



# Department for Transport

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Dear Sir/Madam

## **Planning Act 2008 (as amended) and the Infrastructure Planning (Examination Procedure) Rules 2010.**

### **Application for an amendment to the Able Marine Energy Park Development Consent Order 2014 (S.I. 2014/2935)**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:
  - the report dated 16 May 2022 of the Examining Body (“the ExB”), Alan Novitzky, who conducted an examination into the application dated 25 June 2021 (“the Application”) by Able Humber Ports Limited (“the Applicant”) made on 25 June 2021 for a Material Change to the Able Marine Energy Park Development Consent Order 2014 (“the 2014 Order”).
  - responses to further consultation undertaken by the Secretary of State in respect of the Application.
2. The Applicant has applied under paragraph 3 of Schedule 6 to the Planning Act 2008 (“the 2008 Act”) and regulation 4 of The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (“the 2011 Regulations”) for a Material Change to the Able Marine Energy Park Development Consent Order 2014. This letter is the notification of the Secretary of State’s decision in accordance with regulation 8 of the 2011 Regulations.
3. The Application was submitted to the Planning Inspectorate on 25 June 2021. On 23 September 2021 the Secretary of State decided that it was necessary for an ExB to examine the Application and on 29 September 2021, Alan Novitzky was appointed as the ExB under regulation 22 of the 2011 Regulations. The Examination of the Application began on 16 November 2021. The Examination was conducted on the basis of written evidence submitted to the ExB. The ExB also undertook two unaccompanied and one accompanied site visits. The Examination was completed on 16 March 2022.
4. The decision letter for the original application was issued on 18 December 2013 but the 2014 Order came into force on 29 October 2014 following the successful completion of the Special Parliamentary Procedure. The 2014 Order permitted the development of a marine energy park on the south bank of the Humber Estuary at



Killingholme in North Lincolnshire comprising a new quay together with facilities for the manufacture, assembly and storage of marine energy components, primarily offshore wind turbines (“The Development”).

5. The 2014 Order was subsequently amended by the Able Marine Energy Park Development Consent (Amendment) Order 2021. The Application seeks changes to the 2014 Order to alter the alignment of the quay, removing the specialist berth at the southern end of the quay and setting back the quay line at the northern end, creating a barge berth. The Application also seeks changes to the 2014 Order to allow amendments to dredging and sediment disposal patterns arising from the new quay alignment, and the option of a more efficient construction methodology, identified during the design process. In addition, the route of the footpath diversion on the southern bank of the Humber would be amended to avoid it crossing the tracks of the Killingholme branch railway. The Secretary of State notes that at the Preliminary Meeting, the Applicant requested a modification to the Application to allow an alternative construction sequence which was accepted as a procedural decision and comprises the Application as examined [ER 1.2.2] and on which the Secretary of State has made his decision.
6. To effect these changes, amendments will also be required to the Deemed Marine Licence (“DML”) (Schedule 8 to the 2014 Order). The Applicant has applied for this separately to the Marine Management Organisation (“the MMO”) for a variation of the DML under section 72 of the Marine and Coastal Access Act 2009 [ER 1.2.5].
7. Published alongside this letter on the Planning Inspectorate’s website is a copy of the ExB’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the Report”). The main features of the proposal and the site are set out in Chapter 1 of the ExB’s Report. The ExB’s findings and conclusions are set out in Chapters 3 to 5; the ExB’s views on the Amendment Order and related matters are contained in Chapter 6; and the ExB’s conclusions and recommendation are in Chapter 7 of the ExB’s Report. All “ER” references are to the specified paragraph in the Report and references to “Requirements” are to those in Amendment Order as recommended by the ExB at Appendix D to the Report.

### **Summary of the ExB’s Recommendations**

8. The principal issues considered during the examination on which the ExB has reached conclusions on the case for the material change to the 2014 Order are set out in the ExB’s Report (“the report”) under the following broad headings:
  - Drainage Strategy
  - Flood Risk
  - The proposed footpath diversion
  - Order Limits
  - Marine Archaeology
  - Harbour Operations in the Humber Estuary
  - Hydrodynamics and the Sediment Regime
  - Water and Sediment Quality
  - Biodiversity
  - Increased Crane Height
  - Climate Change
  - Cumulative and In-Combination effects
  - Draft Amendment Order

9. The Secretary of State notes that the ExB set out that in considering the recommendation to grant the Application, the Secretary of State may wish to ask the Applicant to update Table 13.1 and paragraph 13.2.11 in Chapter 13 of the Applicant's Updated Environmental Statement: Flood Risk and Drainage. This is to accurately reflect the provisions of the legal agreement between the Applicant and the Environment Agency ("EA") completed alongside the Amendment Order [ER 5.5.1].
10. For the reasons set out in Chapter 7 (recommendation), the ExB recommended that the Amendment Order be made, in the form set out in Appendix D to the Report.

### **Summary of Secretary of State's Decision**

11. The Secretary of State has carefully considered the ExB's Report, representations received in response to his consultation during the decision-making stage, the Application and supporting documents in deciding, under paragraph 3 of Schedule 6 to the Planning Act 2008 ("the 2008 Act") to make, with modifications, the Amendment Order to amend the 2014 Order. This letter is the statement of reasons for the Secretary of State's decision for the purposes of regulation 52 of the 2011 regulations and regulation 31(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 Regulations").

