



Department  
for Transport

# Habitat Regulations Assessment for an Application under Schedule 6 to the Planning Act 2008

## AMEP DCO Material Change 2

16 July 2022

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## Glossary

Term	Abbreviation
Habitat Regulations Assessment	HRA
Development Consent Order	DCO
Deemed Marine Licence	DML
Nationally Significant Infrastructure Project	NSIP
Planning Inspectorate	PINS
Examining Body	ExB
Planning Act 2008	PA 2008
Report on the Implications for European Sites	RIES
Statutory Nature Conservation Body	SNCB
Natural England	NE
Marine Management Organisation	MMO
Interested Parties	Ips
Statement of Common Ground	SoCG
Statement to Inform Appropriate Assessment or Report to Inform Appropriate Assessment	SIAA RIAA
Appropriate Assessment	AA
Likely Significant Effect	LSE
Adverse Effect on Integrity	AEoI

# 1 Introduction

## 1.1 Background

This document (“the HRA Report”) is a record of the Habitats Regulations Assessment (“HRA”) that the Secretary of State for Transport has undertaken under the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) in respect of the Amendment Order (“the Development”) to the Able Marine Energy Park Development Consent Order 2014 (S.I. 2014/2945) (“the AMEP DCO”). For the purposes of the Habitats Regulations the Secretary of State is the competent authority.

Able Humber Ports Limited (“the Applicant”) submitted an application for development consent (the Application”) to the Planning Inspectorate (“the Inspectorate”) on 25 June 2021 under paragraph 3 of Schedule 6 to the Planning Act 2008 (“PA2008”).

On 23 September 2021 the Secretary of State for Transport decided that it was necessary for an Examining Body (“ExB”) to examine the Application. The ExB was appointed on 29 September 2021. The Examination of the Application began on 16 November 2021 and was completed on 16 March 2022. The ExB submitted the report of the examination, including its recommendation to the Secretary of State on 16 May 2022.

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 and on which the Secretary of State considered.

The Project application is described in more detail in Chapter 2.

## 1.2 Habitats Regulations Assessment (HRA)

The Habitats Regulations aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects.

In the UK, the Habitats Regulations apply as far as the 12 nautical miles (“nm”) limit of territorial waters.

Following the UK’s departure from the European Union, The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019

(“the 2019 Regulations”) and the amendments were taken into account in the preparation of this HRA Report. Reference to the Habitat Regulations in this HRA Report are therefore to the latest amended version at the time of publication, unless otherwise stated.

The Habitats Regulations provides for the designation of sites for the protection of habitats and species of international importance. These sites are called Special Areas of Conservation (“SACs”). The Birds Directive provides for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the UK and internationally. These sites are called Special Protection Areas (“SPAs”). SACs and SPAs together form part of the UK’s National Site Network.

The Convention on Wetlands of International Importance 1972 (“the Ramsar Convention”) provides for the listing of wetlands of international importance. These sites are called Ramsar sites. Government policy is to afford Ramsar sites in the United Kingdom the same protection as sites within the National Site Network (collectively referred to in this HRA as “protected sites”).

Candidate SACs (“cSACs”), SACs and SPAs are afforded protection as European sites. As a matter of policy<sup>1</sup> the Government affords potential SPAs (“pSPAs”) the same level of protection.

Regulation 63 of the Habitats Regulations provides that:

*“(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—*

*(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and*

*(b) is not directly connected with or necessary to the management of that site,*

*must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives.”*

And that:

*“(5) In the light of the conclusions of the assessment, and subject to regulation 64 [IROPI], the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).”*

This Project is not directly connected with, or necessary to, the management of a protected site. The Habitats Regulations require that, where the Project is likely to have a significant effect (“LSE”) on any such site, alone or in-combination with other plans and projects, an appropriate assessment (“AA”) is carried out to determine whether or not the Project will have an adverse effect on the integrity of the site in view of that site’s Conservation Objectives. In this HRA Report, the following assessments are collectively referred to as the Habitats Regulations Assessment (“HRA”):

- Stage 1: Assessment of likely significant effects (“LSE”),
- Stage 2: Appropriate Assessment (“AA”) to determine whether there is an adverse effect on the integrity of a site,

- Stage 3: Assessment of Alternative Solutions,
- Stage 4: Imperative Reasons of Overriding Public Interest (“IROPI”),
- Stage 5: Proposed Compensatory Measures.

The HRA refers only to sites for which the UK is responsible.

### 1.3 Site Conservation Objectives

Where an AA is required in respect of a protected site, regulation 63(1) of the Habitats Regulations requires that it be an AA of the implications of the plan or project for the site in view of its conservation objectives. Government guidance also recommends that in carrying out the LSE screening, applicants must check if the proposal could have a significant effect on a European site that could affect its conservation objectives.

The Secretary of State is aware that conservation objectives and Ramsar information sheets for European sites are available in full via NE’s Designated Sites website. There are no conservation objectives published for Ramsar sites. For the purposes of this HRA Report, the Secretary of State is satisfied that the criteria of the Humber Estuary Ramsar site are reflected by the qualifying features for the Humber Estuary SPA. These conservation objectives have therefore been considered as a suitable proxy for the Ramsar site. Conservation objectives have been established by NE. When these objectives are met, each site will contribute to the overall favourable conservation status of the species or habitat feature across its natural range. Conservation objectives outline the desired state for a protected site, in terms of the interest features for which it has been designated. If these interest features are being managed in a way which maintains their nature conservation value, they are assessed as being in a ‘favourable condition’. An adverse effect on integrity is likely to be one which prevents the site from making the same contribution to favourable conservation status for the relevant feature as it did at the time of its designation. There are no set thresholds at which impacts on site integrity are considered adverse. This is a matter for interpretation on a site-by-site basis, depending on the designated feature and nature, scale, and significance of the impact.

NE has issued generic conservation objectives, which should be applied to each interest feature of the site. Supplementary advice for each site underpins these generic objectives to provide site-specific information and give greater clarity to what might constitute an adverse effect on a site interest feature. Supplementary advice on conservation objectives is subject to availability and is currently being updated on a rolling basis.

Where supplementary advice is not yet available for a site, NE advises that HRAs should use the generic objectives and apply them to the site-specific situation. For SPAs, the overarching objective is to avoid the deterioration of the habitats of qualifying features, and the significant disturbance of the qualifying features, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving the aims of the Birds Directive. This is achieved by, subject to natural change, maintaining and restoring:

- The extent and distribution of the habitats of the qualifying features;
- The structure and function of the habitats of the qualifying features;

- The supporting processes on which the habitats of the qualifying features rely;
- The populations of the qualifying features; and
- The distribution of the qualifying features within the site.

For SACs, the overarching objective is to avoid the deterioration of the qualifying natural habitats and the habitats of qualifying species, and the significant disturbance of those qualifying species, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving favourable conservation status of each of the qualifying features. This is achieved by, subject to natural change, maintaining and restoring:

- The extent and distribution of the qualifying natural habitats and habitats of qualifying species;
- The structure and function (including typical species) of qualifying natural habitats;
- The structure and function of the habitats of qualifying species;
- The supporting processes on which qualifying natural habitats and habitats of qualifying species rely;
- The populations of qualifying species; and
- The distribution of qualifying species within the site.

The conservation objectives and, where available, supplementary advice on conservation objectives have been used by the Secretary of State to consider whether the Project has the potential to have an adverse effect on the integrity of sites, either alone or in-combination with other plans or projects. The potential for the Project to have an adverse effect on site integrity is considered for each site in turn.

