



Application by Able Humber Ports Ltd for Able Marine Energy Park Material Change 2

The Examining Body's written questions and requests for information (ExQ2)

Issued on

The following table sets out the Examining Body's (ExB's) written questions and requests for information – ExQ2. If necessary, the examination timetable enables the ExB to issue a further round of written questions in due course. If this is done, the further round of questions will be referred to as ExQ3.

Questions are set out using an issues-based framework derived from the Initial Assessment of Principal Issues provided as Annex B to the Regulation 27 and 28 letter of 19 October 2021. Questions have been added to the framework of issues set out there as they have arisen from representations and to address the assessment of the application against relevant policies.

Column 2 of the table indicates which Interested Parties (IPs) and other persons each question is directed to. The ExB would be grateful if all persons named could answer all questions directed to them, providing a substantive response, or indicating that the question is not relevant to them for a reason. This does not prevent an answer being provided to a question by a person to whom it is not directed, should the question be relevant to their interests.

Each question has a unique reference number which starts with 2 (indicating that it is from ExQ2) and then has an issue number and a question number. For example, the first question on proposed changes generally is identified as Q2.1.1. When you are answering a question, please start your answer by quoting the unique reference number.

If you are responding to a small number of questions, answers in a letter will suffice. If you are answering a larger number of questions, it will assist the ExA if you use a table based on this one to set out your responses. An editable version of this table in Microsoft Word is available on request from the case team: please contact AbleMarineEnergyPark@planninginspectorate.gov.uk and include 'Able Marine Energy Park Material Change 2' in the subject line of your email.

Responses are due by Deadline 4: 1 February 2022



Abbreviations used:

AEol	Adverse Effect on Integrity	LIR	Local Impact Report
agl	above ground level	LPA	Local Planning Authority
App	Applicant	MMO	Marine Management Organisation
C.GEN	C.GEN Killingholme Limited	NE	Natural England
C.RO	C.RO Ports Killingholme Limited	NELDB	North East Lindsey Drainage Board
DAO	Draft Amendment Order	NLC	North Lincolnshire Council
DCO	Development Consent Order	NPS	National Policy Statement
dDCO	Draft Development Consent Order	NSIP	Nationally Significant Infrastructure Project
EA	Environment Agency	PA2008	The Planning Act 2008
EM	Explanatory Memorandum	RR	Relevant Representation
ES	Environmental Statement	SoS	Secretary of State
ExB	Examining Body	UES	Updated Environmental Statement
HMBCE	Historic Buildings and Monuments Commission for England	WFD	Water Framework Directive
HRA	Habitat Regulations Assessment	WSI	Written Scheme of Investigation

The Examination Library

References in these questions set out in square brackets (eg [APP-010]) are to documents catalogued in the Examination Library. The Examination Library can be obtained from the following link:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030006/TR030006-000234-Able%20Marine%20Energy%20Park%20Material%20Change%202%20Examination%20Library.pdf>

It will be updated as the examination progresses.

Citation of Questions

Questions in this table should be cited as follows:

Question reference: issue reference: question number, eg ExQ2 1.0.1 – refers to question 1 in this table.

ExQ2: 13 January 2022

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ExQ2: 13 January 2022**Responses are due by Deadline 4: 1 February 2022 at 23:59**

ExQ2	Question to:	Question:
1. General and Cross-topic Questions		
Q1.01	App	<p>Pease supply A3 size copies of drawings AME-036-10009 rev C and AME-036-10010 rev C.</p> <p>These were previously supplied as A1 size copies when A3 size was requested. (The ExB already has AME-036-10011 rev C as it applies to both construction process alternatives).</p>
Q1.02	App	<p>Re: ExQ1: 1.0.2, For clarity please confirm whether I am right to interpret drawing AME-036-10004 rev C as showing two prime alternatives -</p> <p><i>A: Anchor piles plus horizontal steel ties to quay piles</i></p> <p><i>B: Flap anchors plus diagonal steel ties to quay piles</i></p> <p>That each of these prime alternatives could be built without a relieving slab or could have one of two types of relieving slab –</p> <p>1: With vertical supporting piles without a crane rail beam</p> <p>2: With vertical piles and some diagonal piles supporting a crane rail beam</p> <p>There would, therefore (noting the Applicant’s response to ExQ1:1.0.3), be six overall alternatives – A, A1, A2, B, B1, B2.</p>
Q1.03	App, C.GEN, C.RO	<p>Re: ExQ1: 1.0.9, C.GEN’s and C.RO’s WRs [REP1-029 and REP1-030], and the C.GEN and C.RO SoCGs [REP1-013 and REP1-007] - acknowledging that the Proposed Changes do not involve any land-based development, please update the ExB regarding progress towards agreement on whether contextual masterplans are to be provided. App, C.GEN, C.RO.</p>