### **Secretary of State's consideration**

12. The Secretary of State's consideration of the ExB's Report and all other material considerations are summarised in the following paragraphs. Where not stated in this letter the Secretary of State can be taken to agree with the ExB's findings, conclusions and recommendation as set out in the Report, and the reasons for the Secretary of State's decision are those given by the ExB in support of the conclusions and recommendations.
13. The National Policy Statement for Ports ("NPSP") has effect in relation to the 2014 Order. The Secretary of State notes that the Report sets out an assessment of the proposed changes in accordance with the NPSP's principles and considerations [ER 2.2.1]. The East Inshore Marine Plan ("the East Marine Plan"), prepared within the framework of the Marine Policy Statement under the Marine and Coastal Access Act 2009, also has effect in relation to the proposed changes and the Secretary of State notes that the ExB has also considered compliance with the East Marine Plan policies [ER 2.2.1].

### **Overview**

14. The 2014 Order was formally implemented in Quarter 2 of 2021 with the construction of a surface water pumping station. This forms part of the associated development supporting the Development [ER 1.4.5].
15. The proposed changes in the Amendment Order, seek to amend the 2014 Order as already implemented on the site. The 2014 Order, as currently amended and implemented, represents the 'fall back' position should the Application not be consented [ER 1.4.6]. The scope of the Updated Environmental Statement ("UES"), submitted by the Applicant in support of the Application, has been limited to those technical topics which will be directly affected by the proposed material amendment.
16. Planning permissions granted within the Development site since 2012 are shown at appendix UES1-4 [APP-104] and in Table 3.2 of the UES Chapter 3: Changes to Planning Policy and Legislation [APP-074] [ER 1.4.7].

## **Consideration of the materiality of the proposed changes**

17. The Secretary of State notes there is no statutory definition in the 2008 Act or the 2011 Regulations of what constitutes a Material or Non-Material Change for the purposes of Schedule 6 to the 2008 Act and Part 1 of the 2011 Regulations.
18. The Department for Communities and Local Government (now the Department for Levelling Up, Housing and Communities) produced guidance entitled “Planning Act 2008: Guidance on Changes to Development Consent Orders” (December 2015) (“the Guidance”), which states that a change should be treated as material if it would require:
  - a) an updated ES to take account of new, or materially different, likely significant effects on the environment. There may be cases where the change proposed will result in likely significant effects on the environment that are entirely positive, but in such cases an updated ES will still be required and the application will need to be treated as a Material Change to ensure that the regulatory requirements on the environmental impact assessment (“EIA”) are met.
  - b) A change is also likely to be material if it would invoke a need for a Habitats Regulation Assessment (HRA). Similarly, the need for a new or additional licence in respect of European Protected Species is also likely to be indicative of a Material Change.
  - c) A change should be treated as material that would authorise the compulsory acquisition of any land, or an interest in or rights over land, that was not authorised through the existing DCO.
  - d) The potential impact of the proposed changes on local people will also be a consideration in determining whether a change is material. Additional impacts that may be relevant to whether a particular change is material will be dependent on the circumstances of a particular case, but examples might include those relating to visual amenity from changes to the size or height of buildings; impacts on the natural or historic environment; and impacts arising from additional traffic.
19. The Secretary of State notes that the Applicant is treating the proposed changes to the 2014 Order as a Material Change because they might result in new or materially different environmental effects. The Secretary of State accepts that the application is a Material Change as it requires an updated ES due to changes in extent of impacts compared to the consented Development.
20. The matters relating to the UES are set out at paragraphs 26 to 91 of this decision letter.

## **Need for the Amendment Order**

21. The Development aims to provide a substantial manufacturing and installation base for the offshore marine energy sector on the south bank of the Humber Estuary. As well as having a quay to receive and export raw materials and products, the development would provide facilities to allow the manufacture and assemble of offshore components, including wind turbines, for loading onto installation vessels for direct transport to offshore development sites [ER 1.2.2].
22. The proposed changes would allow the quay to more easily handle vessels now likely to deliver offshore marine energy infrastructure. Moreover increased crane height would allow larger turbines to be processed [ER 1.2.7].
23. The ExB highlighted that the Applicant’s Overall Summary of Case sets out the benefits of the proposed changes. This notes that the Government target for the 80% reduction on 1990 greenhouse of gas emissions, which was amended to a Net Zero target by 2050, has led to an increase in demand for renewable energy which

in turn has increased demand for the Development. It also sets out that the need has been further increased by the specific target of installing 40GW of offshore wind capacity by 2030, which this project will assist in achieving [ER 1.2.6]. The ExB considered that the contribution from the project has gained increased emphasis with the publication of the Updated British Energy Security Strategy (“BESS”) 7 April 2022) [ER 3.12.40].