The supplementary conservation objectives relevant to this HRA Report, as published by NE and the Joint Nature Conservation Committee (“JNCC”), are referenced in Table 1 of this HRA Report.

## 1.4 The Report on the Implications for European Sites (RIES) and Statutory Consultation

Under regulation 63(3) of the Habitats Regulations the competent authority must, for the purposes of an AA, consult the appropriate Statutory Nature Conservation Body (“SNCB”) and have regard to any representation made by that body within such reasonable time as the authority specifies.

The ExB, with support from the Inspectorate’s Environmental Services Team, produced a Report on the Implications for European Sites<sup>2</sup> (“the RIES”). The purpose of the RIES was to compile, document and signpost information submitted by the Applicant and Interested Parties (“IPs”) during the examination up until deadline 4 of the examination (1 February 2022). The RIES was published on the Planning Inspectorate’s (“PINS”) Nationally Significant Infrastructure Project

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<sup>2</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030006/TR030006-000284-Report%20on%20the%20Implications%20for%20European%20Sites.pdf>



web pages and the ExB notified Interested Parties that it had been published. It was issued on 15 February 2022 to ensure that IPs, including Natural England (“NE”) as the appropriate nature conservation body in respect of the Application for the Development, had been formally consulted on Habitats Regulations matters during the examination. The consultation period ran between 15 February 2022 and 8 March 2022.

The Applicant and NE provided comments on the RIES at deadline 6 (8 March 2022). The recommendation of the ExB is that the RIES and consultation on it represents an appropriate body of information to enable the Secretary of State to fulfil their duties of consultation under regulation 63(3) of the Habitats Regulations. The Secretary of State is satisfied that NE have been consulted and has been given suitable opportunities to make representations in accordance with regulation 63(3) of the Habitats Regulations.

A Statement of Common Ground (SoCG) between NE and the Applicant was submitted at deadline 1 (14 December 2021) and updated at deadline 3 (18 January 2022), deadline 4 (1 February 2022) and deadline 5 (1 March 2022). A final signed version was submitted at deadline 6 (8 March 2022)<sup>3</sup>. Subsequent references to the SoCG between the Application and NE in this HRA Report are to the deadline 6 version, unless otherwise stated. The SoCG confirmed that all matters relating to HRA were agreed between the two parties and that there were no matters outstanding between them in respect of the Development.

The Secretary of State agrees with the ExB’s recommendation that the RIES, and consultation on it, represents an appropriate body of information to enable him to fulfil his duties in respect of protected sites.

## 1.5 Documents Referred to in this HRA Report

This HRA Report has taken account of and should be read in conjunction with the documents produced as part of the application and examination, together with the responses to the Secretary of State’s request for comment and further information dated 10 June 2022. These documents are available on the PINS Nationally Significant Infrastructure Project web pages. In particular:

- The ExB’s Report;
- The RIES [PD-009]<sup>4</sup>;
- The Updated Environmental Statement [APP-071-APP-153]; and
- The Statement of Common Ground with NE/EA/MMO [REP6-004/REP6-006/REP5-013].

The Applicant submitted a HRA report with the Application in three parts;

- Habitats Regulations Assessment Part 1: Likely Significant Effects (LSE) report (the LSE Report) [APP-067];

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<sup>3</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030006/TR030006-000496-\(TR030006.D6.SOCG.NE\)%20Statement%20of%20Common%20Ground%20with%20Natural%20England.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030006/TR030006-000496-(TR030006.D6.SOCG.NE)%20Statement%20of%20Common%20Ground%20with%20Natural%20England.pdf)

<sup>4</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030006/TR030006-000284-Report%20on%20the%20Implications%20for%20European%20Sites.pdf>



- Habitats Regulation Assessment Part 2: Report to Inform Appropriate Assessment (the RIAA) [APP-068]; and
- Habitats Regulations Assessment Part 3 & 4: Alternative Solutions and Imperative Reasons of Overriding Public Interest (IROPI) (the derogations report) [APP-069].

The suite of application documents updated the HRA that was undertaken for the AMEP DCO and focused on the proposed changes to the consented scheme.

Revised versions of the LSE report and the RIAA were submitted with a combined HRA report at deadline 1 [REP1-023] and deadline 3 [REP3-008]. The derogations report was not revised during the examination.

In response to a request in the Regulation 28 letter [PD-002], the Applicant submitted screening and integrity matrices for the Humber Estuary SAC, SPA, and Ramsar site [AS-004] during the preliminary meeting. These were revised at deadline 4 [REP4-018].

The LSE report confirmed that the assessment related only to the AMEP site and that there would be no change to the Cherry Cobb Sands compensation site, so it has not been considered as part of the assessment. NE did not raise any concerns regarding this approach during the examination.

A Statement of Common Ground (“SoCG”) between the Applicant and NE was first submitted with the DCO application at deadline 1 (15/12/2021). A final signed version was submitted at deadline 6 (10/03/2022). Subsequent references to the SoCG between the Applicant and NE in this HRA Report are to the deadline 6 version, unless otherwise stated.

The SoCG confirmed that all matters relating to HRA were agreed between the two parties, and that there were no HRA matters outstanding between them in respect of the Development.

## 2 Development description

The AMEP DCO permits the construction and operation of a 1297m long quay on the south bank of the Humber Estuary, which is of sufficient cargo capacity to qualify as a nationally significant infrastructure project under section 24 of the Planning Act 2008 (harbour facilities). It also authorises onshore manufacturing, assembly and storage facilities adjacent to the quay, highway improvements to one junction (which have been rendered unnecessary by the implementation of the A160/A180 (Port of Immingham) Development Consent Order 2015), minor railway works, the diversion of a public right of way and the provision of environmental mitigation and compensation, and it contains a deemed marine licence for works in the marine area, including dredging and deposits on the bed of the Humber Estuary (Schedule 8). By requirement 4 (Schedule 11) the quay can only be used for the transportation of marine energy infrastructure.

The pre-construction requirements for the AMEP DCO have been fulfilled and the development was commenced in 2021 with the construction of a pumping station. The project underwent Special Parliamentary Procedure on grounds that since no longer apply following changes to the Planning Act 2008.

As the foreshore on which the quay is to be constructed is part of a Special Protection Area, Special Area of Conservation and Ramsar site (the Humber Estuary), a compensatory habitat is to be built on the north bank of the Humber to replace that being lost. The quay cannot commence construction until at least seven months after the compensatory habitat has commenced construction (AMEP DCO requirement 21). The main environmental control provided in the AMEP DCO is requirement 19, which requires a terrestrial environmental management and monitoring plan and a compensation environmental management and monitoring plan to be approved by NE and a marine environmental management and monitoring plan to be approved by the Marine Management Organisation.

The AMEP DCO has been amended on three occasions:

- 23 June 2017 the Deemed Marine Licence was varied by the Marine Management Organisation - changes were made to paragraphs 14(3), 16 and 21;
- 16 September 2020 the Deemed Marine Licence was varied a second time by the MMO a further change was made to paragraph 14(3);
- 14 May 2021 a non-material amendment to the AMEP DCO came into force - changes were made to article 2, Schedule 1 and Schedule 11 and a new article 55A was inserted.
- The HRA for the AMEP DCO concluded that there would be adverse effects on integrity (AEol) of the Humber Estuary SAC, SPA, and Ramsar site and therefore compensation was proposed and agreed during the examination. The proposed changes which are relevant to the Material Change 2 HRA are the works relating to the new quay (Work No.1 of the AMEP DCO) and associated dredge and disposal operations. This includes; the specialist berth at the southern end of the quay which is to be reclaimed as the twin hulled vessel that was to use the facility has not been constructed
- 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 by 61m over a length of 288m;

- Changes to the construction methodology to allow the relieving slab at the rear of the quay to be at the surface as an alternative to being buried or to be omitted altogether, and the use of anchor piles as an alternative to flap anchors;
- A change to the consented deposit location of 1.1M tonnes of clay to be dredged from the berthing pocket, to permit its disposal at HU081 and HU082.
- unrelated to the quay changes, diversion of footpath FP50 in North Lincolnshire will be amended to avoid crossing over existing rail track at the at the end of the Killingholme Branch Line. The path will be diverted to an existing crossing point approximately 200 m north west of the consented location.
- Maximum height of quayside crane would increase from 165m to 200m above the level of the quay.

