice to any future detailed representations that we may make throughout the examination process. We may also have further representations to make if supplementary information becomes available in relation to the project.

2.2 We have reviewed the Development Consent Order (DCO) Material Change (2) application, Environmental Statement (ES) and supporting documents submitted as part of the above mentioned application, which were published on 15 July 2021. Our comments are presented using the ES Chapter headings relevant to our remit below.

3.0 Chapter 7 Geology, Hydrology and Ground Conditions

3.1 This topic has been scoped out of requiring further assessment and we are in agreement with this conclusion.

4.0 Chapter 8 Hydrodynamic and Sedimentary Regime

4.1 Impact of changes to hydrodynamics on Hawkins Point (Section 8.4.36 onwards): One wave condition was chosen to carry out this assessment, but it is not clear why this particular condition, and only one, was chosen. We, therefore, request more clarity on this in order to provide confidence in the conclusions reached.

4.2 In addition, it is noted that the assessment was undertaken using only present day conditions. We recall a previous discussion with Able Humber Ports Limited ("the Applicant") regarding this in relation to the assumption of short term impacts due to the nature of the material and other processes in the estuary. However, further clarity on the assumptions made will help to confirm if present day data itself is appropriate, or whether changes due to the impact of sea level rise needs further consideration.

4.3 If these points can be clarified, the conclusion that there is limited impact on the currently eroding section seems reasonable. However, this assessment does also indicate some increasing wave activity which could result in foreshore erosion to the west of Hawkins Point (8.4.39). Whilst this section of the foreshore is currently stable, the potential impact here needs some further consideration in regards to risk to habitat/flood defences.

4.4 Alternate or Additional Mitigation:

Paragraph 8.4.73 states that 'The proposed AMEP Amended Quay leads to no significant change in assessed impacts to flood tide flows compared to the consented layout. During the ebb tide, a localised region of flow acceleration is predicted off the downstream end of the quay. This initial change may diminish with time but should be noted'.

4.5 As explained in the Introduction of Chapter 8, the Humber's hydrodynamic and sedimentary regime is very complex and subject to constant change. In addition to the assertions based on modelling, made in Chapter 8, in terms of impacts on the Hawkins Point area, all the listed measures regarding HU081 and HU082 in 8.5.2 would be crucial in understanding the actual evolving impacts, during and after dredging disposal.

4.6 To safeguard any consequences from the potential flow acceleration during the ebb tide off the downstream end of the quay, we require the additional mitigation set out in 8.5.2 to be undertaken, and included/secured using the appropriate mechanism (e.g. Marine Licence, Marine Environmental Management and Monitoring Plan etc, or monitoring legal agreement with the Agency). Currently there is no time limit specified in 8.5.2 for monitoring aspects - we require this to be for a minimum of 10 years. We also request that the applicant indicates what remedial action they will implement if this risk is realised.

4.7 We note that although a bespoke programme of bathymetric survey is described, it is implied that existing LiDAR Monitoring surveys (i.e. Environment Agency commissioned surveys) will be used to survey the Hawkins Point foreshore. Scheduled surveys will not be on sufficient enough frequency to guarantee an optimal comparative dataset. Therefore, bespoke LiDAR surveys will need to be commissioned by the Applicant to fully understand inter-tidal and terrestrial impacts integrated with the inter-tidal and sub-tidal results from bathymetry surveys.

4.8 Provision should be made for an agile response to the results from monitoring work – i.e. if the results show departure from the predictions set out in Chapter 8, how significant is this, what are the impacts and, if appropriate, what further mitigation is required. This needs to be set out and secured using the appropriate mechanism (e.g. Marine Licence, Marine Environmental Management and Monitoring Plan etc) as well as the additional mitigation set out in 8.5.2. If this has already been done could the applicant please sign-post us to where this can be found.

4.9 Minor comment

There is a typo in paragraph 8.4.69 where Figure 8.39 is erroneously referenced as 8.40. 5.0

Chapter 9 Water and Sediment Quality

5.1 Please see comments below on the Water Framework Directive (WFD) Assessment.

6.0 Chapter 10 Aquatic Ecology

6.1 Please see comments below on the WFD Assessment.

7.0 Chapter 13 Flood Risk and Drainage

7.1 We have reviewed Chapter 13 and the flood risk assessment is appropriate to the scale, nature and location of the proposed development. However, there are some errors in Chapter 13 in respect of the legal agreement between the Agency and the Applicant. Table 13.1 and paragraph 13.2.11 refer to the legal agreement requiring a compliance with the overtopping limit of 2l/s/m on defences adjacent to the quay and the 'soft' flood defences being limited to 20 years. This does not align accurately with what the legal agreement says and for the avoidance of doubt we make the following comments.

7.2 The legal agreement makes a distinction between the 'Improvement Works' and the 'Quay Strategic Flood Defences'. The Improvement Works require the installation of 60m of rock armour to the north west of the proposed quay, the Applicant is required to provide the Standard of Protection here (i.e. overtopping limited to 2l/s/m) for a period of 20 years following completion. The Quay Strategic Flood Defences refers to the flood defences which effectively will be built over by

the Quay where the Applicant is required to provide the Standard of Protection until the Quay is removed and replaced with alternative defences, which meet the Standard of Protection.

7.3 We would also take this opportunity to remind the Applicant of its obligation under Clause 9 of the agreement, which requires them to enter into a new agreement, in the same form as the obligations set out in this agreement, prior to development commencing.

7.4 In addition to the above, Paragraph 13.9.1 states that "The site is set in a context where flooding is possible; however, this risk is largely controlled through flood defences. The scheme design has been developed to reflect the prevailing risk and will not exacerbate flood risk elsewhere. Residual risk will then be managed through implementation of a robust flood warning and evacuation strategy".

7.5 Flood risk in the Humber Estuary is currently managed in accordance with the "Planning for the Rising Tides" (2008) strategy, published by the Environment Agency. We are currently developing a new strategy (Humber 2100+) in partnership with the local authorities that takes account of new evidence and changes in legislation and funding since the 2008 strategy was agreed. We would like the Applicant to understand that we manage, rather than control, risk via flood defences. It is possible for defences to be overtopped, as happened in 2013, around the estuary if the flood exceeds the design height of a defence.

8.0 Chapter 23 Waste

8.1 We are in agreement with the approach and conclusion outlined in this Chapter with respect to waste.

9.0 Water Framework Directive Assessment

The Applicant has provided further clarity and responded positively to several of the points raised by us in response to the Preliminary Environmental Information Report (PEIR), but there are still some points that need addressing.

9.1 The WFD assessment approach used in Environment Agency guidance "Clearing the Waters for All" has been applied. A new, albeit short section has now been added to show that the Applicant has considered other activities that could affect the same receptors. The level of evidence associated with the other dredging activities is still weak but they are briefly mentioned as being part of the existing baseline. Other terrestrial developments are better covered as they are signposted to the cumulative impacts Chapter in the main ES. Both are now brought together in this new section.

9.2 The evidence for the other activities such as any new or planned dredging is provided, but with limited evidence as "No substantive deleterious cumulative impacts have been identified from multiple developments in the ZoI [Zone of Impact] from those addressed in the original ES e.g. dredge disposal is ongoing from ports activity in the Humber, power station cooling water abstraction and discharge" (Chapter 10 Aquatic ecology (paragraph 10.4.88), and Section 7 (page 34) Water framework Directive Assessment).

9.3 Monitoring for the WFD classification takes place outside areas of existing impacts so existing dredge channels and disposal areas should have been avoided during each benthic invertebrate survey and form part of the baseline. So any additional new activities that may impact the benthic receptors may be limited in



space and time. We would expect to see more evidence behind this statement for the Material Change.

9.4 The sediment contains elevated levels of a number of chemical of concern. The Applicant has presented that information and highlighted where levels are elevated above Cefas Action Levels (CAL) 1 and where applicable 2. A recently proposed CAL 1 and CAL 2 is recommended by Cefas for Polycyclic Aromatic Hydrocarbon (PAH) which the Applicant has also usefully applied. On average, the CAL 1 for PAH is exceeded in most cases, however all results are below the CAL 2 for both the sum of low molecular weight and the sum of high molecular weight PAHs. However, as the Humber lower fails for a number of PAHs, further analysis was also considered using the SeDiChem tool. The SeDiChem assessment tool was developed for the Environment Agency, to consider exceedances of environmental quality standards (EQS) within a sediment plume associated with the dredging of sediments.