24. The proposed change to the footpath diversion, supported by Network Rail [RR-008], means it would circumvent the end of the line instead of having to cross it, thus enhancing safety [ER 1.2.8].
25. The Secretary of State agrees that the proposed changes meet Government policy for ports set out in section 3.3 of the NPSP, including encouraging sustainable development. By staying within the parameters of the consented scheme, the proposed changes also meet many of the objectives set out at NPSP paragraph 3.3.3 including contributing to local employment, preserving marine and terrestrial biodiversity, providing high standards of protection for the natural environment, and adequately maintaining protection of heritage assets [ER 5.2.1].

### **Findings and Conclusions in relation to the Main Planning Issues (Chapter 3)**

26. The Secretary of State notes that the main issues remaining during the Examination and considered by the ExB for acceptability were as follows:
  - Harbour Operations in the Humber Estuary
  - Hydrodynamics and the Sediment Regime
  - Water and Sediment Quality
  - Biodiversity
  - Increased Crane Height
  - Climate Change
  - Cumulative and In-Combination effects
  - Draft Amendment Order [ER 3.7.1].

### **Harbour Operations in the Humber Estuary**

27. The Secretary of State notes that Chapter 14 of the UES assesses the commercial and recreational navigation effects of the proposed changes on harbour operations in the Humber Estuary [APP-085]. The UES includes an updated Navigational Risk Assessment (“NRA”) as an appendix [ER 3.8.1].
28. The Secretary of State notes that the anticipated patterns of arrival, departure, and movement of vessels, both during construction and operation have been assessed in the UES. The UES predicts that vessel movements during the construction phase, including the proposed changes, associated with the change in location for the deposit of dredged material from land to licensed marine sites, would be no more than that assessed in the original ES [ER 3.8.2]. The ExB noted that the NRA shows a general decrease in risk scores across all hazard categories when compared to the 2011 NRA [ER 3.8.13].
29. The Secretary of State notes that the 2011 NRA and original ES considered a study area from Immingham Oil Terminal to King George Dock which for the purposes of the UES has been extended to incorporate the dredged deposit sites. The cumulative impacts of the wider river area have been considered in section 4.1 of the NRA and a navigation simulation exercise was carried out on 6 January 2022 [ER 3.8.3]. The UES sets out at paragraph 14.4.46 that the consultation with the Harbour Master did not establish any potential additional cumulative effects of significance to shipping

and navigation beyond those contained in the ES. The Applicant's response to the ExB observes that only the dredging of adjacent berths acts in-combination with the Development in relation to navigation [3.8.4]. The Applicant concluded in paragraph 14.9.1 of the UES that overall the proposed changes would have a minimal effect on the existing profile which should be managed in compliance with existing embedded mitigation, regulations, and procedures governing movements, pilotage, towage, and vessel traffic services [APP-144] [ER 3.8.5].

30. The Secretary of State also notes that the ExB highlighted that the Applicant's UES concluded that the residual effects of the revised scheme would be the same or lower than those assessed in the ES [ER 3.8.17].
31. The Secretary of State is aware that during the pre-application stage and Examination, concerns were raised by interested parties ("IPs"), Associated British Ports Humber Estuary Services and C.RO Ports Killingholme ("C.RO") regarding additional risks associated with new or additional construction vessel movements and with the use of the repositioned barge berth, particularly during vessel manoeuvring operations. C.RO welcomed the commitment made by the Applicant to an approved vessel movement management plan arising from paragraph 66(1) and (2) of the protective provisions and confirmed that no further protective provisions were required to address the impacts related to construction vessel movements. The Associated British Ports Humber Estuary Services ("ABP-HES") expressed concern that any additional movement of dredgers in the Umer Estuary might challenge their capacity to provide pilotage services. ABP-HES and the Applicant agreed that the protective provisions should remain unaltered but for the avoidance of doubt they require the submission and approval of a dredge and disposal strategy for all works concerning the construction and maintenance of the quay (Work No. 1 in Schedule 1 to the DCO) [ER 3.8.6-3.8.12].
32. The Secretary of State agrees with the ExB's conclusions that the proposed changes would be acceptable with respect to Harbour operations in the Humber Estuary [ER 3.8.19]. The Secretary of State agrees with the ExB's conclusions that proposed changes accord generally with the provisions of the NPSP, the local development plan, the National Planning Policy Framework ("NPPF") [ER 3.8.18].

### **Hydrodynamics and the Sediment Regime**

33. The Secretary of State notes the ExB's consideration of the Applicant's UES chapter 8: Hydrodynamic and Sediment Regime. The areas of consideration include [ER 3.9.1]:
  - An updated assessment of the sediment plume dispersion arising from construction dredging activities.
  - An assessment of the erosion rates for the increased volumes to be placed at the marine disposal sites.
  - Updated modelling of the effects of the disposal of material on tides and waves, and the effects at Hawkins Point on the north bank of the Humber.
  - Updated hydrodynamic modelling based on current bathymetry, which has evolved since the 2014 Order assessment, and the changes proposed to the quay.
  - Sediment modelling based on changes proposed to the quay to give information about mud and sand transport.
  - A qualitative description of altered wave impacts arising from the changes proposed to the quay.