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ExQ2	Question to:	Question:	
2. The Draft Amendment Order (DAO)			
Q2.01	App	Re: ExQ1: 3.0.3, response noted, but does this cover points 2.6.4 and 2.6.6 in the Explanatory Memorandum which relate to amended drawings in the DAO?	
Q2.02	App, C.GEN, C.RO	ExQ1: 3.0.3, C.GEN's and C.RO's WRs [REP1-029 and REP1-030], and C.GEN's and C.RO's SoCGs [REP1-013 REP1-007], please update the ExB regarding progress towards agreement on any modifications to protective provisions.	
Q2.03	App	Re: ExQ1: 2.0.6 - noted, but is DCO Schedule 11 Requirement 42(d) then still appropriate?	
Q2.04	App, MMO	At 3.3 of the MMO SoCG [REP1-008] regarding a possible amendment to Article 57 of the original DCO to clarify that the process of arbitration is not applicable to decisions made under the DML, the ExB was asked to consider whether this amendment would be appropriate in the present examination process since it does not arise as part of the MC2 application. Our understanding is that the Applicant would need to request a change to the application and submit a revised DAO to this effect. The ExB would then consider whether the change would be acceptable, whether any further consultation by the Applicant would be required, and whether this could be done during the examination, before making a procedural decision on the requested change.	

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ExQ2	Question to:	Question:	
3. Operators and Harbour Operations			
Q3.01	C.RO, ABP(HES)	Re: ExQ1: 3.0.1, the Applicant's and C.RO's responses are noted. Are C.RO and ABP(HES) content with the Applicant's response?	
Q3.02	App	Re: ExQ1: 3.0.2, would the Applicant please comment on C.RO's concerns set out in their response including, but not limited to, movements and timing of RoRo vessels	
Q3.03	App	How are space requirements, manoeuvring areas, and turnover times affected by different vessel types and load requirements?	
Q3.04	App, C.RO	Please report on the navigation simulation exercise carried out on 6 January 2022.	
Q3.05	C.RO	Re: ExQ1: 3.0.5, what is C.RO's response to the technical data and modelling behind the Applicant's conclusion that there would be no additional construction vessel movements caused by the Proposed Changes	
Q3.06	C.RO	Does C.RO have comments on the alternative construction sequence proposed by the Applicant, now published at AS-007?	
Q3.07	C.RO, App	Please report on any remaining concerns regarding potential rail operations which might benefit C.RO.	
4. Hydrodynamics and Sedimentary Regime including Dredging and Deposition			

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ExQ2	Question to:	Question:	
Q4.01	App	The UES at 8.5.2 sets out the additional mitigation measures necessary because of the dredging activities associated with the Proposed Changes and notes that they would need to be accommodated within any Amendment Order. However, the EA's WR, at 3.6 [REP1-032], reports that the Applicant has stated that this will be secured via the MEMMP. Which would it be? If secured only through the MEMMP, which arises within the DML, how would interests outside those involved in the DML be satisfied? Please clarify.	
Q4.02	App	Re: ExQ1: 4.0.4 – the Applicant's response indicates that the additional mitigation and monitoring required by the EA is set out in Schedule 1 of the EA SoCG. Does this mean points 4.6 and 4.8 of HR Wallingford's memo dated 27 October 2021 responding to EA and MMO RRs?	
Q4.03	App	Re: ExQ1: 4.0.12, the Applicant's response ends with an incomplete sentence, 'The short term...' How should the sentence end?	
Q4.04	App	Para 3.7 of the MMO SoCG [REP1-008] notes that the majority of material disposed of at HU081 and HU082 is considered likely to erode and disperse over a period of years. How long, as an estimate, would this take?	
5.	Biodiversity		
Q5.01	NE	In response to ExQ1: 5.0.6 the Applicant notes that the HRA Part 1 report has been updated in consultation with Natural England [REP1-023]. Does it resolve NE's concerns?	