9.5 The results of the SeDiChem tool are said to predict EQS exceedances within plume for all of the PAHs that are considered on the SeDiChem tool. This result is then largely dismissed and the reason given that the exceedances of the EQS for these PAHs as a result of the dredging required "is largely due to its very low MAC-EQS concentration (MAC-EQS of 0.00082 ?g/l)" (page28, Water framework Directive Assessment).

9.6 No reference is provided in the WFD assessment for the SeDiChem work. It does not appear to be presented in the ES Chapters 8 or 9, or any of the supporting appendices – could the Applicant please sign post us to this work if it is included with the application submission.

9.7 The overall conclusion in the WFD assessment is that the Sediment quality levels of the material to be dredged are considered to be within acceptable levels and the temporary nature of the dredging and disposal activity limits the potential for any effects from the proposed development, including the proposed Material Change. However, the levels in the sediment are elevated and may release contaminants into the water column that could result in further EQS exceedances in the water column.

9.8 Therefore the conclusions should be expanded to better explain the time period and the scale of those exceedances (using the modelled dispersion) data, and help justify the conclusions.

10.0 Further Representations

10.1 We will submit further detailed Written Representations in due course. We reserve the right to add or amend these representations, including requests for DCO Requirements/amendments should further information be forthcoming during the course of the examination on issues within our remit. If you have any questions regarding these representations, please contact me



Applicant's Comments

Impact of changes to hydrodynamics on Hawkins Point

- 6.2 The Applicant notes that the draft DCO Amendment Order would not authorise the additional deposition of dredged arisings to HU082 and HU081; this would be permitted by means of a variation to the deemed marine licence, by means of a separate application to the Marine Management Organisation ('MMO') made under the Marine and Coastal Access Act 2009. The EA's concerns regarding impacts from deposition at HU081 and HU082 therefore do not directly relate to the material change application.
- 6.3 The SoCG between the Applicant and EA includes a detailed response in relation to the points raised in the EA's relevant representation, namely:
- (a) the particular wave condition used in the assessment
 - (b) the reasons why present day data was used for the assessment
 - (c) foreshore erosion to the west of Hawkins Point and risk to habitat/flood defences
- 6.4 In the draft SoCG submitted at Deadline 1 (TR030006/SOCG/EA) the EA indicates that, taking into account these additional explanations, it is content with the modelling and assessment undertaken in relation to impacts on Hawkins Point.

Alternate or additional mitigation

- 6.5 The additional mitigation set out in section 8.5.2 of the UES will be secured via the Marine Environmental Management and Monitoring Plan that the MMO must approve pursuant to the requirements of the DCO, and through the Applicant's proposed changes to the deemed marine licence (see the draft application submitted at Deadline 1 with document reference TR030006/D1/7).
- 6.6 The flow acceleration for the amended quay on the ebb tide is predicted to occur slightly further inshore and over a smaller area than was the case for the consented quay (UES paragraph 8.4.44 and Figures 8-23 and 8-24). Peak speeds on the ebb tide at South Killingholme Oil Jetty may increase by up to 0.3m/s and at the Immingham Gas Jetty by up to 0.1m/s. These effects cannot be mitigated but are reported for information and consideration by adjacent berth operators.
- 6.7 The SoCG between the Applicant and EA also provides a proposed monitoring schedule to supplement the information in Section 8.5.2 of the UES. The monitoring includes for pre-construction surveys, monitoring and compliance reporting during the dredging and continued monitoring post-construction. It is proposed that the post-construction monitoring be reviewed 3 years after disposal activities at HU081/82 is completed. Current measurements in proximity to South Killingholme Oil Jetty will be made pre- and post- construction of AMEP on spring tides of a similar range. The Applicant will commission bespoke LiDAR surveys of Hawkins Point to monitor changes to the site before, during and after completion of the disposal activities.



Flood Risk and Drainage

- 6.8 The Applicant notes the EA's representation that Table 13.1 and paragraph 13.2.11 in the UES do not accurately reflect the provisions of the legal agreement between the Applicant and the Environment Agency which was entered into with regards to the DCO ('the Agreement' – APP-141). The Applicant agrees that the 'improvement works' must be maintained for 20 years, while the elements of the quay that comprise strategic flood defences must be maintained until the quay is removed and replaced with an alternative flood defence. Any minor corrections which may be made to Table 13.1 and paragraph 13.2.11 to reflect the EA's representation would have no effect on the conclusions reached in the UES.
- 6.9 The Applicant is aware of its obligations under clause 9 of the Agreement and is in the process of putting the required agreements in place.

Water Framework Directive Assessment

- 6.10 Following a meeting between the Applicant and the Environment Agency on 5 October 2021, additional information was added to the Water Framework Directive assessment (WFDa). Following comments received from EA on 10 December, the WFDa has been further revised. The revised document was submitted to the Planning Inspectorate at Deadline 1 (document reference TR030006/D1/10).



7. **Representation No. 6 – Network Rail Infrastructure Ltd**

Relevant Representation

- 7.2 The following representation was received by the Planning Inspectorate from Network Rail Infrastructure on 13th August 2021.

APPLICATION BY ABLE HUMBER PORTS LIMITED TO MAKE A MATERIAL CHANGE TO THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER 2014 (S.I. 2014/2935) PLANNING INSPECTORATE REFERENCE: TR030006 RELEVANT REPRESENTATION OF NETWORK RAIL INFRASTRUCTURE LIMITED Network Rail Infrastructure Limited (Network Rail) owns, operates and maintains the railway infrastructure of Great Britain. Network Rail operates the railway infrastructure pursuant to a network licence granted under section 8 of the Railways Act 1993. The application for a material changes relates to four items. Network Rail is concerned only with item (c); namely the proposed realignment of the footpath no. 50 diversion so that it goes around the end of the railway rather than crossing it (Footpath Diversion Realignment). Network Rail welcomes the proposed Footpath Diversion Realignment which will enhance the safety of those working on and using the railway and supports the material change to the DCO insofar as it relates to the Footpath Diversion Realignment. Network Rail reserves the right to raise further issues in evidence and requests that the Examining Authority treat Network Rail as an Interested Party for the purposes of Examination.

Applicant's Comments

- 7.3 No comment necessary



8. **Representation No. 7 – North Lincolnshire Council**

Relevant Representation

- 8.2 The following representation was received by the Planning Inspectorate from North Lincolnshire Council on 16th August 2021.

I would like to register as an interested party on behalf of North Lincolnshire Council as the host Local Authority. Please could all correspondence regarding this Material Change application be sent to myself at the above email address and also planning@northlincs.gov.uk. North Lincolnshire Council has a number of interests in the proposed amendment as detailed in its response to the EIA scoping exercise.

Applicant's Comments

- 8.3 The Applicant has been engaging with NLC as regards the interests set out in its response to the Scoping Opinion consultation. For further details see the draft statement of common ground (TR030006/SOCG/NLC) submitted at Deadline 1.
- 8.4 The Applicant notes that NLC also responded to the pre-application consultation on the Application. Points raised by NLC are addressed in the Applicant's responses to the ExB's first written questions (document reference TR030006/D1/1).



9. **Representation No. 8 – Marine Management Organisation**

Relevant Representation

- 9.2 The following representation was received by the Planning Inspectorate from the MMO on the 19th August 2021.

On 15 July 2021 the Marine Management Organisation ("MMO") were notified in accordance with regulation 19 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) (the "2011 Regulations") that the Planning Inspectorate ("PINS") had received an application, made by Able Humber Ports Limited (the "Applicant"), for a material change to be made to the Able Marine Energy Park Development Consent Order 2014 ("the DCO"). This document comprises the MMO's initial comments in respect of the Able Marine Energy Park Material Change 2 application in the form of a relevant representation following consultation with our technical advisors at The Centre for Environment, Fisheries and Aquaculture Science ("Cefas"). This representation is without prejudice to any future representation the MMO may make about the Able Marine Energy Park Material Change 2 application throughout the examination process. Furthermore, this representation is also without prejudice to any decision the MMO may make on any associated application for consent, permission, approval, or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development.