34. The UES concluded at paragraph 8.9.0 that the effects on water levels, bed shear stresses, and waves arising from the proposed changes would be similar to that predicted in the original Environmental Statement and it was also concluded that changes to the dredging requirements would be necessary and that there would be small differences in the peak flow patterns on the ebb tide [ER 3.9.2].
35. The Secretary of State notes that the signed Statement of Common Grounds with the EA (ER 3.9.4) and the MMO [ER 3.9.5-3.9.7] both set out that there were no outstanding matters between the Applicant and these parties.
36. The ExB's noted the assessment of the altered vessel berthing and manoeuvring arrangements which involves a pattern of dredging which differs from that previously considered in the original Environmental Statement [ER 3.9.9]. The ExB noted that the overall quantities of dredged material would be similar to that considered for the 2014 Order, but the proposed changes would remove the need for some of the dredged material to be deposited terrestrially. The terrestrial fill is no longer required as it is now intended to deposit all the excavated material at marine licensed sites in accordance with variations to be incorporated in the DML [ER 3.9.9].
37. The ExB highlighted that to counter potential effects, including those on tides and waves, and consequent erosion at Hawkins Point foreshore on the north bank of the Estuary, additional mitigation has been proposed. This mitigation, together with a monitoring scheme had been agreed with the EA as it considered aspects of the monitoring necessary to guard against any consequences of ebb tide flow acceleration off the downstream end of the quay arising from the omission of the specialist berth [ER 3.9.10]. The Secretary of State is satisfied that this mitigation and monitoring is to be secured through minor changes to the DML and the operation of the Marine Environmental Management and Monitoring Plan which is secured by requirement 19(2) in Schedule 11 in the 2014 Order [ER 3.9.11]. The ExB noted that the MMO in paragraph 3.6 of its Statement of Common Ground set out that changes to the tidal currents and wave climatology would be localised and not result in significant impacts on coastal and physical processes, but at the MMO's suggestion the Applicant has agreed to the use of a plough dredger to level mounds and fill troughs at the disposal sites if deemed necessary by the MMO and to be secured by varying the DML [ER 3.9.12].
38. The Secretary of State is aware that the Statement of Common Ground between the MMO and the Applicant records agreement that the proposed changes would not cause significant alterations in tidal regime water levels and that the dredging maintenance patterns anticipated, which would be similar to those previously authorised, would not involve significant change [ER 3.9.13].
39. The Secretary of State agrees with the ExB that the proposed changes accord generally with the provisions of the NPSP and in particular section 5.3 concerning coast change, and with the local development plan and the NPPF, particularly coastal change in section 14. It is also noted that the proposed changes accord with the East Marine Plan, in particular Policy D01, concerned with dredging and disposal [ER 3.9.17]. The Secretary of State also agrees with the ExB regarding the effects of the proposed changes and that the proposed changes would be acceptable with regard to hydrodynamics and the sediment regime [ER 3.9.18].

#### **Water and Sediment Quality**

40. As highlighted by the ExB, chapter 9 of the Applicant's UES assesses the effects of the proposed changes on Water and Sediment Quality [3.10.1]. The Secretary of

State notes an updated Water Framework Directive assessment (“WFDa”) was prepared by the Applicant to reflect the proposed changes. It was informed, where appropriate, by updated monitoring and modelling agreed with the EA [ER 3.10.4] and was also updated during the Examination [ER 3.10.6]. The ExB highlighted that the WFDa predicted that the Development, including the proposed changes, would not cause deterioration to the current status of any WFD water body nor should they prevent future status objectives being achieved [ER 3.10.5]. The Secretary of State notes that following an update to the WFDa, the EA confirmed that it agreed with the conclusions [ER 3.10.9]. The Secretary of State agrees with the ExB’s conclusions that the proposed changes would not lead to the deterioration of the status of any Water Framework Directive waterbody, nor should they prevent future status objectives being achieved [ER 3.10.15].

41. The Secretary of State also agrees with the ExB that the proposed changes accord with the provisions of the NPSP, particularly section 5.6 concerning water quality and resources and with the local plan and relevant policy documents. He also agrees with the ExB that the proposed changes would be acceptable with regard to their effects on water and sediment quality [ER 3.10.14-3.10.15].

## **Biodiversity**

42. The Secretary of State notes that the effects of the proposed changes have been considered in regard to biodiversity. Consideration has been given to Sites of Special Scientific Interest (“SSSI”), local wildlife sites, and priority habitats as well as protected and priority species. The Applicant’s UES concluded that no additional environmental impacts have been identified since the production of the original Environmental Statement [ER 3.11.4].
43. The Secretary of State is aware that following the Scoping Opinion, the baseline terrestrial habitat and species surveys carried out by the Applicant were updated and incorporated into their assessment, including updated habitat survey and ornithological data [ER 3.11.5]. The updated survey found that the bird population of importance were broadly similar to those documented in the original Environmental Statement, and changes in terrestrial habitat largely reflected losses arising from the partial implementation of the 2014 Order, together with additional natural saltmarsh colonisation [ER3.11.6].
44. The Secretary of State notes the construction effects of the proposed changes set out in Chapter 11 of the UES were found to be insignificant and that there would be no change in the extent of the noise disturbance as the quay piling would be no closer to the protected sites and no more extensive than under the original Environmental Statement that accompanied the 2014 Order. The Applicant did not identify any additional operational or cumulative effects which needed to be taken into consideration [ER 3.11.8] and was satisfied that the mitigation and compensation measures required under the 2014 Order, including the area proposed for compensation habitat provided at Cherry Cobb Sands, remained suitable [ER 3.11.9]. As there are no changes in the construction effects arising from the proposed changes compared to those identified in the original Environmental Statement, no further mitigation is required to counter impacts on terrestrial ecology. The ExB highlighted that no significant additional operational effects were identified in the UES [ER 3.11.10].
45. The Secretary of State agrees with the ExB, NE and the MMO, that the proposed changes would not materially affect the two SSSIs ( the Humber Estuary and North Killingholme Haven Pits nature reserve) and the locally designated sites, including