The Development is described in further detail in The Updated Explanatory Memorandum [REP4-014]. It is also summarised in Chapter 1 of the ExB's Recommendation Report.

The Development does not amend the Order Limits or land plans, nor authorise any change to compulsory acquisition or temporary possession. The net effect of the change is that marginally less land would be reclaimed from the Humber estuary, no changes are proposed to the compensation measures already consented by the Secretary of State for the loss of intertidal and estuarine habitat and its possible consequential effects on waterbird assemblage.

The dredging proposals are amended to the extent necessary to dredge the berthing pockets for the amended quay line and to permit greater disposal at sea in the absence of alternative beneficial uses.

In support of the Material Change application the Applicant has provided an update to the baseline ecological survey information with the RIAA [APP-068], including:

- Changes to baseline habitats
- Changes to baseline bird numbers
- Changes to development baseline in combination assessment

## 2.1 Development Location

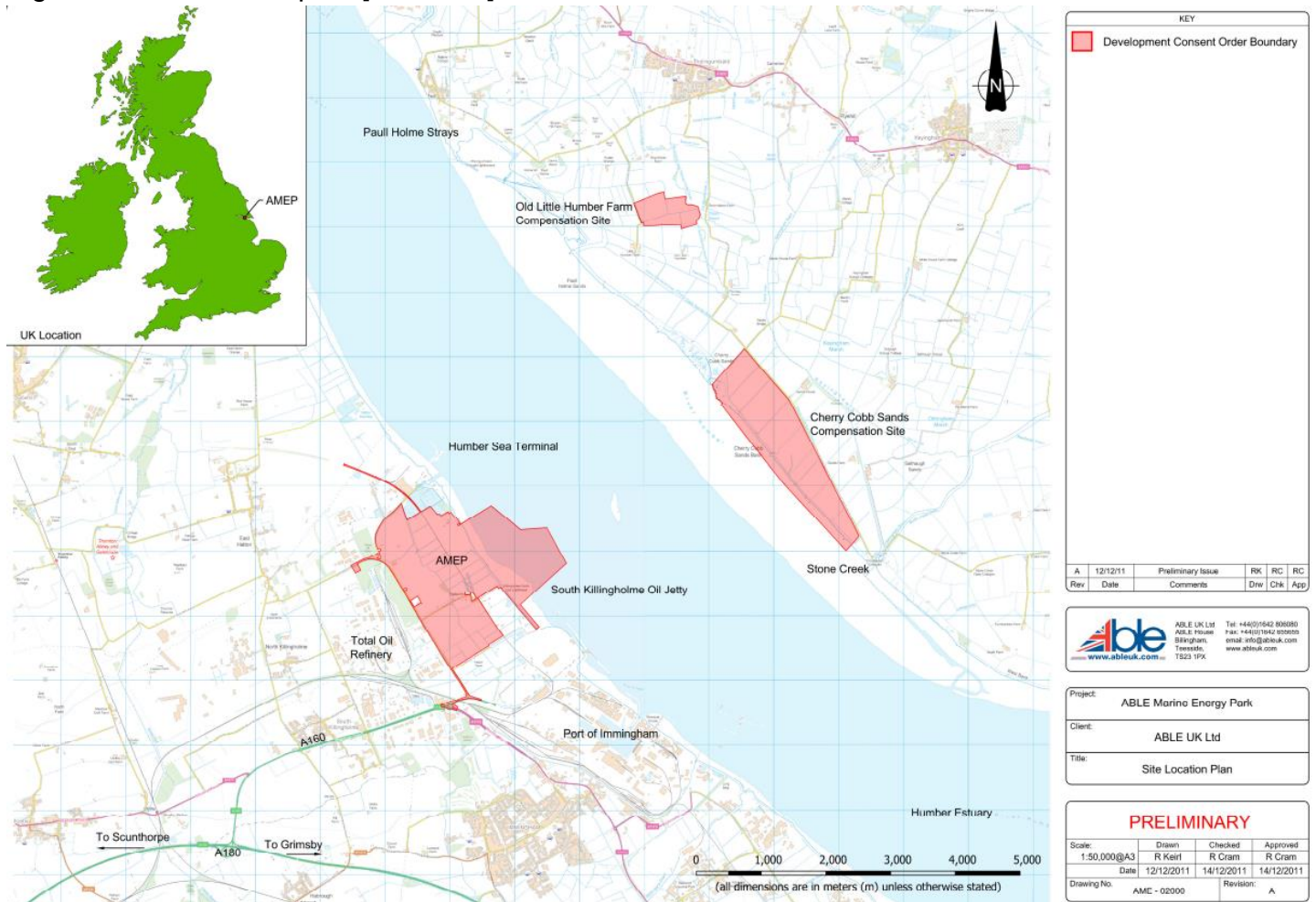
The site is located east of North Killingholme, within North Lincolnshire, on the south bank of the River Humber. It lies downstream of the Humber Sea Terminal (HST) and immediately upstream of the South Killingholme Oil Jetty with the Port of Immingham a little further south.

The site, excluding the area of ecological mitigation, covers approximately 268 ha, part of which has existing consents for port related storage, part is existing or former arable land to be developed for industrial use and some 45 ha is land to be reclaimed from the Humber Estuary, to provide a new quay. A further area of existing arable land of approximately 48 ha would be converted to managed grassland to mitigate the effects of the development on ecological receptors including birds using the adjacent Humber Estuary Special Protection Area (SPA).

The DCO incorporates three distinct areas, the terrestrial ‘AMEP Site’ and the ‘Compensation Site’ on the north bank of the Humber at Cherry Cobb Sands, as well as the quay within the Humber Estuary which is referred to as the ‘Marine Site’. The Proposed Changes relate entirely to the AMEP Site and the Marine Site. The Compensation Site is not affected by the Proposed Changes.

The site location is provided in Figure 1;

Figure 1: Site location plan [APP-058]



## 2.2 Changes to the Application During Examination

At the preliminary meeting the Applicant requested a modification to the proposed changes to allow an alternative construction sequence which was accepted as an additional submission by procedural decision.

### 3 Stage 1: Screening for Likely Significant Effects

Under regulation 63 of the Habitats Regulations, the Secretary of State must consider whether a development will have an LSE on a protected site, either alone or in combination with other plans or projects.

The purpose of this section is to identify any LSEs on protected sites that may result from the Project and to record the Secretary of State's conclusions on the need for an AA.

The Applicant's approach to determining European sites to be included in the assessment is set out in the Applicant's LSE Report [APP-067]. The Applicant identified European sites within 20km of the Proposed Changes, and more distant sites where there could be an ecological link to the project (described in Section 4 of the LSE Report).

For avifauna, a precautionary approach has been adopted by the Applicant, assuming that all birds using the Humber Estuary and its functionally linked habitat within 1km of the Project site could potentially be affected by the proposed development.

For Seals, ranges were linked to potential foraging ranges/project level modelling (primarily underwater noise modelling), together with consideration of site connectivity determined from at sea usage data.