1.0 The Role of the MMO

The MMO was established by the Marine and Coastal Access Act 2009 (the "2009 Act") to contribute to sustainable development in the marine area and to promote clean, healthy, safe, productive, and biologically diverse oceans and seas.

The responsibilities of the MMO include the licensing of construction works, deposits and removals in English inshore and offshore waters and for Northern Ireland offshore waters by way of a marine licence¹. Inshore waters include any area which is submerged at mean high water spring ("MHWS") tide. They also include the waters of every estuary, river, or channel where the tide flows at MHWS tide. Waters in areas which are closed permanently or intermittently by a lock or other artificial means against the regular action of the tide are included, where seawater flows into or out from the area. The MMO is an interested party for the examination of DCO applications for Nationally Significant Infrastructure Projects ("NSIPs") in the marine area.

As a prescribed consultee under the Planning Act 2008 (the "2008 Act"), the MMO advises developers during pre-application on those aspects of a project that may have an impact on the marine area or those who use it. In addition to considering the impacts of any construction, deposit, or removal within the marine area, this also includes assessing any risks to human health, other legitimate uses of the sea and any potential impacts on the marine environment from terrestrial works.

In the case of NSIPs, the 2008 Act enables DCO's for projects which affect the marine environment to include provisions which deem marine licences ("DML")². Where a marine licence is deemed within a DCO, the MMO is the delivery body responsible for post consent monitoring, variation, enforcement, and revocation of provisions relating to the marine environment. As such, the MMO has a keen



interest in ensuring that provisions drafted in a DML enable the MMO to fulfil these obligations.

Alternatively, developers can look to have the marine elements of NSIP's consented via a marine licence under Part 4 of the 2009 Act. The MMO is the Licensing Authority for the purpose of Part 4 of the 2009 Act, and is also responsible for post-consent monitoring, variation, enforcement, and revocation of provisions relating to the marine environment. Where a marine licence is sought under Part 4 of the 2009 Act for an NSIP, the MMO will engage with PINS throughout the DCO process to ensure that NSIPs are considered in their entirety, and do not conflict with any licence issued under Part 4 of the 2009 Act.

The MMO is responsible for post-consent monitoring, variation, enforcement, and revocation of provisions relating to the marine environment of consents issued under both Acts. Further information on licensable activities can be found on the MMO's website³. Further information on the interaction between PINS and the MMO can be found in our joint advice.

2.0 The Proposed Development

This application is for a material change to be made to the Able Marine Energy Park Development Consent Order 2014 ("the DCO"). The application seeks a material change to the DCO that authorised the Able Marine Energy Park, a 1,279 metre quay on the south bank of the River Humber in North Lincolnshire, along with associated development including onshore facilities for the manufacture and storage of marine energy infrastructure and a compensatory habitat on the north bank.

The amendment seeks to achieve the following:

(a) 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;

(b) changes to the construction methodology to allow the relieving slab at the rear of the quay to be piled at the surface or to be omitted, and the use of anchor piles instead of flap anchors;

(c) consequential changes to dredge deposits where dredged materials may no longer be used in the construction of the associated works; and

(d) 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's interest in this project include any impacts to the UK marine area as described in Section 42 of the 2009 Act. 3.

3.0 Draft Development Consent Order and Deemed Marine Licences

3.1 Schedule 9 - Deemed Marine Licence ("DML")

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'. We recommend this is used in future iterations of the draft DML.

The MMO will undertake a thorough review of the proposed changes to the DML and advise on any changes to be made in future representations.

3.2 Arbitration

Article 57 in the current DCO states 'Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.'

The MMO notes that arbitration provisions tend to follow model clauses and be confined to disputes between the applicant/beneficiary of the DCO and third parties e.g. in relation to rights of entry or rights to install/maintain apparatus. The MMO does not consider that it was intended to apply such provisions to disagreements between the undertaker and the regulator, and strongly questions the appropriateness of making any regulatory decision or determination subject to any form of binding arbitration.

When the MMO was created by Parliament to manage marine resources and regulate activities in the marine environment, the Secretary of State delegated their functions to the MMO under the 2009 Act. As both the role of the Secretary of State (in determining DCO applications) and the role of the MMO (as a regulator for activities in the marine environment) are recognised by the 2008 Act, the responsibility for the DML passes from the Secretary of State to the MMO once granted. The MMO is responsible for any post consent approvals or variations, and any enforcement actions, variations, suspensions, or revocations associated with the DML.

It was not the intention of Parliament to create separate marine licensing regimes following different controls applied to the marine environment. One of the aims of the 2008 Act is the provision of a 'one stop shop' for applicants seeking consent for a National Significant Infrastructure Project (NSIP). The new regime allows for the applicant to choose whether to include a DML issued under the 2009 Act within the DCO provision or apply to the MMO for a stand-alone licence covering all activities in the marine environment. In any case, it is crucial that consistency is maintained between DML granted through the provision of a DCO, and Marine Licences issued directly by the MMO independent of the DCO process.

It is the MMO's opinion that the referral to arbitration in situations where 'difference' may arise, is contrary to the intention of Parliament and usurps the MMO's role as regulator for activities in the marine environment.

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 the 2009 Act. 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 the 2009 Act. 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 that regime to challenge a decision through the existing appeal routes under Section 73 of the 2009 Act.

The MMO would like to highlight that the regulatory decisions, and indeed any challenges through the existing mechanisms should be publicly available and open to scrutiny. In many cases, members of the public or other stakeholders may wish to make representations in relation to post-consent matters. Ordinarily, their views would be considered by the MMO and they would have the opportunity to follow up and challenge the decision making e.g. through the MMO complaints process, by complaint to the Ombudsman, or by Judicial Review. A private

arbitration to resolve post-consent disputes would reduce transparency and accountability.

Regarding appeals, the MMO draws attention to the position on Norfolk Vanguard Offshore Wind Farm DCO. The Examining Authority (ExA) recommendation on Schedules 9 to 12, Part 5 – procedure for appeals concluding in paragraph 9.4.42 is outlined as follows

"There is no substantive evidence of any potential delays to support an adaptation to existing procedures to address such perceived deficiencies. To do so would place this particular Applicant in a different position to other licence holders."

Similarly, the Hornsea Three Offshore Wind Farm ExA Recommendation report states under the 'Alternative dispute resolution methods in relation to decisions of the MMO under conditions of the DMLs' section, in paragraphs 20.5.27 – 20.5.29:

"We agree with the MMO on this point. The process set out in the Marine Licensing (Licence Application Appeals) Regulations 2011 does not cover appeals against decisions relating to conditions. Whilst it would be possible to amend those regulations under PA2008, the result would be to create a DML which would be different to other marine licences granted by the MMO. We recommend that the Applicant's alternative drafting in Articles 38(4) and 38(5) is not included in the DCO. (...) We have commented above that the scale and complexity of the matters to be approved under the DMLs is a strong indicator that those matters should be determined by the appropriate statutory body (the MMO). In our view an approach whereby matters of this magnitude would be deemed to be approved as a result of a time period being exceeded would be wholly inappropriate. Notwithstanding the exclusion of European sites, this approach would pose unacceptable risks to the marine environment and navigational safety. We recommend that the Applicant's alternative drafting is not included in the DCO."

There is no compelling evidence as to why the Applicant in the case of AMEP should be an exception to the well-established rules and treated differently to any other Marine Licence holder.

The MMO advise that the following paragraph is added to the DCO immediately after the current arbitration paragraph, which should be identified as paragraph '(1)':

'(2) Paragraph (1) does not apply to any decision, difference, determination, approval or permission required by or under any provision of the deemed marine licence in Schedule 8.'

4. Environmental Statement ("ES")

4.1. The MMO notes that previous consultation comments and responses to the Preliminary Environmental Impact Report (PEIR) are summarised within the ES and are satisfied that these previous comments have been adequately assessed.

4.2. The MMO would like to note that any mitigation discussed in the ES must be secured through conditions in the DML. All conditions must be: Necessary; Precise; Enforceable; Reasonable; Relate to the activity or development.