their features of interest, over and above the effects predicted in the original Environmental Statement. The Secretary of State also agrees that protected species would not experience additive effects [ER 3.11.28].

46. The Secretary of State has considered the ExB's appraisal of cumulative and in-combination effects and agrees with the ExB's conclusion that adverse cumulative and in-combination effects arising from the proposed changes are unlikely, since the residual terrestrial and aquatic effects would be no more than those set out in the original Environmental Statement (ER 3.11.29).

47. The Secretary of State agrees with the ExB that the proposed changes accord with relevant policies and are acceptable with respect to biodiversity [ER 3.11.30-3.11.31].

### **Increased Crane Height**

48. The Secretary of State notes that the proposed changes would increase the crane height from 165m to a maximum height of 200m above ground level [ER 3.12.7-3.12.8]. The ExB's assessment notes that the proposed change to crane height would allow the handling of larger and more powerful wind turbines than would be possible under the 2014 Order, enhancing the Development's ability to play a positive role in moderating climate change [ER 3.13.8].

49. The Secretary of State notes the ExB considered that any increase in potential harm to birds beyond that assessed in the original Environmental Statement would be extremely small, and that the ecological assessments effectively cover cumulative and in-combination effects [ER 3.12.11] and has no reason to disagree with this.

50. With regard to effects on landscape character, the Secretary of State notes that the ExB considered that the increased crane height would be seen in the context of existing large scale industrial and port development and agreed with the Applicant that, where identifiable within the scale of the existing landscape, there would be no change to the original assessment [ER 3.12.16].

51. With regard to visual amenity, the Secretary of State notes that the ExB concluded that in relation to close views, the Applicant's original assessments of magnitude of change and significance of impact would not change [ER 3.12.22]. The ExB also concluded that the increased crane height would not be significant, when considered in relation to middle distance views from the west, south and north [ER 3.12.23-3.12.35].

52. In relation to effects on heritage receptors, the ExB set out that there are two instances of heritage assets whose settings might be affected by the proposed changes: a group of three South Killingholme lighthouses, listed as Grade II and the Brick and Tile Kiln, East Halton, also Grade II listed [ER 3.12.36].

53. The ExB noted that the Applicant's original Environmental Statement set out that the position of the lighthouse group on the riverbank preserves the principle of the original setting which required open views on the Estuary [ER 3.12.37]. The ExB observed that the Applicant's Environmental Statement set out that, despite there being extensive modern industrial development to the south and west, the addition of high structures, the new quay, cranes and temporary towers would no longer allow clear visibility from the river and as a result a high adverse impact is predicted. The ExB however considered that the proposed increase in crane height would not exacerbate the harm identified in the original ES [ER 3.12.38].

54. With regard to the Brick and Tile Kiln, the Applicant's ES set out that the Development would occupy the foreground in these views and produce a minor adverse effect [ER 3.12.39]. The ExB considered the increased crane height might add marginally to this effect but the Secretary of State notes that the ExB did not think this would be in any way critical [ER 3.12.40].
55. The ExB concluded that with regard to heritage impact, any loss of significance would be less than substantial and would be outweighed by the public benefit of the proposed changes, including the Development's enhanced ability to contribute to the supply of renewable energy. The Secretary of State agrees with this and that this contribution has gained increased emphasis with the publication of the updated BESS on 7 April 2022 [ER 3.12.40].
56. The Secretary of State agrees with the ExB's overall conclusion that the proposed changes would not significantly exacerbate the harm identified to heritage assets and that cumulative effects arising from increased crane height on landscape character, visual amenity and heritage are unlikely [ER 3.12.41].
57. The Secretary of State agrees with the ExB that the proposed changes are acceptable in respect of increased crane height [ER3.12.44].