For cetaceans, interest would be limited to the Southern North Sea SAC – which at 35km distance is located further from the project than the maximum screening range (26km) that applies to the site (JNCC 2020).

Up to date baseline data have been used to determine which qualifying features occur within potential impact zone of the Project, and the importance of those features in the context of their European site populations.

The following European sites were included in the Screening Assessment (Table 1):

**Table 1 European sites identified within 20km, or could have an ecological link to the project.**

<b>European Site</b>	<b>Distance from application site (nearest point)</b>	<b>Site Conservation Objectives</b>
Humber Estuary SAC UK00300170	Overlaps	<a href="http://naturalengland.org.uk">European Site Conservation Objectives for Humber Estuary SAC - UK00300170 (naturalengland.org.uk)</a>
Humber Estuary SPA UK9006111	Overlaps	<a href="http://naturalengland.org.uk">European Site Conservation Objectives for Humber Estuary SPA - UK9006111 (naturalengland.org.uk)</a>
Humber Estuary Ramsar site	Overlaps	<a href="#">Humber Estuary   Ramsar Sites Information Service</a>
Greater Wash SPA UK9020329	18km	<a href="http://naturalengland.org.uk">European Site Conservation Objectives for Greater Wash SPA - UK9020329 (naturalengland.org.uk)</a>
Southern North Sea SAC	35km	<a href="#">Southern North Sea MPA   JNCC - Adviser to Government on Nature Conservation</a>
The Wash and North Norfolk Coast SAC UK0017075	69km	<a href="https://sac.jncc.gov.uk/site/UK0017075">https://sac.jncc.gov.uk/site/UK0017075</a>
Berwickshire and North Northumberland Coast SAC UK0017072	210km	<a href="#">Berwickshire and North Northumberland Coast - Special Areas of Conservation (jncc.gov.uk)</a>



No evidence was presented by any IP to suggest that any other European site(s) or qualifying features could be affected by the Development. The Secretary of State is therefore satisfied that no other European site needs to be addressed in this updated HRA Report. The Secretary of State is also satisfied that the Development is not directly connected with or necessary to the management of any European site.

Section 6 of the LSE Report [APP-067] concluded no LSE for the following sites due to distance from the Application site, the nature of the Proposed Changes and a lack of evidence of any ecological link:

- Greater Wash SPA;
- Southern North Sea SAC;
- Wash and North Norfolk Coast SAC; and
- Berwickshire and North Northumberland Coast SAC.

NE agreed with the conclusion in its response to the PEIR and draft HRA (dated 26 May 2021) which was provided in the ES Appendix UES11-4 [APP-139].

Section 8 of the Applicant's LSE Report [APP-067] identifies the potential effect pathways for the Humber Estuary SAC, SPA, and Ramsar site:

#### **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

The Secretary of State notes that NE and the ExB did not identify any additional effect pathways which the Applicant had failed to assess. The Secretary of State is therefore satisfied that all relevant potential impacts have been assessed by the Applicant.

The Secretary of State has considered the potential effects of the Application on all interest features of the protected sites listed in Table 1, taking into account their conservation



objectives, to determine whether there will be likely significant effects in the context of the Habitats Regulation. The Secretary of State considers that sufficient information has been provided to inform a robust assessment in line with his duties under the Habitats Regulations. In reaching his conclusion, the Secretary of State took no account of measures intended to mitigate effects on any protected site.

### 3.1 Likely Significant Effects Alone Assessment

Of those protected sites considered in the LSE assessment, the Secretary of State agrees with the recommendations of the ExB. The ExB concluded that likely significant effects could not be excluded either alone or in-combination with other plans or projects, for three sites as listed in Table 2, alongside the relevant site features and impact pathways.

The ExB report and the RIES provide further information on sites and features which were considered, but for which likely significant effect were screened out. The Secretary of State is satisfied to adopt the rationale and conclusions of the ExB for those sites and features screened out of the LSE assessment and has not duplicated this assessment here.

The Secretary of State agrees with the recommendations of the ExB and concludes that likely significant effects cannot be excluded at the three sites listed in Table 2, when the Project is considered alone. These sites are taken forward to the AA to consider whether the Project will result in an adverse effect upon the integrity of these sites.

**Table 2: Protected sites for which likely significant effects cannot be excluded.**

Name of European site	Qualifying features for which potential for LSE is concluded alone or in combination	Pathway(s) of effect
<b>HUMBER ESTUARY SAC</b>	<ul style="list-style-type: none"> <li>• Estuaries (H1130)</li> </ul>	<ul style="list-style-type: none"> <li>• Permanent habitat loss</li> </ul>
	<ul style="list-style-type: none"> <li>• Mudflats and sandflats not covered by seawater at low tide (H1140)</li> <li>• Salicornia and other annuals colonising mud and sand (H1310)</li> <li>• Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) (H1330)</li> </ul>	<ul style="list-style-type: none"> <li>• Permanent habitat loss</li> <li>• Indirect habitat loss (habitat change)</li> </ul>
	<ul style="list-style-type: none"> <li>• Sea lamprey</li> <li>• River lamprey</li> <li>• Grey seal</li> </ul>	<ul style="list-style-type: none"> <li>• Disturbance/ displacement (underwater noise)</li> </ul>
<b>HUMBER ESTUARY SPA</b>	<ul style="list-style-type: none"> <li>• Common shelduck <i>Tadorna tadorna</i> (non-breeding)</li> <li>• Eurasian marsh harrier <i>Circus aeruginosus</i> (breeding)</li> <li>• Red knot <i>Calidris canutus</i> (non-breeding)</li> </ul>	<ul style="list-style-type: none"> <li>• Permanent loss of supporting habitat</li> <li>• Noise disturbance</li> <li>• Indirect functional habitat loss (noise, lighting and visual disturbance)</li> </ul>

	<ul style="list-style-type: none"> <li>• Pied avocet <i>Recurvirostra avosetta</i> (non-breeding)</li> <li>• Pied avocet <i>Recurvirostra avosetta</i> (breeding)</li> <li>• Dunlin <i>Calidris alpina</i> (non-breeding)</li> <li>• Black-tailed godwit <i>Limosa limosa</i> (breeding)</li> <li>• Bar-tailed godwit <i>Limosa lapponica</i> (non-breeding)</li> <li>• Redshank <i>Tringa totanus</i> (non-breeding)</li> <li>• Assemblage qualification – the site qualifies under article 4.2 of the Birds Directive because it regularly supports 153,394 individual waterbirds in the non-breeding season.</li> </ul>	<ul style="list-style-type: none"> <li>• Permanent loss of supporting habitat</li> <li>• Noise disturbance</li> <li>• Indirect functional habitat loss (noise, lighting and visual disturbance)</li> <li>• Displacement from high tide NKHP roost site</li> </ul>
<b>HUMBER ESTUARY RAMSAR</b>	<p><b>Ramsar criterion 1</b></p> <ul style="list-style-type: none"> <li>• Representative example of near natural estuary</li> </ul>	<ul style="list-style-type: none"> <li>• Changes to intertidal habitat</li> <li>• Habitat loss</li> </ul>
	<p><b>Ramsar criterion 3</b></p> <ul style="list-style-type: none"> <li>• Breeding colony of grey seals <i>Halichoerus grypus</i></li> </ul>	<ul style="list-style-type: none"> <li>• Permanent loss of supporting habitat</li> <li>• Noise disturbance</li> </ul>
	<p><b>Ramsar criterion 5</b></p> <ul style="list-style-type: none"> <li>• Assemblages of non breeding waterfowl</li> </ul>	<ul style="list-style-type: none"> <li>• Permanent loss of supporting habitat</li> <li>• Noise disturbance</li> <li>• Indirect functional habitat loss (noise, lighting and visual disturbance)</li> <li>• Displacement from high tide NKHP roost site</li> </ul>
	<p><b>Ramsar criterion 6: species/ populations occurring at levels of international importance</b></p> <ul style="list-style-type: none"> <li>• Red knot <i>Calidris canutus</i> (breeding and non-breeding)</li> <li>• Common shelduck <i>Tadorna tadorna</i> (non-breeding)</li> </ul>	<ul style="list-style-type: none"> <li>• Permanent loss of supporting habitat</li> <li>• Noise disturbance</li> <li>• Indirect functional habitat loss (noise, lighting and visual disturbance)</li> </ul>