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ExQ2	Question to:	Question:	
Q5.02	NE	NE's response to ExQ1: 5.0.1 [REP1-036] notes that a LSE has been identified for ringed plover and sanderling but they do not appear to have been considered in the sHRA. However, para 9.4 of the LSE report explains that no LSE was concluded for sanderling as the species was not recorded in surveys. The ringed plover appears to have been assessed in the RIAA and an AEOL concluded at para 8.22. Do these parts of the HRA report satisfy NE's concerns?	
Q5.03	NE	At 4.7 of its SoCG with NE [REP1-002], the Applicant states, under matters not agreed, that there would be no change in the extent of noise disturbance as the quay piling would be no closer to receptors, as set out in section 16.4.0 of Chapter 16 of the UES [APP-087]. Does NE agree and is NE satisfied with the Applicant's response to ExQ1: 5.0.15 regarding noise effects under the Proposed Changes?	
Q5.04	NE	NE's response to ExQ1: 5.0.3 at RR ref 3.3.3 [REP1-036] requests justification or evidence for the Applicant's conclusion that there would be no change in the extent of the operational noise disturbance and asks for clarification within the sHRA. Is NE content with the Applicant's response?	
Q5.05	App	Further to ExQ1: 5.0.9 and point 4.9 of the SoCG with NE [REP1-002], please set out the changes to quay lighting arising from the Proposed Changes. Whilst the lighting scheme would be subject to approval under Requirement 24, sufficient information should be available to the Secretary of State at consenting stage.	

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ExQ2	Question to:	Question:	
Q5.06	App, NE	NE's response to ExQ1: 5.0.3 at RR ref 3.3.2 [REP1-036] notes that it considers the effects of dredging volumes on aquatic ecology have not been adequately addressed in the sHRA. Also, that there does not appear to be any section within the sHRA providing a clear justification to support the conclusion that there would be no additional impacts on the Humber Estuary SAC/Ramsar designated features arising from the increase in dredging disposal volumes. Has the Applicant addressed the points made in this response in detail and, if so, where? Does NE agree with the Applicant's conclusion of no LSE from the dredging activities associated with the Proposed Changes?	
Q5.07	App	The Applicant notes, in response to ExQ1: 5.0.16 [REP1-019], that a MEMMP has already been approved by the MMO but would need minor changes to reflect the use of HU081. Does this include an amended monitoring regime?	
Q5.08	App	ExQ1: 5.0.7, the Applicant makes reference to the original sHRA which does not form part of the present examination. Please submit the relevant information to the examination in a separate document.	
Q5.09	App	In its response to ExQ1: 5.0.3 RR ref 3.3.1 [REP1-036], regarding habitat change figures, NE advises that the sHRA and UES 11-2 should be updated on predicted medium and long term changes, as well as immediate losses, and clarification should be given on how figures for habitat change have been calculated. How does the Applicant respond?	

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ExQ2	Question to:	Question:	
Q5.0.10	App	Also in its response, RR ref 3.3.2, NE notes that discussions on the effects of capital and maintenance dredging disposal have concluded and advises that this should be clarified in the sHRA together with the conclusions reached. Please respond.	
Q5.0.11	App	Are any of the additional mitigation measures involved in dredging and deposition required to avoid or reduce impacts to European sites?	
Q5.0.12	App	The CJEU decision People Over Wind and Sweetman v Coillte Teoranta (C-323/17) means that the measures intended to avoid or reduce the harmful effects of a proposed project on a European site may no longer be taken into account by competent authorities at the HRA screening stage. Please set out the implications of additional mitigation measures on Humber Estuary features where necessary.	
Q5.0.13	App	Grey Seal - The Applicant's screening matrices [AS-004] identify a LSE to the grey seal of the Humber Estuary SAC under the heading of habitat loss. However, footnote (f) does not refer to habitat loss. Please can the Applicant explain whether it considers there is a LSE to the grey seal from habitat loss and, if so, provide relevant information to inform an appropriate assessment for this potential impact pathway?	
Q5.0.14	App	Para 6.16 of the RIAA within the revised HRA Report [REP1-023] identifies the potential for 'changes to the invertebrate and fish communities in the vicinity of the AMEP development to have an associated impact on grey	