### **Climate**

58. During the Examination, in response to a query regarding the possible changes in the carbon footprint incurred during construction brought about by the proposed changes, the Applicant stated that the quantities of materials used in construction would not be significantly different, but that there would be less land and seabed reclamation and less piling, suggesting a possible decrease in the carbon footprint [ER 3.13.3]. The Applicant also stated that the Development would help meet the 2050 Net Zero Target by the time the sixth carbon budget takes effect and in particular would be helping to meet the drive for 40GW of offshore wind by 2030, which was increased to 50GW in the recently updated BESS.
59. The ExB noted that with regard to cumulative and in-combination effects, the proposed changes would not contribute to these effects beyond those predicted in the ES [ER 3.13.9]. The Secretary of State agrees with the ExB that the proposed changes accord with relevant policies and that the proposed changes are acceptable with respect to climate change [ER 3.13.10-3.13.11]. In addition, the Secretary of State notes that the proposed changes would allow the handling of larger and more powerful wind turbines than would be possible under the 2014 Order, enhancing the Development's ability to play a positive role in moderating climate change [ER 3.13.8].

### **Cumulative and In-Combination effects**

60. The Secretary of State notes that the EA and the MMO questioned the adequacy of the Applicant's assessment on this matter but following exchanges during the Examination were satisfied [ER 3.14.3].
61. The Secretary of State notes that the ExB was content with the Applicant's assessment and that no significant effects were identified as arising from the proposed changes [ER 3.14.4]. The Secretary of State agrees with the ExB that the proposed changes are acceptable with respect to cumulative and in-combination effects [ER 3.14.5].

### **Habitats Regulations Assessment**

62. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit)

Regulations 2019 (“the Habitats Regulations”), the Secretary of State as the competent authority is required to consider whether the Development (which is a project for the purposes of the Habitats Regulations) would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European site.

63. Where likely significant effects cannot be ruled out, the Secretary of State must undertake an appropriate assessment (“AA”) under regulation 63(1) of the Habitats Regulations to assess potential adverse effects on site integrity. Such an assessment must be made before any decision is made on undertaking a plan or project or any decision giving consent, permission or other authorisation to that plan or project. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the plan or project will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternatives and imperative reasons of overriding public interest (“IROPI”) apply (regulation 64).
64. Where a plan or project is agreed to in accordance with regulation 64, notwithstanding a negative assessment of the implications for a European site, regulation 68 also requires that the appropriate authority must secure that any necessary compensatory measures are taken to ensure the overall coherence of the national site network is protected.
65. The Secretary of State’s Habitats Regulations Assessment (“HRA”) is published alongside this letter. The following paragraphs, should be read alongside the HRA which is the full statement of the Secretary of State’s consideration of these matters.
66. The Secretary of State agrees with the ExB, that the project is not connected with, or necessary to the management for nature conservation of any of the European sites considered within the Applicant’s assessment [ER 4.1.2].
67. The Applicant provided a HRA report with three parts:
  - TR030006/APP/7A – Habitats Regulations Assessment Part 1: Likely Significant Effects (“LSE”) report (“the LSE Report”) [APP-067].
  - TR030006/APP/7B – Habitats Regulations Assessment Part 2: Report to Inform an Appropriate Assessment (“the RIAA”) [APP-068].
  - TR030006/APP/7C – Habitats Regulations Assessment Part 3 & 4: Alternative Solutions and Imperative Reasons of Overriding Public Interest (IROPI) (“the Derogations Report”) [APP-069] [ER 4.1.8].
68. The Application documents updated the Secretary of State’s HRA that was undertaken for the 2014 Order and focused on the proposed changes to the consented scheme (ER 4.1.9). Revised versions of the Applicant’s LSE Report and the RIAA were submitted at Deadline 1 [REP1-023], Deadline 3 [REP3-008] and Deadline 5 [REP5-007]. The Secretary of State notes that the Derogations Report was not revised during the Examination [ER 4.1.10]. The ExB published a Report of the Implications for European Sites (“RIES”) [PD-009] on 15 February 2022.
69. In response to a request in the Regulation 28 letter [PD-002], the Applicant submitted screening and integrity matrices for the Humber Estuary Special Area of Conservation (“SAC”), Humber Estuary Special Protected Area (“SPA”), and Ramsar site [AS-004] during the pre-examination stage. These were revised at Deadline 4 [REP4-018] [ER 4.1.11].

70. The Secretary of State acknowledges that the Applicant's LSE Report [APP-067] relates only to the Development site and there would be no change to the Cherry Cobb Sands compensation site (or any material change on that site), so it has not been considered as part of the assessment. The Secretary of State notes that NE did not raise any concerns regarding this approach during the Examination and agrees with the level of information provided [ER 4.1.12].

#### Relevant European Sites

71. The Secretary of State agrees with the ExB report, that the proposed changes will have a Likely Significant Effect ("LSE") on the Humber Estuary SAC, Humber Estuary SPA, and the Humber Estuary Ramsar. The Secretary of State agrees with the ExB's conclusion of no LSE on Greater Wash SPA, Southern North Sea SAC, the Wash and North Norfolk Coast SAC, and Berwickshire and North Northumberland Coast SAC due to the distance from the Development, the nature of the proposed changes and a lack of evidence of any ecological link [ER 4.2.5 – 4.2.7].