4.3. The MMO defer to Natural England as the SNCB regarding the Habitats Regulation Assessment (HRA) and for impacts to any habitats or species, both terrestrial and marine.

4.4. The MMO wish to highlight that the Environment Agency are the lead authority for the Waste Framework Directive, Water Framework Directive and matters

pertaining to flood risk. The MMO also defer to the Environment Agency for advice in relation to impacts to migratory fish species. The MMO advise early and direct engagement with the Environment Agency on these matters.

4.5. The MMO looks to Historic England regarding heritage impacts and will engage with them as necessary to identify whether mitigation needs to be secured via the DML. 4.6. The MMO will engage with navigation safety bodies and lighthouse authorities regarding impacts (including cumulative) for navigational matters. If any mitigation is required, then the MMO would look to secure this via the DML.

4.7. The MMO welcomes the East Marine Plan Compliance Table that has been undertaken. The MMO will undertake a thorough review of this document and submit comments regarding it in future representations.

4.8. The MMO wish to take this opportunity to remind the Applicant of their responsibility to ensure that they are complying with legislation regarding protected species (e.g. the Wildlife and Countryside Act, 1981). Further guidance regarding protected species and wildlife licensing is available on the MMO's website, link here: [REDACTED]

4.9. The MMO agree with the potential impacts on aquatic ecology receptors and concur that the material change being assessed does not affect the significance of potential impacts to aquatic ecology.

4.10. The MMO note that changes to tidal currents and wave climatology will be localised and not result in significant impacts to coastal and physical processes, including no effect on the ongoing erosion of Hawkins Point and the managed realignment sites to the east. We also acknowledge that the majority of material disposed of at HU081 and HU082 is considered likely to erode and disperse over a period of years due to hydrodynamic processes. The MMO also agrees that the proposed design will not cause significant changes in water levels on the regional tidal regime; and changes in the annual maintenance dredge budgets of the proposed project and existing operations within nearby infrastructure are anticipated but are not considered to be significant and are similar to those described in the original authorised development.

4.11. The MMO are aware of the Environment Agency's initial relevant representation on the Able Marine Energy Park Material Change 2 application and support their comments.

4.12. 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.

4.13. Hydrodynamic and sediment transport modelling is described in Section 8.2 of the ES and underpins many of the studies investigating potential impacts on coastal and physical processes associated with the proposed works. An unbiased statistical accuracy assessment has not been carried out, however, the data used to inform the model is considered appropriate and the comparison of model and observational data shows good agreement. Although it is recognised that models predicting the potential impacts in a dynamic estuary such as the Humber have a degree of uncertainty (paragraph 8.2.29), the model outputs are considered to be of sufficient accuracy to inform the updated ES.

4.14. The description of fisheries and fish ecology in the vicinity of the AMEP site is largely informed by data collected during the 2013 baseline otter trawl, beam trawl and seine net surveys, and the 2016-2017 fyke net surveys. The limitations associated with the various survey methods have been recognised, but overall, the species caught on the surveys are in line with fish populations and communities that are typical of the Humber estuary. Whilst the survey data are not very recent, the MMO are satisfied that they are adequate to provide an appropriate site characterisation of fish species present in the area.

4.15. 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. 4.16. The MMO, Environment Agency and Natural England advised on 25 March 2021 that in the absence of any significant alteration to construction techniques and/or measures, agreed in the original ES and secured in the DML, to mitigate impacts to the fish community from piling (timing restrictions set out in Schedule 8 of the DCO, paragraphs 37-43) remain relevant for the material amendment. Furthermore, agreed measures to mitigate impacts to marine mammals (soft start, marine mammal observer etc.) also remain relevant for the material amendment.

4.17. The material change may cause disruption to marine environment during the works for users of the sea. The MMO note the 'notice to mariners' condition in the DML and advise that this is retained.

Applicant's Comments

The articles of the existing DCO

- 9.3 The Applicant does not object to the amendment to Article 57 of the AMEP DCO proposed by the MMO which clarifies that the process of arbitration does not apply to decisions made under the DML. However, it is not an issue that arises as a result of the Application and it is for the Examining Body to decide whether such amendments are appropriate as part of a material change application.

Draft DML

- 9.4 The Applicant notes the MMO's request that the term "licence-holder" in the deemed marine licence be replaced with "undertaker", and has included this change in its application to the MMO for a variation to the DML (see document TR030006/D1/9).

- 9.5 The Applicant notes the MMO's comments regarding the availability of plough dredging as a mitigation option, and has included a proposed change to paragraph 12 of the DML in its application to the MMO for a variation (TR30006/D1/7), to ensure that plough dredging is available as an option and can be undertaken if required.

Updated Environmental Statement

- 9.6 The Applicant welcomes the MMO's confirmation that its previous consultation comments and responses to the Preliminary Environmental Impact Report are summarised within the UES and the MMO is satisfied that these previous comments have been adequately assessed.
- 9.7 The Applicant also welcomes the MMO's confirmation that it agrees with the assessment of potential impacts on aquatic ecology receptors, as detailed in Chapter 10 of the UES (APP-081), and that the Application does not affect the significance of potential impacts to aquatic ecology.
- 9.8 The Applicant welcomes the MMO's confirmation that it considers that changes to tidal currents and wave climatology will be localised and not result in significant impacts to coastal and physical processes, including no effect on the ongoing erosion of Hawkins Point and the managed realignment sites to the east, and its acknowledgement that the majority of material disposed of at HU081 and HU082 is considered likely to erode and disperse over a period of years due to hydrodynamic processes.
- 9.9 The Applicant has agreed that the use of a plough dredger would be an option if deemed necessary by the MMO to prevent the formation of discrete mounds hindering the dispersal of inerodible material (see Table 8-2 in Chapter 8 of the UES (APP-079)). Ploughing would be undertaken based on bathymetric surveys during or on completion of disposal activities.
- 9.10 The Applicant welcomes the MMO's agreement that the proposed design will not cause significant changes in water levels on the regional tidal regime; and changes in the annual maintenance dredge budgets of the proposed project and existing operations within nearby infrastructure are anticipated but are not considered to be significant and are similar to those described in the original authorised development.
- 9.11 The Applicant welcomes the MMO's statement that the hydrodynamic and sediment transport modelling described in Section 8.2 of the UES, which underpins many of the studies investigating potential impacts on coastal and physical processes associated with the proposed works, are sufficiently appropriate and accurate.
- 9.12 The Applicant welcomes the MMO's confirmation that it is satisfied with the description of fisheries and fish ecology in the vicinity of the AMEP site, which is largely informed by data collected during the 2013 baseline otter trawl, beam trawl and seine net surveys, and the 2016-2017 fyke net surveys. The Applicant notes that the MMO considers the survey data adequate to provide an appropriate site characterisation of fish species present in the area.
- 9.13 The Applicant has been meeting with the MMO on a regular basis, and is still liaising with them regarding cumulative effects from other developments in the area. However, so far as the Applicant is aware, the only other significant marine project being undertaken at present is the routine maintenance dredging of the estuary and quays.





10. **Representation No. 9 – Maritime and Coastguard Agency**

Relevant Representation

- 10.2 The following representation was received by the by the Infrastructure Planning Commission from Maritime and Coastguard Agency on 19th August 2021.

Part of the Maritime and Coastguard Agency's (MCA) wide remit includes responsibilities for the safety of navigation and search and rescue in the UK. We have an interest in the shipping and navigation chapter of the Environmental Statement and would like to be consulted on the establishment of any infrastructure or works in or over the marine environment, and any Harbour Orders providing statutory powers for the ongoing safe operation of the marine park. Should any works be required in or over the marine environment, a Marine Licence may be required under the Marine and Coastal Access Act 2009, at which time the MCA will be invited to comment on the licence application from the safety of navigation safety perspective. In addition, the MCA would point the developers in the direction of the Port Marine Safety Code (PMSC) and its Guide to Good Practice; they would need to liaise and consult with any relevant Statutory Harbour Authority to develop a robust Safety Management System (SMS) for the project under this code.

Applicant's Comments

- 10.3 No comment necessary.