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ExQ2	Question to:	Question:
		<p>seals through changes to the prey composition and availability'. However, a LSE from changes to prey composition and availability is not considered in the screening and integrity matrices. Please clarify whether a LSE has been identified for this potential impact pathway.</p>
Q5.0.15	App	<p>Loss of foraging resources to the Humber Estuary SPA/Ramsar - The Applicant's screening matrices [AS-004] include the impact heading 'Loss of foraging resources' to features of the Humber Estuary SPA and Ramsar. On e-page 3 this was explained as arising from 'Alteration/loss to benthic communities as a result of changes in suspended [sic]'. A LSE was identified for some qualifying features from this impact pathway in the HRA screening matrices. However, this impact heading was not subsequently used in the integrity matrices for the site. Only the thermal plume was addressed in the LSE Report although a LSE was excluded for this particular impact. Please clarify conclusions with regard to the potential impact of loss of foraging resources, along with sufficient information to inform an appropriate assessment if necessary.</p>
Q5.0.16	App	<p>Red Knot of the Humber Estuary SPA – There are a number of inconsistencies within the HRA documents regarding this feature</p> <ul style="list-style-type: none"> • Para 9.4 of the revised LSE Report [REP1-023] concludes no LSE for red knot as, 'Only one or two birds recorded by TTTC, or percentage of Humber Estuary population recorded is so low as to be insignificant'. • However, Appendix 4 states the species is regularly present in the potential impact zone in non-trivial numbers and a LSE cannot be ruled out.

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ExQ2	Question to:	Question:	
		<ul style="list-style-type: none">The Humber Estuary SPA integrity matrix [AS-004] identified an AEoI to red knot from light/noise disturbance. Please clarify.	
Q5.0.17	App	Coastal lagoons – Paras 7.39 and 9.10 of the revised LSE Report [REP1-023] identify the potential for coastal lagoons as a supporting habitat to the Humber Estuary SPA to be affected by the Proposed Changes. However, a LSE for this feature of the Humber Estuary SAC is excluded in the screening matrices [AS-004] on the basis of the feature being outside the development impact zone. Please explain why.	
Q5.0.18	App	River and sea lamprey - The HRA screening matrix [AS-004] rules out a LSE to these features of the Humber Estuary SAC arising from water quality changes. The screening matrix for the Humber Estuary Ramsar does not have the same heading but, instead, includes 'loss of foraging resources' which is described on e-page 3 as being 'alteration/loss to benthic communities as a result of changes in suspended [sic]'. A LSE for river and sea lamprey has been identified under this Ramsar screening heading. Please clarify.	
Q5.0.19	App	Intertidal Habitat – The Humber Estuary SAC screening matrix [AS-004] excludes a LSE arising from changes in intertidal habitat for all qualifying features. However, Appendix 5 of the revised LSE Report [REP1-023] identifies a LSE arising from habitat changes to estuarine habitat (H1130), intertidal mudflat (H1140) and saltmarsh (H1330/H1310). Please clarify.	

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ExQ2	Question to:	Question:	
Q5.020	App	AEols to qualifying features of the Humber Estuary SPA and Ramsar – The RIAA identifies direct and indirect effects on bird species from habitat loss. Indirect effects are said to be as a result of the ‘Indirect functional habitat loss through disturbance...due to the effective reduction in extent and distribution of the habitat supporting birds.’ It appears that disturbance from noise impacts has been assessed separately. Please explain exactly what is meant by this potential impact heading.	
6. Water Framework Directive (WFD)			
Q6.01	EA	Regarding the EA’s response to ExQ1: 6.0.7, is the EA satisfied with the Applicant’s response to ExQ1: 13.0.3 with respect to cumulative assessment, in particular, but not exclusively, the cumulative effects of the Proposed Changes in conjunction with AMEP? (The Applicant points to the residual effects of AMEP as having been assessed in the original ES and therefore included in the UES baseline, summarises them by topic chapter, and sets out statements about the continued reliability of the ES assessment).	
Q6.02	EA, App	The Applicant has now submitted a Dredge disposal benthic invertebrate monitoring scheme [REP1-025]. How would this be secured? Would the EA like to comment on the scheme?	
Q6.03	App	The EA notes at 4.6 in its WR [REP1-032] that clarity is required regarding any worsening of status for PAHs that are not currently failing. How does the Applicant respond?	