#### Potential Impacts

72. The Applicant's LSE Report [APP-067] identified LSEs on habitat features of the Humber Estuary SAC, SPA and Ramsar site as follows [ER 4.3.1]:

##### Construction phase:

- direct loss of intertidal feeding, staging and loafing habitat within the Humber Estuary SPA/Ramsar/SAC through construction of project infrastructure and transformation of intertidal mudflat to saltmarsh in the longer term (Table 12 of [APP-068]);
- indirect loss of intertidal habitat within the Humber Estuary SPA/Ramsar/SAC;
- loss of fish habitat within the Humber Estuary SPA/Ramsar/SAC;
- loss of terrestrial habitat functionally linked to the Humber Estuary SPA/Ramsar/SAC;
- disturbance to birds, fish and marine mammals (noise and visual);
- underwater noise disturbance affecting fish and marine mammals;
- dredging and other construction effects on water quality;
- disposal of dredge spoil; and
- cumulative effects.

##### Operational phase:

- disturbance to birds (noise and visual);
- maintenance dredging impacts, including boat disturbance;
- lighting impacts; and
- maintenance dredging.

73. The Secretary of State agrees with the assessment from the ExB and notes that Natural England are in agreement that there are no additional impact pathways likely to arise from the proposed changes, and is therefore satisfied that all relevant potential effect pathways have been considered by the Applicant [ER 4.3.3].

#### In Combination Assessment

74. The Secretary of State notes that the ExB, Natural England and EA are satisfied that the Applicant has considered in combination effects from all relevant plans or projects and agrees with that assessment (ER 4.4.2-4.4.4).

#### Likely Significant Effects

75. The Secretary of State notes that the ExB and IPs sought minor clarifications regarding the screening for LSEs during the Examination as set out in Table 3 of the Report [ER 4.5.6], and following clarification the ExB and IPs agreed that there would be no change to the LSEs identified for the consented Development arising from the proposed changes [ER 4.5.2].
76. The ExB provided a breakdown of its conclusions regarding LSEs for all qualifying features [ER 4.5.11]. The Secretary of State agrees with the ExB's conclusion that the proposed changes are likely to have significant effects on the qualifying features regarding habitat and bird qualifying features and that these accord with the LSEs identified for the 2014 Order.
77. Paragraph 9.14 of the LSE Report stated that the habitat qualifying features for which LSE had been excluded from the project alone would not be affected by the Development, hence an in combination assessment for them would not be necessary [ER 4.5.7]. These conclusions were unchanged in the Applicant's Revised HRA Report [ER 4.5.9]. The Secretary of State notes that Natural England has confirmed that it is satisfied that the in combination effects have been satisfactorily addressed [ER 4.5.10].

#### Adverse Effect on Integrity ("AEoI")

78. The Secretary of State notes that Section 9 of the RIAA stated that the mitigation measures identified as part of the 2014 Order remain suitable and fit for purpose without any need for modification. These measures are secured through the approval of various plans and method statements as specified in Schedule 8 (Deemed Marine Licence) and Schedule 11 (requirements) of the extant 2014 Order [ER 4.7.3].
79. No new mitigation was suggested in response to the proposed changes within the application version of the RIAA [APP-068]. However, additional measures to mitigate impacts from dredging and disposal were included in the RIAA at Deadline 3 [ER 4.7.5].

#### AEoI from the Application Alone

##### Humber Estuary SAC, SPA & Ramsar

80. The Secretary of States notes in respect of habitat loss and change that the proposed changes would reduce the quay alignment footprint from 45ha for the Development to 43.6ha. The RIAA [APP-068] therefore sets out that there would be some changes in the extent of impacts compared to the consented Development [ER 4.8.2]. The Secretary of State has taken account of Table 4 in the Report which sets out the habitat loss from the proposed changes compared with the consented Development [ER 4.8.4].
81. The Secretary of State also notes that there would be an increase in loss of saltmarsh (H1330) at the Cherry Cob Sands compensation site from the channel across the foreshore from the existing flood defence to Cherry Cobb Sands Creek from 1.8ha reported in the ES for the 2014 Order to 2ha for the proposed changes [ER 4.8.5].
82. The Secretary of State acknowledges the ExB observation in relation to paragraph 8.9 and Table 12 of the RIAA and the conclusions that there would be AEoI for the loss of estuarine habitat (H1130), intertidal mudflat/sandflat (H1140/H1310) and saltmarsh (H1330) from reclamation to construct the quay [ER 4.8.6].

83. With regard to disturbance to grey seal, river lamprey and sea lamprey, paragraph 8.20 of the RIAA [APP-068] stated that there would be no change to the original conclusion for the consented Development of no AEol [ER 4.8.6] and this is noted by the Secretary of State.
84. The Secretary of State has had regard to the Applicant's assessment of effects of the Humber Estuary SPA and bird features of the Humber Estuary Ramsar that are summarised in Table 13 of the RIAA [APP-068] which states that the same conclusions had been reached for the proposed changes as had been reached for consented Development [ER 4.9.1].

#### Conclusion on AEol

85. The Secretary of State notes the ExB's view that the scale, location and nature of the proposed changes would not significantly alter the magnitude or extent of effects that have previously been assessed. He further notes that the ExB agrees with the Applicant's conclusions that the AEol identified for the 2014 consented DCO would also apply to this Amendment Order and there would be no additional AEol to those identified for the consented Development [ER 4.11.1]. The Secretary of State notes the ExB's consideration of effects and mitigation that are set out in ER 4.11.3. The Secretary of State has taken note that the ExB has concluded that on the basis that the proposed changes have not resulted in any materially different effects to the consented Development, the ExB sees no reason to either amend the existing mitigation or secure any further additional mitigation and has no reason to disagree with this assessment.