11. **Representation No. 10 – Natural England**

Relevant Representation

- 11.2 The following representation was received by the Planning Inspectorate from Natural England on 23rd August.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Relevant Representation PART I: Summary of Natural England's advice. Further information required to assess the potential for the project to impact on SAC habitats as well as the passage/ wintering bird assemblage of the Humber Estuary SPA and Ramsar site. PART II: Natural England's detailed advice. Further details about the project are necessary to assess dredging and vessel movement impacts. and Further evidence is required to assess the potential operational impacts of the quay alterations.

1.1. Natural England's advice in these relevant representations is based on information submitted by Able Humber Ports Ltd in support of its application for a material change ('the project') to the Development Consent Order ('DCO') in relation to the Able Marine Energy Park, which came into force on 29 October 2014 ('the consented DCO').

1.2. Natural England has been working closely with Able UK Limited to provide advice and guidance since 2012 and had jointly agreed on a Statement of Common Ground for the consented DCO (dated 24 August 2012). Natural England has also been working with the Environment Agency and Marine Management Organisation to provide coordinated advice. Related to the consented DCO, Natural England has serious ongoing concerns regarding the timescales of the creation of the compensation habitat, and the risk of the time lag in providing ecologically functioning habitat, which may lead to major negative impacts on several SPA/Ramsar features. Natural England is seeking to agree an appropriate timescale for commencing compensation habitat creation.

1.3. These relevant representations contain a summary of what Natural England considers the main nature conservation and related issues¹ to be in relation to the DCO application as well as the Deemed Marine Licence contained therein, and indicate the principal submissions that it wishes to make at this point. Natural England will develop these points further as appropriate during the examination process. It may have further or additional points to make, particularly if further information about the project becomes available.

1.4. Part I of these representations provides an overview of the issues and a summary of Natural England's advice. Section 2 identifies the natural features relevant to this application.

1.5. Part II of these representations sets out all the significant issues which remain outstanding, and which Natural England advises should be addressed by Able UK Limited and the Examining Authority as part of the examination process in order to ensure that the project can properly be consented. These are primarily issues on which further information would be required in order to allow the Examining

Authority properly to undertake its task or where further work is required to determine the effects of the project to provide a sufficient degree of confidence as to their efficacy.

1.6. Natural England will continue discussions with Able UK Limited to seek to resolve these concerns and agree outstanding matters in a statement of common ground. Failing satisfactory agreement, Natural England advises that the matters set out in sections 4 to 6 will require consideration by the Examining Authority as part of the examination process.

1.7. The Examining Authority may wish to ensure that the matters set out in these relevant representations are addressed as part of the Examining Authority's first set of questions to ensure the provision of information early in the examination process.

Part I: OVERVIEW OF THE NATURAL FEATURES AND THE MAIN ISSUES RELEVANT TO THIS APPLICATION

2. The natural features potentially affected by this application

2.1. The designated sites relevant to this application are:

2.1.1. Humber Estuary Special Protection Area (SPA)

2.1.2. Humber Estuary Special Area of Conservation (SAC).

2.1.3. Humber Estuary Ramsar site

2.1.4. Humber Estuary Site of Special Scientific Interest (SSSI)

2.1.5. North Killingholme Haven Pits SSSI

2.2. Natural England concurs with Able UK's Updated Environmental Statement Chapter 1 that the proposed project will not incur any additional impacts from the consented DCO, for nationally protected species, European protected species or Local Wildlife Sites (LWS).

2.3. The main issues raised by this application are that further information is required to assess the following impact pathways:

2.3.1. Impacts on permanent direct loss of estuarine and intertidal mudflat habitat, due to the construction footprint of the development. 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. 2.3.2. Impacts on estuarine and intertidal mudflat SAC/Ramsar habitat, due to the effects of additional dredging activities and the effects of additional disposal of dredged material to sea.

2.3.3. Impacts from noise disturbance to SPA/Ramsar birds using North Killingholme Haven Pits during construction and operation, due to the change in the design of the quay.

2.3.4. Procedural clarification with the HRA in relation to the way that mitigation and compensation have been addressed. Mitigation measures should be identified within the Appropriate Assessment and their effectiveness assessed.

Compensation measures should be addressed in a separate section after the conclusion of the Appropriate Assessment.

Part II: NATURAL ENGLAND'S RELEVANT REPRESENTATIONS IN RESPECT OF ABLE MARINE ENERGY PARK MATERIAL CHANGE 2

3. Planning Inspectorate Reference: TR030006

3.1. Natural England's advice is that in relation to identified nature conservation issues within its remit there is no fundamental reason of principle why the project should not be permitted, but that the applicant has provided insufficient evidence to establish that there will be no additional adverse impacts on the Humber Estuary European sites in question.

3.2. Natural England's headline points are that on the basis of the information submitted:

3.2.1. Natural England is not satisfied that it can be excluded beyond reasonable scientific doubt that the project would not have an additional adverse effect on the integrity of the Humber Estuary SAC, SPA, Ramsar and SSSIs as a result of the project. 3.2.2. Natural England is satisfied that there are not likely to be additional impacts on European Protected Species as a result of the project

3.2.3. Natural England is not satisfied that the proposal is not likely to damage features of interest of the Humber Estuary and North Killingholme Haven SSSIs. Many of the species included in the Humber Estuary SPA/Ramsar waterbird assemblage are also part of the Humber Estuary and North Killingholme Haven SSSIs' citations, and so the above impacts also have the potential to impact upon the notified features of the Humber Estuary and North Killingholme Haven SSSIs.

3.2.4. Natural England advises that, if approved, the project must be subject to all necessary and appropriate requirements, which ensure that unacceptable environmental impacts either do not occur or are sufficiently mitigated.

3.3. Natural England's advice is that there are a number of matters which have not been resolved satisfactorily as part of the pre-application process that must be addressed by Able Humber Ports Ltd and the Examining Authority as part of the examination and consenting process before development consent can be granted. Some of these matters are important enough to mean that, if they are not satisfactorily addressed, it would not be lawful to permit the project due to its impacts on the SAC, SPA, Ramsar and SSSI interests. However, Natural England's advice is that all these matters are capable of being overcome. The specific concerns in relation to each are outlined below.

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.

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.

3.3.3. 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.

3.3.4. 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 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 Page 5 of 6 also mentioned which are not relevant to the material changes at the Killingholme development site.

PART II: OUTSTANDING MATTERS REQUIRING ATTENTION

4. Further details about the project in order to enable assessment

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.

4.2. Ascertain if 4000 vessel movements across the estuary to dredge disposal sites adds additional impacts to the consented DCO.

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.

5. Further evidence or assessment work required

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 of intertidal SAC habitats and disturbance to SPA/Ramsar features.

6. Additional comments

6.1. Other issues such as those related to the clarity or completeness of the HRA are set out in the tables below

Updated HRA1 June 2021

Section	Comment
7.20	Fish assemblage: The only fish that are relevant to the HRA are river and sea lamprey which are not mentioned in this section. Reference should be made to river and sea lamprey.
7.22	Marine mammals: the only marine mammal that is relevant to the HRA is grey seal which is not specifically mentioned in this section. Reference should be made to grey seal.
Table 10	Refers to data collected between Dec 2020 and March 2021, why is the early wintering/ autumn passage period (August to November) missing? Explanation needed.
Table 13	Change in areas of habitat loss is not explained clearly eg change from 31.5 to 31.3 ha of mudflat/ sand flat, it is presumed that this is a result in the change of footprint of the quay, but this needs to be explained clearly in the table.
9.10	It would be helpful to mention in this section that has been a change in the baseline habitat at Killingholme foreshore ie accretion followed by saltmarsh colonisation.
Appendix 4	As the bird data tables have differentiated between birds at Killingholme Foreshore and North Killingholme Haven Pits it would be useful to differentiate between them in this table.