	<ul style="list-style-type: none"> <li>• Dunlin <i>Calidris alpina</i> (breeding and non-breeding)</li> <li>• Black-tailed godwit <i>Limosa limosa</i></li> <li>• Redshank <i>Tringa totanus</i> (non-breeding)</li> <li>• Bar-tailed godwit <i>Limosa lapponica</i> (breeding)</li> </ul>	<ul style="list-style-type: none"> <li>• Permanent loss of supporting habitat</li> <li>• Noise disturbance</li> <li>• Indirect functional habitat loss (noise, lighting and visual disturbance)</li> <li>• Displacement from high tide NKHP roost site</li> </ul>
	<p><b>Ramsar criterion 8</b></p> <ul style="list-style-type: none"> <li>• River lamprey <i>Lampetra fluviatilis</i></li> <li>• Sea lamprey <i>Petromyzon marinus</i></li> </ul>	<ul style="list-style-type: none"> <li>• Noise disturbance</li> </ul>

### 3.3 Likely Significant Effects In Combination Assessment

Under the Habitats Regulations, the Secretary of State is obliged to consider whether other plans or projects in-combination with the Project might affect protected sites.

The Applicant selected projects which could affect the designated site feature under consideration. The plans or projects included in the in-combination assessment are:

- Able Logistics Park – PA/2009/0600 – NLC;
- North Killingholme Generating Station (DCO Application);
- Hornsea Offshore Wind Farm (Zone 4) Project 2 (DCO Application);
- Yorkshire Energy Park (17/01673/STOUTE – East Riding of Yorkshire Council);
- Outstrays to Skeffling Managed Realignment Site; and
- South Humber Gateway Mitigation Areas (including Cress Marsh, Novartis and the former Huntsman Tioxide site).

Having considered the list of plans and projects and paragraph 2.3 of the RIES which states that NE was satisfied all relevant schemes had been assessed, the Secretary of State is content that all plans and projects with the potential to have significant in combination effects with the Development in terms of the HRA have been identified.

Paragraph 9.14 of the LSE Report [APP-067] stated that the habitat qualifying features for which LSE had been excluded from the project alone would not be affected at all by AMEP; hence an in-combination assessment for them was not necessary.

In respect of the bird species for which the Applicant had concluded that there would be no LSE from the project alone, paragraph 9.8 of the LSE Report [APP-067] stated that in-combination effects would not occur for one of the following reasons:

- the species was not reliant on the habitats lost (including coot, heron and gadwall);
- there were only records of one or two birds; or
- the species occurrence represented such a small percentage of the Humber Estuary population as to be insignificant.

These conclusions were unchanged in the revised versions of the HRA Report [REP1-023][REP3-008][REP5-007].

In response to the RIES, NE [REP6-007] confirmed that it was satisfied in-combination effects have been satisfactorily addressed.

## 4 Appropriate Assessment Methodology

The requirement to undertake an AA is triggered when a competent authority, in this case the Secretary of State, determines that a plan or project is likely to have a significant effect on a protected site either alone or in-combination with other plans or projects. Guidance issued by Defra states that the purpose of an AA is to assess the implications of the plan or project in respect of the site's conservation objectives, either individually or in-combination with other plans and projects, and that the conclusions should enable the competent authority to ascertain whether the plan or project will adversely affect the integrity of the site concerned. The focus is therefore specifically on the species and/or habitats for which the protected site is designated.

In line with the requirements of regulation 63 of the Habitats Regulations:

In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.

The purpose of this AA is to determine whether adverse effects on the integrity of the features of the three sites identified can be ruled out as a result of the Project alone or in-combination with other plans or projects in view of the site's conservation objectives and using the best scientific evidence available.

In accordance with the precautionary principle embedded in the integrity test and established through case law, the Secretary of State as the competent authority (subject to regulation 64) may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the protected site, and this must be demonstrated beyond all reasonable scientific doubt. If the Secretary of State cannot exclude adverse effects on integrity ("AEoI") of the affected protected sites, then he can only agree to a plan or project if it complies with the requirements of regulation 64 of the Habitats Regulations. Regulation 64 provides that the Secretary of State may agree to the plan or project only if satisfied that there are no alternative solutions, and that the plan or project must be carried out for imperative reasons of overriding public interest ("IROPI"). In addition, regulation 68 requires compensatory measures to be secured which maintain the overall coherence of the national site network.

## 5 Stage 2: Appropriate Assessment

The Secretary of State has undertaken an objective scientific assessment of the implications of the Development on the qualifying features of the protected sites identified in his screening assessment, using best scientific evidence available. The assessment has been made in light of the site's conservation objectives, which are set out in Table 1 and Section 1.3 of this HRA Report.

### 5.1 Appropriate Assessment: Protected Sites for Which there is Agreement on Conclusions of No Adverse Effects on Site Integrity

The Secretary of State has noted section 9 of the Applicant's RIAA [APP-068] which stated that the key mitigation measures identified in the AMEP DCO remain suitable and fit for purpose without any need for modification. Measures are secured through the approval of various plans and method statements as specified in Schedule 8 (Deemed Marine Licence (DML)) and Schedule 11 (Requirements) of the AMEP DCO.

He has also had regard to paragraph 8.28 of the RIAA which identified the following specific mitigation measures secured within the AMEP DCO that were taken into account in the Applicant's assessment of the effects on the integrity of European sites. These mitigation measures are:

- The provision of replacement foraging and roosting habitat – Schedule 11 requirement 19 of the AMEP DCO;
- Protection from disturbance – Schedule 11 requirement 42 of the AMEP DCO;
- Implementation of a lighting plan – Schedule 11 requirement 24 of the AMEP DCO; and
- Measures for managing piling activities – Schedule 8 (DML) paragraphs 37-43 of the AMEP DCO.

The AMEP DCO provides for monitoring and managing the impacts of the scheme on the hydrodynamic and sedimentary regime. Additional mitigation measures to mitigate impacts from dredging and disposal were included in the RIAA at Deadline 3 [REP-008].

No adverse effect on integrity was found for (1) loss of terrestrial habitat (due to the provision of replacement foraging and roosting habitat in Halton Marshes Wet Grassland Mitigation Area), for (2) disturbance within North Killingholme Haven Pits (NKHP) (as a result of the protection from disturbance as set out in the extant DCO at Schedule 11 requirement 42), for (3) lighting effects on NKHP (through implementation of the agreed lighting mitigation), and (4) from piling (based on the adoption of agreed measures for managing piling activities, are set out in Schedule 8 paragraphs 37-43 of the extant DCO).

Table 3 presents the Secretary of State's conclusions on protected sites for which he considers there to be no adverse effects on integrity, for which there is also agreement between the Applicant and NE at the close of Examination to no adverse effects on site integrity, and for which the ExB was also satisfied that an adverse effect on integrity on these sites and their qualifying features could be excluded.