#### AEol from the Application in combination with other plans or projects

86. The Secretary of State notes that consideration has been given to plans or projects which may act in combination with the proposed changes. The Secretary of State notes that the ExB is satisfied that all adverse effects from the proposed changes alone would be fully mitigated or compensate for, and as such there will be no pathway for in combination effects with other plans and projects [ER 4.12.6] and agrees with this conclusion..

#### Derogations

87. The Secretary of State notes that the case regarding alternative solutions and IROPI for the consented Development was tested and accepted within the Secretary of State's HRA for the 2014 Order. Similarly, the compensation secured within the 2014 Order has been subject to scrutiny within the Examination for that application and was deemed suitable and appropriate by the Secretary of State in the making of that Order [ER 4.13.7].
88. The Secretary of State agrees with the ExB's consideration of the proposed changes and the stated objectives and is of the opinion that these do not materially alter the proposed objectives that underpinned the original derogation case, except to highlight the increasing need for delivery of new renewable energy infrastructure [ER 4.13.8].
89. The Secretary of State notes that the compensation scheme has not been altered, despite a slight reduction in the extent of effects. The Secretary of State therefore agrees with the findings of the ExB, and is content that, as stated in the Applicant's Overall Summary of Case, there would be a slightly greater ratio of compensatory habitat being provided to that being lost, when compared to the 2014 Order [ER 4.13.9].

90. The Secretary of State notes that the Statutory Nature Conservation Body, Natural England, has signed a Statement of Common Ground agreeing with the Applicant's HRA and conclusions [REP5-017] [ER 4.14.3].

91. The Secretary of States notes that the conclusions made by the ExB that the proposed changes would not materially change the outcomes of the original assessment and most importantly would not result in additional adverse effects. He therefore agrees with the ExB s that the derogations case for the 2014 Order can be relied upon for the proposed changes [ER 4.13.10].

### **Conclusion on the Case for Development Consent**

92. The Secretary of State has considered the ExB's analysis in section 5 of the Report and agrees with the ExB that the proposed changes are acceptable with respect to each of the main issues analysed in the ExB's Report, and that the legal and policy context is satisfied [ER 5.8.1]. The Secretary of State, noting the increased need for more offshore wind resulting from BESS and the role this Application will play in supporting that, he agrees with the ExB that the overall planning balance is in favour of the proposed changes [ER 5.8.2].

### **The Public Sector Equality Duty (PSED)**

93. The Secretary of State has had regard to the public sector equality duty and the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not (section 149(1) of the Equality Act 2010). The Secretary of State notes that the PSED is applicable to the ExB in the conduct of this Examination and in reporting and that the ExB has endeavoured to carry out all responsibilities under the PSED in relation to the Examination process as a whole [ER 7.1.3] and it is noted by the Secretary of State that the ExB has not identified any effects for those with protected characteristics. The Secretary of State does not consider that a decision to approve the proposed changes application would have significant differential impacts on any of the protected characteristics referred to in section 149(7) of the Equality Act 2010. On that basis there is no breach of the PSED.

### **Natural Environment and Rural Communities Act 2006**

94. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 ('the 2006 Act') must have regard to the purpose of conserving biodiversity and in particular to the United Nations Environmental Programme on Biological Diversity of 1992 when deciding on whether to grant development consent. The Secretary of State has had due regard to conserving biodiversity.

### **The Secretary of State's overall conclusions and decision**

95. The Secretary of State has considered the ongoing need for the development and considers that the project continues to conform with the policy objectives set out in the NPSP and supports the objectives of the Overarching Energy National Policy Statement (EN-1) and the Renewable Energy Infrastructure National Policy Statement (EN-3).

96. The Secretary of State is of the view that the need for this Development as set out in his letter of 18 August 2014 has further increased as a result of Government's target of for 50GW of offshore wind capacity by 2030, which this project will assist in achieving, noting that the proposed changes will also allow for the processing of larger turbines than allowed under the 2014 Order.

97. The Secretary of State has considered the nature and effect of the proposed changes, noting that they would have no materially new or materially different environmental effects. He is satisfied that the conclusions of the HRA undertaken in 2014 remain unchanged and notes that no new powers of compulsory acquisition are sought.

For the reasons given in this letter, the Secretary of State had decided under paragraph 3 of Schedule 6 to the 2008 Act to make a Material Change in relation to the 2014 Order so as to authorise the change sought by the Applicant through the Application.

**Challenges to decision**

98. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

**Publicity for decision**

99. The Secretary of State's decision on the application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the 2017 Regulations.

Yours faithfully

Natasha Kopala



## **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the statement of reasons (decision letter) is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The decision documents are being published on the Planning Inspectorate website at the following address:

[Able Marine Energy Park Material Change 2 | National Infrastructure Planning \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk/able-marine-energy-park-material-change-2-national-infrastructure-planning)

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655)**