Updated HRA2 June 2021

Section	Comment
Section 5. Bird data tables 1 to 10	It would improve the clarity of the Appropriate Assessment if discussion of bird issues at North Killingholme Haven Pits (NKHP), Killingholme foreshore (KFS) and terrestrial habitat is kept separate within the document eg address all the NKHP bird issues together and then address the Killingholme foreshore issues rather than swapping between the two.
Bird data tables 1 to 10	It is important to highlight the significant changes between the ES and the updated data. This could be done by using symbols or highlighting to indicate significant increases or decreases in bird numbers in the updated document. It would also be useful to highlight the birds that occur in significant numbers in the survey area (eg in bold or shading).
6.15	We have previously communicated the following to Able UK, we are unsure whether the guidance and data on grey seals has been updated. Natural England concurs that it still remains that a Likely Significant Effect on the Humber Estuary SAC feature grey seal cannot be ruled out. There have been a number of updates to both industry standard guidance and best available evidence since the original Environmental Statement was written. NOAA 2018 guidance ¹ updates the noise impact thresholds previously used in Southall et al. 2007 and the most recent Special Committee on Seals (SCOS) report 2019 contains the latest seal counts. The updated HRA should consider whether the conclusions remain appropriate based on this updated information. Depending on the conclusions of the HRA, there may be a further need to update the MEMMP.
Table 11	Clearer explanation is needed of the changes to the berth areas and impacts on habitat loss. Overall change in habitat given in table 11, but more detail needed on losses and gains of different habitat types compared to the original design. Plans would help support the explanation.
10 Summary	This section should present a list of the adverse effects that cannot be mitigated or otherwise avoided, without consideration of compensation.



Applicant's Comments

An appropriate timescale for commencing compensation habitat creation.

- 11.3 The Application does not seek to amend any timescales for the creation of compensation habitat. These timescales are already set out in Schedule 11 paragraph 22 and Schedule 8 paragraph 25 of the AMEP DCO and in a separate legal agreement between the parties dated 29 April 2013 (attached at Appendix 1 to the draft SoCG between the Applicant and Natural England (NE) (TR30006/SOCG/NE)).

Change in habitat loss

- 11.4 NE states in its relevant representation that clarification, for audit purposes, 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. NE is satisfied that the compensatory habitat at Cherry Cobb Sands will remain adequate. The Applicant provided tables relating to Habitat Losses in Appendix UES11-2 (APP-137). A revised version of this document is submitted at Deadline 1.

Impacts on estuarine and intertidal mudflat SAC/Ramsar habitat

- 11.5 NE asks about impacts on estuarine and intertidal mudflat SAC/Ramsar habitat, due to the effects of additional dredging activities and the effects of additional disposal of dredged material to sea.
- 11.6 Dredging volumes are set out in UES Appendix 4-2, and are very similar to those in the original, and there no change in the effects on aquatic ecology (as set out in Chapter 10 of the UES). The total number of dredge vessel movements is detailed in the Navigation Risk Assessment ('NRA') at Appendix UES14-1 of the UES (APP-147) and is not materially different to those predicted in the original ES (refer to Table 3 *ibid*).

Impacts from noise disturbance to SPA/Ramsar birds using North Killingholme Haven Pits

- 11.7 NE asks about impacts from noise disturbance to SPA/Ramsar birds using North Killingholme Haven Pits (NKHP) during construction and operation, due to the change in the design of the quay. There will be no change in the extent of the noise disturbance resulting from the proposed material change as the quay piling, which generates the highest noise levels, will be no closer to NKHP as a consequence of the proposed changes. UES Chapter 16, paragraph 16.8.2 of the updated Environmental Statement (APP-087) reports that '*no changes have been identified that would alter the assessment of effects as described in the original ES*'. In any event, noise levels at NKHP are limited by condition, refer to Schedule 11 paragraph 42(3) of the AMEP DCO.

Habitats Regulations Assessment

- 11.8 Following a meeting with NE on 22 September 2021, it was agreed that no additional environmental assessment was required but that the shadow Habitats Regulations Assessment (sHRA) submitted with the application would be re-



structured in accordance with their comments. A revised version was shared with NE on 26 October. Whilst no response has been received a further update was submitted as a standalone document at Deadline 1, document reference TR030006/D1/3).



12. **Representation No. 11 – C.GEN Killingholme Ltd (“C.GEN”)**

Relevant Representation

- 12.2 The following representation was received by the Planning Inspectorate C.GEN Killingholme Ltd on 7th September 2021.

“C.GEN” is the owner of land adjacent to AMEP, which has the benefit of an existing DCO ((SI 2014/2434) (subject to a correction order dated 26 October 2015 (SI 2015/1829) for the construction of a new power station, capable of operating as a gas-fired combined cycle facility, or on syngas produced via an integrated gasification production facility.

C.GEN Killingholme Limited (“C.GEN”) is the owner of land adjacent to AMEP, which has the benefit of an existing DCO ((SI 2014/2434) (subject to a correction order dated 26 October 2015 (SI 2015/1829) for the construction of a new power station, capable of operating as a gas-fired combined cycle facility, or on syngas produced via an integrated gasification production facility.

C.GEN acquired the former Centrica power station in 2016. This included all the cooling water intake/outfall infrastructure between the power station site and the River Humber, including the pipework located in the river itself. C.GEN owns the pumping station adjacent to the infrastructure, as well as all related easements and rights. Navigation warnings / aids are maintained around the pipework in the river, for navigation safety. Centrica participated in the examination of the AMEP DCO and had the benefit of protective provisions in the existing DCO, principally to protect the route and apparatus of this cooling infrastructure from damage or other adverse affects (including silting over the outfall) during construction and operation of AMEP. C.GEN inherited these protections.

The former power station is designated as a site for energy projects and as such the cooling water infrastructure and route remains viable for providing cooling water abstraction and discharge (subject to an environmental permit and other consents as necessary) for electricity generation uses in future. We note from the PEIR that there are predicted changes to the original assessment of accretion and deposition that accompanied the DCO. These changes to the consented project therefore have the ability to impact on the utility of the cooling water infrastructure in future.

We have seen a response from the EA that as there is no environmental permit in place, the impact of changes in the quay wall design and construction at AMEP as proposed in the Material Change 2 could be scoped out from assessment. In our view, the fact that there is no environmental permit in place is not the determining factor as to whether there should be any assessment of the effects the material change works on the cooling water infrastructure. The issue is whether there may be any change in the assessment of likely significant effects on that infrastructure, the need for any mitigation, and whether the existing protective provisions are adequate to ensure that C.GEN’s interests are properly protected.

To illustrate this, under the protective provisions Able was required to obtain C.GEN’s approval to a method statement for protection of this infrastructure, both the on-land route and the marine infrastructure, prior to implementing any part of the AMEP authorised works. This is not affected by the existence of any environmental permit

We are concerned that the changes will present additional / new impacts on the pipework that will affect its utility in the future. We asked the applicant to share additional environmental information prior to making the application – at the very least additional sensitivity analysis – so that we could review this. This was not provided.

For the avoidance of doubt, we require that the existing protective provisions remain in place and unamended as part of any amendment to the DCO. Able has indicated that this will be the case.

Further, we understand that the applicant is proceeding with implementation of the consent while making the DCO amendment application, alongside continuing existing alternative uses on AMEP. It would be helpful to understand how these different developments or stages of developments will interact, and to see assessment of any interim development scenario, including baseline.

Applicant's Comments

Assessment of impacts on C.GEN infrastructure

- 12.3 In relation to impacts on the existing intakes and outfalls to the north of the proposed quay, additional assessment of impacts are reported in Chapter 8 of the UES. Paragraph 8.4.67 of the UES records that, '(a) beneficial effect of the amended quay design is to reduce the previously predicted impacts on the region inshore of the Uniper and CGEN intake and outfall locations'. Consequently the impact of the proposed material change to alter the quay alignment will be beneficial for the pipework referenced in C.GEN's relevant representation.

Protective provisions

- 12.4 The Applicant confirms that the existing protective provisions remain in place, and no amendment to the protective provisions is proposed as part of the Application.

Staged development of AMEP

- 12.5 With regard to the staged development of AMEP, CGEN state that it would 'be helpful ... to see assessment of any interim development scenario, including baseline'. The EIA has been undertaken in accordance with a standard procedure whereby the existing baseline has been surveyed and characterised, the impacts of the project on the baseline environment have been assessed, and mitigation has been identified where there are likely to be significant adverse effects affecting the baseline environment. Interim stages of the development have not been assessed as, by inspection, they are not likely to give rise to more significant effects on the existing environment than the completed scheme. The relevant baseline is the baseline at the time of the application and that is generally described in UES Chapter 1 and UES Appendix 11-1.
- 12.6 In relation to extant consents, those parts of the application site benefitting from an historic operational consent are shown in Figure 12.1.