**Table 3: Secretary of State’s conclusions on Protected Sites for which there is agreement on conclusions of no Adverse Effects on Integrity from the Project either alone or in-combination.**

Name of European site	Qualifying features	Pathway(s) of effect, screened no adverse effect on integrity
<b>HUMBER ESTUARY SAC</b>	<ul style="list-style-type: none"> <li>• Sea lamprey</li> <li>• River lamprey</li> <li>• Grey seal</li> </ul>	<ul style="list-style-type: none"> <li>• Disturbance/ displacement (underwater noise)</li> </ul>
<b>HUMBER ESTUARY SPA</b>	<ul style="list-style-type: none"> <li>• Common shelduck <i>Tadorna tadorna</i> (non-breeding)</li> <li>• Eurasian marsh harrier <i>Circus aeruginosus</i> (breeding)</li> </ul>	<ul style="list-style-type: none"> <li>• Noise disturbance</li> <li>• Indirect functional habitat loss (noise, lighting and visual disturbance)</li> </ul>
	<ul style="list-style-type: none"> <li>• Pied avocet <i>Recurvirostra avosetta</i> (non-breeding)</li> <li>• Red knot <i>Calidris canutus</i> (non-breeding)</li> <li>• Dunlin <i>Calidris alpina</i> (non-breeding)</li> <li>• Black-tailed godwit <i>Limosa limosa</i> (non-breeding)</li> <li>• Bar-tailed godwit <i>Limosa lapponica</i> (non-breeding)</li> <li>• Redshank <i>Tringa totanus</i> (non-breeding)</li> <li>• Assemblage qualification – the site qualifies under article 4.2 of the Birds Directive because it regularly supports 153,394 individual waterbirds in the non-breeding season</li> </ul>	<ul style="list-style-type: none"> <li>• Noise disturbance</li> </ul>

	<ul style="list-style-type: none"> <li>• Pied avocet <i>Recurvirostra avosetta</i> (breeding)</li> </ul>	<ul style="list-style-type: none"> <li>• Noise disturbance</li> <li>• Displacement from high tide NKHP roost site</li> </ul>
<b>HUMBER ESTUARY RAMSAR</b>	<p><b>Ramsar criterion 3</b></p> <ul style="list-style-type: none"> <li>• Breeding colony of grey seals <i>Halichoerus grypus</i></li> </ul>	<ul style="list-style-type: none"> <li>• Permanent loss of supporting habitat</li> <li>• Noise disturbance</li> </ul>
	<p><b>Ramsar criterion 5</b></p> <ul style="list-style-type: none"> <li>• Assemblages of non-breeding waterfowl</li> </ul>	<ul style="list-style-type: none"> <li>• Noise disturbance</li> </ul>
	<p><b>Ramsar criterion 6: species/ populations occurring at levels of international importance</b></p> <ul style="list-style-type: none"> <li>• Red knot <i>Calidris canutus</i> (breeding and non-breeding)</li> <li>• Dunlin <i>Calidris alpina</i> (breeding and non-breeding)</li> <li>• Redshank <i>Tringa totanus</i> (non-breeding)</li> <li>• Bar-tailed godwit <i>Limosa lapponica</i> (breeding)</li> </ul>	<ul style="list-style-type: none"> <li>• Noise disturbance</li> </ul>
	<ul style="list-style-type: none"> <li>• Common shelduck <i>Tadorna tadorna</i> (nonbreeding)</li> </ul>	<ul style="list-style-type: none"> <li>• Noise disturbance</li> <li>• Indirect functional habitat loss (noise, lighting and visual disturbance)</li> </ul>
	<p><b>Ramsar criterion 8</b></p> <ul style="list-style-type: none"> <li>• River lamprey <i>Lampetra fluviatilis</i></li> <li>• Sea lamprey <i>Petromyzon marinus</i></li> </ul>	<ul style="list-style-type: none"> <li>• Noise disturbance</li> </ul>

For the reasons set out Table 12 and 13 of the Applicant's Revised HRA report and during the examination, the Secretary of State is satisfied that an adverse effect on site integrity, from the effects of the Project alone or in-combination with other plans and projects, can be excluded for the qualifying features listed for Humber Estuary SAC, SPA, Ramsar site as set out in Table 3.

## 5.2 Appropriate Assessment: Humber Estuary SAC and habitat features of the Humber Estuary Ramsar

The Secretary of State notes that the Applicant's assessment of effects on the Humber Estuary SAC and habitat features of the Humber Estuary Ramsar stated that the same conclusions had been reached as those made for the AMEP DCO.

In respect of habit loss and change, the Proposed Changes would reduce the quay alignment footprint from 45ha for the AMEP DCO to 43.6ha (paragraph 28.1.6 of [APP-099]). The RIAA [APP-068] therefore explained that there would be some changes to the extent of impacts compared to the consented AMEP DCO.

Table 4 provides a summary of the Applicant's assessment as set out in Table 11 of the RIAA [APP-068] as set out in Table 4 of the ExB Report.

The Secretary of State agrees with the ExB's findings, that the Proposed Changes would result in marginally less land being reclaimed from the Humber Estuary and that there would be a small reduction in estuarine sub-tidal (H1130) and intertidal mudflat (H1140 and H1310) direct and indirect losses compared to the AMEP DCO. There would be a small new loss of colonising saltmarsh (H1330); this is the result of colonisation since the AMEP DCO was consented. In respect of these qualifying features, the ExB considers that the Proposed Changes would still result in an adverse impact on the extent and distribution of qualifying natural habitats, meaning that the site's Conservation Objectives to maintain such habitats would not be met.

The ExB therefore concluded that an AEoI remained for permanent direct loss of estuarine habitat (H1130), intertidal mudflat/sandflat (H1140/H1310) and saltmarsh (H1330) and indirect effects (indirect habitat loss due to habitat changes) on intertidal mudflat and mudflat with pioneer saltmarsh (H1140/H1310) and saltmarsh (H1330).

**Table 4: summary of the Applicant’s assessment as set out in Table 11 of the RIAA [APP-068] as set out in Table 4 of the ExB Report.**

Habitat type	Qualifying features	Pathway(s) of effect	Permanent direct loss within the reclamation site		Indirect effects (south of the reclamation site)	
			AMEP DCO (ha)	Proposed Change (ha)	AMEP DCO (ha)	Proposed Change (ha)
Sub-tidal Habitat	Estuaries (H1130)	<ul style="list-style-type: none"> <li>• Permanent habitat loss</li> </ul>	13.5	10.4	n/a	n/a
Intertidal mudflat and mudflat with pioneer saltmarsh	Mudflats and sandflats not covered by seawater at low tide (H1140) And Salicornia and other annuals colonising mud and sand (H1310)	<ul style="list-style-type: none"> <li>• Permanent habitat loss</li> <li>• Indirect habitat loss (habitat change)</li> </ul>	31.5	31.3	11.6	7.7
Colonising saltmarsh	Atlantic salt meadows ( <i>Glauco-Puccinellietalia maritima</i> ) (H1330)	<ul style="list-style-type: none"> <li>• Permanent habitat loss</li> <li>• Indirect habitat loss (habitat change)</li> </ul>	0	1.9	0	4.7



### 5.3 Appropriate Assessment: Humber Estuary SPA and bird features of the Humber Estuary Ramsar

The Secretary of State has noted the Applicant's assessment of effects on the Humber Estuary SPA and bird features of the Humber Estuary Ramsar which is summarised in Table 13 of the RIAA [APP-068] and the fact that the same conclusions had been reached for the Proposed Changes as had been reached for the AMEP DCO

Paragraph 8.22 and Table 13 of the RIAA concluded there would be an adverse effect on integrity for the Humber Estuary SPA and Ramsar. These were:

- from (i) indirect habitat loss (estuarine and intertidal mudflat) and (ii) indirect functional habitat loss through disturbance (from the combination of noise, lighting and visual impacts for avocet, marsh harrier, bar-tailed godwit, black-tailed godwit, dunlin, knot, redshank, shelduck and for the six wintering waterbird assemblage species (curlew, lapwing, mallard, ringed plover, shoveler and teal).
- from displacement of the following waders from high tide NKHP roost sites for black-tailed godwit, avocet, dunlin, bar-tailed godwit, redshank, SPA waterbird assemblage qualification, Ramsar criterion 5 (assemblages of non-breeding waterfowl) and Ramsar criterion 6 (dunlin, black-tailed godwit, redshank and bar-tailed godwit).