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ExQ2	Question to:	Question:	
Q6.04	EA	Is the EA satisfied with the SediChem details submitted by the Applicant [REP1-021] and the discussion set out at page 28 in the revised WFD [REP1-004]?	
7.	Flood Risk (No Further Questions)		
8.	Drainage (No Further Questions)		
9.	Quayside Cranes		
Q9.01	App	Re: ExQ1: 9.0.5, Lighting – Night-time, second bullet, please submit the relevant information dealing with night-time impacts on avian receptors to the examination in a separate document.	
Q9.02	App	Re: ExQ1: 9.0.5, the caption to Figure 6 – please explain, second line should this read ‘same intensity’ rather than ‘same colour’?	
Q9.03	App	Re: Para 1.2, [REP1-015], please confirm whether and, if so, how many fixed cranes are proposed and of what height. (UES Table 22-1 notes that since the time of the Scoping Report further information has been made available regarding the potential maximum height of cranes to be located on the quay, namely up to 200m in height).	
Q9.04	App	Re: ExQ1: 9.0.7, Appendix A, containing figures and photomontages, was not included in the submissions at DL1, even though it was flagged in the covering letter as TR03-0006/D1/14/F and referred to in the text of [REP1-015]. When can we expect it?	

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ExQ2	Question to:	Question:	
Q9.05	App	Re: ExQ1: 9.0.8, whilst an exercise has been carried out to indicate the effects of the taller structures with reference to the LVIA prepared for the original ES, there does not appear to be an equivalent exercise for the heritage setting effects. Does the Applicant intend to submit one?	
Q9.06	App	Re: Table 2: Review of Potential Change to Visual Amenity, [REP1-015], is the assessment for VP1, Public footpath on the south Humber bank, affected by the proposed rerouting of the footpath?	
Q9.07	App	Para 3.6, Views from the North [REP1-015], why are VPs 1 and 2 excluded from this section?	
Q9.08	App	Typical examples of night-time crane aviation warning lights are shown at Figure 5 in the Applicant's response to ExQ1: 9.0.5. The night-time photomontages received on 12.1.22 do not appear to show any lighting to the quayside crane. Why is this?	
10.	Footpath Diversion (No further questions)		
11.	Heritage Aspects		
Q11.01	App, NLC	[REP1-010], the updated Marine WSI consists of the September '21 version. However, para 3.1.11 of the SoCG with NLC [REP1-022], refers to a version dated 12 November. Please clarify.	
Q11.02	App	Re: Applicant's response to ExQ1: 11.0.3, reference is made to Figure 2. Although this and Figure 1 are listed in	

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ExQ2	Question to:	Question:	
		the contents to the updated WSI [REP1-002], they are not included in the document. Please clarify	
Q11.03	NLC	Re: Applicant's response to ExQ1: 11.0.5, is NLC content that watching briefs would only be carried out during backhoe dredging, and not where TSHD or CSD is being used?	
Q11.04	App	Please respond to Historic England's point B in their response to ExQ1: 11.0.8 [REP1-039] regarding Killingholme North Low Lighthouse.	
12.	Climate Change (No further questions)		
13.	Cumulative and in-combination Effects		
Q13.01	App	The EA notes at 4.2 in its WR that the reasons for excluding certain projects from Cumulative Assessment (UES Section 6.4.0 Table 6-2) are stated as, 'No likely cumulative effects predicted. AMEP was excluded from the cumulative assessment which accompanied this planning application.' The ExB agrees that this exclusion provides no evidence to justify the conclusion that no cumulative effects are expected from the Proposed Changes to the AMEP. Please provide suitable evidence.	
Q13.02	App	The in-combination assessment at paras 8.15-8.17 of the RIAA [REP1-023] appears to be couched in general terms without referring to specific impacts and features assessed, nor are these discussed in UES Chapter 6 in relation to the HRA. Please provide a more detailed in-combination assessment to substantiate the conclusions drawn.	

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ExQ2	Question to:	Question:
Q13.03	NE	Is NE satisfied that the Applicant has considered all relevant plans or projects in the cumulative and in-combination assessments?