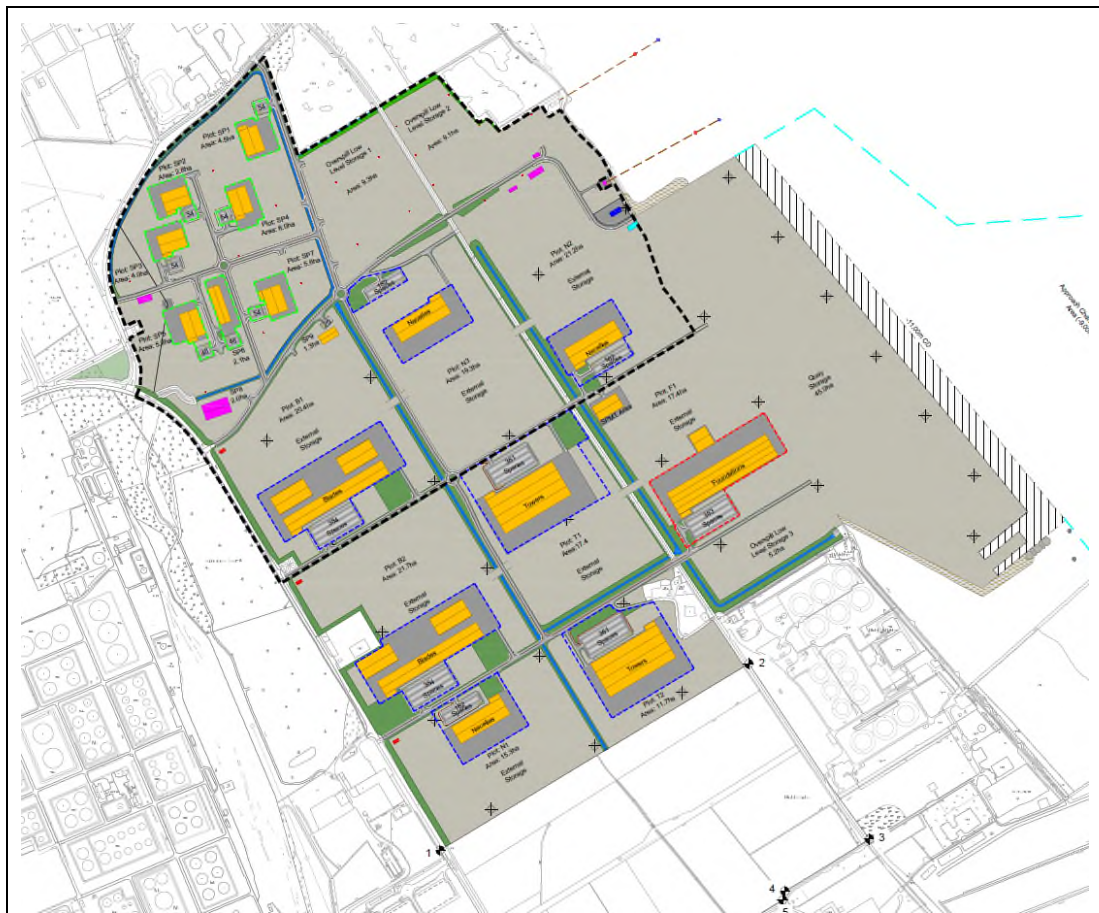


Figure 12.1: Indicative AMEP Masterplan with Area benefiting from Other Operational Consents Delineated by Dashed Line.

- 12.7 The operations permitted within the AMEP site by these historic permissions are limited to port related storage operations and car workshops, and in some areas simply to vehicle storage and distribution. By contrast, the operations permitted by the DCO are much broader in scope and include for the manufacture, assembly as well as storage of items associated with the offshore renewable energy sector. This includes for the construction and operation of 10 factories within the delineated area in Figure 12.1. It is not plausible that the construction and operation of ten additional factories results in less environmental impact than simply storing port related goods in accordance with existing consents. Accordingly, there is not likely to be a more significant environmental effect arising from an interim development scenario as opposed to the completed scheme. Further, and in any event, it is evident from both the original ES and the UES that the most significant environmental effects arise during construction and not during operation.
- 12.8 Developments such as AMEP do not displace existing development overnight. It was always the case that existing and consented development would be operating side by side for a period of time, and that existing development would be gradually displaced as AMEP is built out. This is not only obvious from the scale of development but also by reference to Schedule 11 Requirement 3 of the DCO



which requires stages of the development to be approved by the local planning authority.



13. REPRESENTATION No. 12 – C.RO Killingholme Ltd (“C.RO”)

Relevant Representation

- 13.2 The following representation was received by the Planning Inspectorate from C.RO Killingholme Ltd on 7th September 2021.

C.RO Ports Killingholme Limited (“C.RO”) is the harbour authority and owner and operator of C.RO Ports Killingholme, a six-berth ro-ro ferry port located immediately upstream from the Able Marine Energy Park (“AMEP”) site. C.RO operates 24 hours seven days a week servicing scheduled ro-ro ferry sailings from the northern continental ferry ports. C.RO made representations about the original DCO application and took part in the examination. The main interactions/impacts on C.RO’s operations were: additional dredging requirements at C.RO’s berths and approach channels; construction vessel traffic operating in C.RO’s approach channel; the interaction of AMEP vessel movements with C.RO’s, in particular manoeuvring AMEP vessels in the approach channel to C.RO. AMEP’s harbour overlaps with the C.RO approach channels, with vessel swinging a particular issue. Broadly, these issues remain with the Material Change 2 application. C.RO has the benefit of specific protective provisions in the existing DCO (schedule 9 part 6), which establish priority in the river for our ferry services, and also protect the harbour and approaches from any detrimental effects in the river regime resulting from the construction or operation of AMEP. The protective provisions also include a regime for prior approval by C.RO of any works that may affect our approach channel or berths, and a mechanism for recovery of any costs incurred by us as a result of changes in the river regime caused by AMEP. Able Humber Ports (“AHPL”) has confirmed that it does not propose any changes to these protective provisions. Our review of the Material Change 2 application documents is ongoing and comments in this representation are subject to that. At this stage we do not have an in-principle objection to the application, so long as the protective provisions remain in force. Therefore, our ongoing review is focused on whether the existing protective provisions remain effective to control and ameliorate any impacts on C.RO operations, including dredging requirements, management of construction vessels, and future priority for vessel traffic to/from C.RO. We responded to Able’s consultation on the preliminary environmental report.

Comments on Material change 2 application.

1. Scope of assessment: subsequent to the DCO being made, AHPL has carried out development on the AMEP site under separate planning applications, for different uses not related to AMEP. The ES (para 1.2.7) states that none of the planning permissions granted in respect of the AMEP site in the period since the DCO was submitted will prevent or alter the delivery of AMEP for the purpose for which it was originally intended (i.e. as a bespoke port facility to facilitate offshore windfarm and other renewable energy development). It would be helpful to have clarity in how these different developments will interact, so that as neighbours and affected parties we can fully understand the impacts of the consents that will actually be built out, whether fully or in part. Currently, the application assumes AMEP will be fully built out; if it is possible that it will not be and other existing uses will remain, this will be a different development to that envisaged by the DCO and Material Change 2 application and it should be assessed. In addition, AHPL should be required to confirm whether the revised phasing of the quay wall envisages a partial implementation i.e. a scenario where the whole quay wall is

not built out at once. This is a practical possibility based on a review of the engineering and construction methodology. Clearly, if there were a phased delivery the impacts on C.RO and generally – in particular the river regime would be materially different than if the whole quay wall were to be built out. In the absence of this assessment, there should be controls on how the development is implemented.

2. New / additional construction vessel movements: Changes to construction methodology, with deposition of dredged material off site rather than into the quay wall will lead to additional vessel traffic in the vicinity of CPK, in the approach channel and on the Humber to/from the deposition sites. Scheduled commercial traffic must retain river priority. There must be a management plan in place to ensure construction traffic moves away from our approaches when vessels are moving to/from CPK.