Paragraph 8.22 of the RIAA stated that it could also not be ruled out that the continued use of NKHP as a roost site by waders from Killingholme Marshes Foreshore (KMFS), particularly black-tailed godwit, could be affected once mudflats at KMFS were lost.

AEoI from the Proposed Changes in-combination with other plans or projects In combination effects only occur if there are residual effects of a project because impacts of the project have not been fully mitigated (or compensated) which could then cause a significant impact when taken together with another project that has not fully mitigated its impacts. As with the AMEP DCO, all impacts from the project alone are either fully mitigated or compensated for. The Secretary of State notes that in response to the RIES, NE [REP6-007] confirmed that it was satisfied that in combination effects have been satisfactorily addressed.



## 5.4 Appropriate Assessment Conclusions

As the competent authority for Transport NSIPs as defined under the PA2008, the Secretary of State has undertaken an Appropriate Assessment under regulation 63 of the Habitats Regulations. The Secretary of State has undertaken an Appropriate Assessment in respect of the conservation objectives of three protected sites to determine whether the Project, either alone or in-combination with other plans or projects, will result in an adverse effect on site integrity.

The Secretary of State has considered all of the information available to him, including the advice from the SNCBs, the recommendations of the ExB and the representations of IPs, including the Applicant.

The Secretary of State is satisfied that, given the relative scale and magnitude of the identified effects on the qualifying features of the Humber Estuary SAC, SPA and Ramsar and where relevant, the measures in place to avoid or reduce potential adverse effects secured in the AMEP DCO and DML, there would not be any implications for the achievement of the respective conservation objectives and therefore adverse effects on site integrity can be excluded for the qualifying features set out in Table 3.

However, the Secretary of State concurs with Applicant, NE and the ExB that adverse effects on integrity cannot be ruled out beyond reasonable scientific doubt in relation to:

Humber Estuary SAC and Ramsar:

- from the loss of estuarine habitat (H1130), intertidal mudflat/sandflat (H1140 / H1310) and saltmarsh (H1330) from reclamation to construct the quay.

Humber Estuary SPA and Ramsar:

- from (i) direct habitat loss (estuarine and intertidal mudflat) and (ii) indirect functional habitat loss through disturbance (from the combination of noise, lighting and visual impacts) for: avocet; marsh harrier; bar-tailed godwit; black-tailed godwit; dunlin; knot; redshank; shelduck; and six wintering waterbird assemblage species (curlew, lapwing, mallard, ringed plover, shoveler and teal);
- from displacement of the following waders from high tide NKHP roost sites for: black-tailed godwit; avocet; dunlin; bar-tailed godwit; redshank; SPA waterbird assemblage qualification; Ramsar criterion 5 - assemblages of non-breeding waterfowl; and Ramsar criterion 6 – dunlin, black-tailed godwit, redshank, bar-tailed godwit.

In reaching the consenting decision for the original AMEP DCO, the Secretary of State assessed the magnitude and extent of effects on the qualifying features of the Humber Estuary SAC, SPA and Ramsar and concluded that there would be a number of adverse effects. Taking into account the Proposed Change application documents and Examination material, the Secretary of State agrees with the ExB, 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. Therefore, the AEoI identified for the AMEP DCO would also apply to the Proposed Change application and that there would be no additional AEoI to those identified for the AMEP DCO.

The Secretary of State has taken note of the details of the ExB's consideration of the effects for the habitats of the Humber Estuary SAC and Ramsar site and the birds species of the Humber Estuary SPA and Ramsar site.

The Secretary of State has also considered the matters set out by the ExB regarding mitigation and that the majority of those measures proposed within the RIAA to avoid adverse effects were initially proposed with the AMEP DCO. He has also noted that the ExB considered the mitigation measures identified in paragraph 8.28 of the RIAA [APP-068] to be adequate and appropriately secured.

The Secretary of State has had regard to the proposed additional measures to further mitigate the dredging impacts, even though the Applicant stated that these are not required in order to reach the conclusion of no AEoI of the Humber Estuary SAC, SPA and Ramsar site; and that this position has not been disputed. While noting this position, the Secretary of State has taken account that the ExB is content that these measures are adequately secured through the Marine Environmental Management and Monitoring Plan in the AMEP DCO.

On the basis that the Proposed Changes have not resulted in any materially different effects to the AMEP DCO, the Secretary of State agrees with the ExB and sees no reason to either amend the existing mitigation or secure any further additional mitigation. The Secretary of State agrees with the ExB's conclusions.

## 6 Consideration of Case for Derogation

Based on the AA the Secretary of State cannot conclude, beyond reasonable scientific doubt, the absence of an adverse effect from the Project alone, on the integrity of the features of the Humber Estuary SAC, SPA, Ramsar set out in section 5.4 of this HRA report.

The Secretary of State has therefore reviewed the Project in the context of regulations 64 (considerations of overriding public interest) and 68 (compensatory measures) of the Habitats Regulations to determine whether the Project can be consented.

Regulation 64 allows for the consenting of a project that is required for imperative reasons of overriding public interest (“IROPI”), even though it would cause a negative adverse effect on the integrity of a protected site.

Consent may only be given under regulation 64 where no alternative solutions to the project are available which are less damaging to the affected protected site and where regulation 68 is satisfied.

Regulation 68 requires the appropriate authority to secure any necessary compensatory measures to ensure that the overall coherence of the UK’s national site network is protected.

This part of the Project review has followed a sequential process whereby:

- Alternative solutions to the Project have been considered;
- Consideration has been given to whether there are IROPI for the Project to proceed; and
- Compensation measures proposed by the Applicant for ensuring that the overall coherence of the UK’s National Site Network is protected have been assessed.

The Secretary of State has had regard to guidance on the application of HRA published by the Planning Inspectorate (2017) (Advice Note 10), guidance produced by Defra (2012) and the European Commission (2018), together with recently published joint guidance by Defra, NE, the Welsh Government and Natural Resources Wales (2021) on ‘Habitats Regulations Assessment: protecting a European site’ (the “2021 joint guidance”). It is noted that the Defra (2012) guidance was withdrawn on 15 March 2021. This former guidance has subsequently been updated and replaced by the 2021 joint guidance.