3. Creation of a "barge" ro-ro berth: the change to the quay design in this location is significant, because vessels will need to manoeuvre materially differently, in the direction of the berths at C.RO Ports Killingholme, when berthing and leaving. We do not have any information about what types of vessels would use this revised berth (including length and draught). This is a large berth which, if capable of handling ro-ro type traffic (according to the PEIR), will involve significant vessel movements in our approach channel. This needs to be set out and assessed fully. At present we cannot be satisfied that the existing protective provisions are sufficient, or be confident that AHPL could handle safe berthing and departure of these vessels in this new berth, without impacting the safe and efficient operation of C.RO Ports Killingholme.

4. Dredging requirements at C.RO Ports Killingholme: AHPL provided information as part of the PEIR predicting changes in deposition at C.RO Ports Killingholme from the original assessment for AMEP (authorised under the DCO), in particular for the baseline a decrease in mud deposition of between 9-22,000 m³ per annum and increases in sand deposition of between 13-18,000 m³ per annum. Overall, these ranges indicate the relative unpredictability of changes to the river regime resulting from construction and operation of AMEP. For this reason, the existing protections in the DCO must remain in force to ensure that where there are adverse impacts from the AMEP project, C.RO is not exposed to additional cost or operational impacts.

5. Impact on existing dredging deposition: the new proposals for deposition of capital dredge volumes at the identified disposal locations, as opposed to reuse for the construction of the quay at AMEP, will have a significant impact on the ability of existing dredging activities to dispose dredged arisings conveniently at reasonable cost, within the River Humber. AHPL should model, and provide information, on the longer term impact of dredging activities resulting from this major change to the AMEP proposals. This change is because AHPL has done reclamation and infill works subsequently for different development on AMEP, which was not contemplated in the original application.

6. Order Limits: During consultation for this application we raised with AHPL that the order limits included the route of the Killingholme Branch Line, including the section that runs north from AMEP and bisects C.RO Ports Killingholme. AHPL confirmed that this was a legacy of their original proposals to compulsorily acquire this line, which were dropped during examination. They also confirmed that they were not proposing to carry out any works or other activities to this section of the branch line. We have suggested to AHPL that it would be sensible to rectify the

order limits to reflect this, and exclude this section of the branch line from the "red line", shown on a number of plans. This would be in line with common practice for all planning applications, which only include land where development will be carried out. As AHPL is amending the order limits elsewhere in this respect, it follows it could do so here as well.

Applicant's Comments

Staged development of AMEP

- 13.3 In relation to the scope of the assessment, C.RO makes the same comments as C.GEN, namely that interim development scenarios should be reported. For the reason explained in Section 12 above, the Applicant considers that the likely significant effects of the scheme have been reported whether or not the Associated Development is completed. The Applicant has not assessed staged completion of the marine works as those works will be completed under a single continuous contract.
- 13.4 The pace of change in the offshore renewable energy sector means that the associated industrial development use proposed in 2011 is no longer fit for purpose. Accordingly, new industrial development will be brought forward under the provisions of the TCPA 1990, and an environmental impact assessment of those projects will be undertaken at that time. By way of example, a recent application has been submitted to NLC for a monopile manufacturing facility on the former Mitigation Area A (NLC planning reference PA/2021/1525). Further applications for industrial development will be brought forward in due course giving an opportunity to comment on them at the appropriate time.

Vessel traffic

- 13.5 With regard to vessel traffic, the Applicant notes that Schedule 8, paragraph 16 already requires a vessel management and movement plan to be agreed in writing by the MMO prior to any licensed activity being undertaken. Further, Schedule 9, Part 1 of the AMEP DCO requires this plan to be submitted to the Conservancy Authority and any comment from them must be submitted to the MMO. The Applicant considers these arrangements to be suitable and sufficient protection to C.Ro.
- 13.6 Information on the Ro-Ro vessels that could currently use the barge berth to the north of the quay are contained in Section 2.2.2 of the Navigation Risk Assessment (NRA) submitted as UES Appendix 14-1. The berthing and departure of these vessels is not expected to be more significant than those vessels already assessed in the original ES and reported in Annex 14.3, here:

[Microsoft Word - L30106.1R ABLE UK \(planninginspectorate.gov.uk\)](#),

and also in Annex 14.4 here:

https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030001/TR030001-001612-OS-003_TR030001_Able%20UK%20Ltd_Supplementary%20Environmental%20Information_File%202%20of%202.zip .

In this respect it is noted that the NRA (UES Appendix 18-1), at Table 6, reports the Conservancy Authorities view that '*Traffic largely passes well clear of the development. Vessels bound for Humber Sea Terminals will be most impacted;*

however, it is anticipated that the impact should not be dissimilar to that previously assessed'.

- 13.7 Relevantly, the simulations undertaken to support the original ES included a 45,000 DWT bulk Carrier departing from the original northern berth, a vessel far larger than anything anticipated to be used by the offshore renewable energy sector.
- 13.8 No additional construction vessel traffic is expected compared to the assessment in the original ES. The original assessment of construction activity did in fact envisage that that all dredge arisings would be deposited at sea and that this generated the figure of 5,518 construction vessel movements. The UES provides a new assessment of construction vessel movements and arrives at a very similar number of trips (5,464, see UES Appendix 14-1, Table 3). The difference between the Original ES estimate and the revised UES estimate is materially trivial (and in fact the new number is lower). The two assessments are illustrated in Table 3 of the NRA, UES Appendix 18-1.

Protective Provisions

- 13.9 The Applicant has not proposed any changes to the Protective Provisions as part of the Application. The protective provisions benefitting C.Ro would be unchanged should the material change be granted, and will continue to protect C.Ro's interests.

Additional deposition of dredged arisings

- 13.10 The Applicant notes that the additional deposition of dredged arisings does not form part of the proposed material change application, but would be authorised by a separate application to the MMO to vary the deemed marine licence. Nevertheless, the Applicant notes the assessment of the impacts in the UES, which covered the potential effects from the changes to the deemed marine licence. The long-term effects of the deposition of capital dredging has been fully assessed and is reported in the UES, particularly in Chapter 8 and Appendix UES 8-2. In the short to medium term, all the capital dredge arisings are expected to erode away. The impact of the additional deposition of dredged arisings will not affect maintenance dredging deposition at all, as the deposit sites are completely different.

Order Limits

- 13.11 There are several parcels of land within the Order limits, such as the Lookout (a former residential property now acquired by AHPL), that could at this stage be removed from the Order Limits but doing so would serve no obvious purpose. It is not at all clear what prejudice is foreseen from retention of the original Order Limits and in the absence of any such prejudice the Applicant would not propose to complicate the application by belatedly introducing this unrelated matter into the examination.



14. **Representation No. 13 – Northern Gas Networks**

Relevant Representation

- 14.2 The following representation was received by the Infrastructure Planning Commission from Northern Gas Networks on 7th September 2021.

Dear Sir or Madam

We respond to the attached notice received by Northern Gas Network (NGN). Firstly, we should confirm that NGN have no infrastructure on the South bank of the Humber, NGN own and operate the Gas Distribution Network to the North of the Humber. The network on the south side is in the ownership of Cadent Gas. We note there are some compensatory habitat to be put in place on the north bank, however we can also confirm we have no infrastructure in the area indicated on the plan and will therefore not be making any representation / objection to the proposals

Kind Regards Dave Ring | Senior Surveyor

Applicants Response

- 14.3 No comment necessary.



15. **Representation No. 14 – The Coal Authority**

Relevant Representation

- 15.2 The following representation was received by the Planning Inspectorate from The Coal Authority on 7th September 2021.

Dear Planning Inspectorate

Further to notification received from Able Humber Ports Ltd, dated 13 July 2021, I have reviewed the plans against our coal mining information and can confirm that, whilst the site falls within the coalfield, it is located outside the defined Development High Risk Area; meaning that there are no recorded coal mining legacy hazards at shallow depth that could pose a risk to land stability for surface development. Accordingly, the Coal Authority has no specific comments / observations to make on the material changes to the Development Consent Order.

Kind regards Deb Roberts (she / her)

Applicant's Comments

- 15.3 No comment necessary.