## 7 Stage 3: Assessment of Alternative Solutions

The Secretary of State has given regard to the objectives of the Project as described by the Applicant and has considered how these objectives could be met by alternative means. The Applicant submitted a Derogations Report [APP-069] which provided a review and, where relevant, updates to the information that was submitted for the consented AMEP DCO. As stated in the ExB report, the Applicant's Overall Summary of Case [REP6-002] sets out the benefits of the Proposed Changes. It notes that the gains of the original project in terms of employment and its contribution to renewable energy targets all remain, the latter target having increased from an 80% reduction on 1990 greenhouse gas emissions to a 100% reduction (net zero), thus increasing the need for the project. 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. The material change would allow the quay to more easily handle vessels now likely to deliver offshore marine energy infrastructure. Moreover, the increased crane height would allow larger turbines to be processed. In respect of alternatives, this included updates to:

- The zero-option/do nothing; Manufacturing facilities for next generation offshore wind turbines require a quayside location and the development cannot proceed without it. Due to the increase in size of offshore wind turbines, they cannot be manufactured and transported over any significant distance by road.
- Alternative sites; as concluded in the 2011 DCO HRA, paragraphs 7.5.1 to 7.5.60 consideration was given to possible alternative sites for the proposed development. It is still the conclusion that there are no alternative site to AMEP that would have a less damaging effect on the Natura 2000 Network. The Secretary of State notes that this is particularly the case because the site already benefits from a Development Consent Order.
- Alternative scale of development; the Secretary of state agrees that the alternative of reducing the scale of development is discounted as it is inconsistent with the imperative need to urgently provide significant facilities for the manufacture of offshore wind turbines.
- Alternative designs; the Secretary of State agrees that there is no feasible alternative design with a lower environmental impact that will be suitable for use by the offshore energy sector.
- Alternative operation of the facility; the Secretary of State agrees with the conclusions reached in paragraph 7.8.16 of the submitted HRA in relation to the AMEP DCO that alternative 2 (maximum pre assembly on site) is the alternative proposed and it provides an optional environmental and economic solution and reduces risk to as low as reasonably practicable by substantially reducing trans-shipment of goods to a construction port.

Following a review of the information submitted by the Applicant and comments provided by IPs, as well as the recommendation of the ExB, and having identified the objectives of the Project and considered all alternative means of fulfilling these objectives, the Secretary of State is satisfied that no alternative solutions are available that would meet the Project objectives, and IROPI must be considered.

## 8 Stage 4: Imperative Reasons of Overriding Public Interest (“IROPI”)

The HRA Derogation Provisions provide that a project having an adverse effect on integrity on a protected site may proceed (subject to a positive conclusion on alternatives and provision of any necessary compensation) if there are IROPI.

This section of the HRA determines whether there are IROPI for the Project to proceed subject to adequate compensatory measures being implemented.

The HRA Derogation Provisions identify certain in-principal grounds of IROPI that may be advanced in favour of such a project. Where the site concerned hosts a priority natural habitat or a priority species, grounds for IROPI should include human health, public safety or beneficial consequences of primary importance to the environment but otherwise may be of a social or economic nature.

The parameters of IROPI are explored in guidance provided by Defra<sup>5</sup> and the European Commission<sup>6</sup>, which identify the following principles:

- Imperative – Urgency and importance: There would usually be urgency to the objective(s), and it must be considered "indispensable" or "essential" (i.e. imperative). In practical terms, this can be evidenced where the objective falls within a framework for one or more of the following;
  - (i) actions or policies aiming to protect fundamental values for citizens' life (health, safety, environment);
  - (ii) fundamental policies for the State and the Society; or
  - (iii) activities of an economic or social nature, fulfilling specific obligations of public service.
- Public interest: The interest must be a public rather than a solely private interest (although a private interest can coincide with delivery of a public objective).
- Long-term: The interest would generally be long-term; short-term interests are unlikely to be regarded as overriding because the conservation objectives of protected sites are long term interests.
- Overriding: The public interest of development must be greater than the public interest of conservation of the relevant protected site(s).

In respect of project objectives and IROPI, the Applicant’s updated information included:

- achieving energy targets including those within the Climate Change Act 2008, the Paris Agreement, and the government target of 40GW of offshore wind electricity generation by 2030;
- the need to decarbonise energy production;
- the need for security of UK energy supply;
- the need for large capacity offshore turbines;
- the need to rebalance the UK economy;
- the need for growth in UK manufacturing; and

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<sup>5</sup> [https://consult.defra.gov.uk/marine-planning-licensing-team/mpa-compensation-guidance-consultation/supporting\\_documents/mpacompensatorymeasuresbestpracticeguidance.pdf](https://consult.defra.gov.uk/marine-planning-licensing-team/mpa-compensation-guidance-consultation/supporting_documents/mpacompensatorymeasuresbestpracticeguidance.pdf)

<sup>6</sup> [https://ec.europa.eu/environment/nature/natura2000/management/docs/art6/EN\\_art\\_6\\_guide\\_jun\\_2019.pdf](https://ec.europa.eu/environment/nature/natura2000/management/docs/art6/EN_art_6_guide_jun_2019.pdf)

- the need to regenerate the Humber sub-region.

The Secretary of State is satisfied that there are imperative reasons of overriding public interest for the Project to proceed subject to adequate compensatory measures being implemented as set out in the AMEP DCO. In arriving at his decision, the Secretary of State has considered the objectives set out by the Applicant and has reviewed how the Project addresses those objectives by providing a new quay with direct access to a significant land parcel that is to be developed to support the manufacture of components for the offshore renewable energy sector. The Secretary of State accepts this is a sector that must grow to enable the delivery of offshore wind and agrees that the Project provides a public benefit which is essential and urgent despite the harm to the integrity of the Humber Estuary.

## 9 Stage 5: Proposed Compensatory Measures

The Secretary of State, having in accordance with regulation 64 determined that there are no alternative solutions and that the Project must be carried out for imperative reasons of overriding public interest, has considered below the requirements of regulation 68, which are to provide that any necessary compensatory measures are secured to ensure that the overall coherence of the national site network is protected.

The HRA Report was revised at D1 [REP1-023] to explain that a compensation scheme was agreed for the AMEP DCO. It concluded that given the magnitude of impacts would be slightly reduced as a result of the Proposed Changes, the agreed compensation scheme is expected to provide the appropriate quantum of compensation. Details of the losses and compensation ratios for the habitat that would be lost were provided in Technical Appendix UES11-2 (submitted in [APP-137] and revised in [REP1-027]).

NE [RR-007] [REP1-002][REP4-023] confirmed that compensatory habitat at Cherry Cobb Sands will remain adequate and advised [REP1- 002] that it should be created as soon as practically possible and commenced at the latest 7 months prior to construction of the quay.

The case regarding alternative solutions and IROPI for the AMEP project was tested and accepted within the SoSDfT HRA for the AMEP DCO. Similarly, the compensation secured within the AMEP DCO has been subject to scrutiny within the Examination for that application and was deemed suitable and appropriate by the SoSDfT in the making of that Order.

The ExB report has considered 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.

Furthermore, the ExB notes that the compensation scheme has not been altered, despite a slight reduction in the extent of effects. The ExB is therefore content that, as stated in the Applicant's Overall Summary of Case [REP6-002], there would be a slightly greater ratio of compensatory habitat being provided to that being lost, when compared to the AMEP DCO. The ExB has concluded that the Proposed Changes would not materially change the outcomes of the original assessment, and most importantly, would not result in additional adverse effects. The ExB therefore considers that the derogations case for the AMEP DCO can be relied upon for the Proposed Changes.

Having given due consideration to the information presented to him, the Secretary of State agrees with the position of the Applicant / the advice of NE / other key stakeholders / the recommendations of the ExB. The Secretary of State concludes that sufficient legal and technical arrangements are in place to secure that the compensation package as proposed is appropriate and guaranteed to be implemented under the AMEP DCO, and that secure and binding plans are in place to deliver and manage the measures on an ongoing basis.



## 10 Conclusions

The Secretary of State has carefully considered all the information presented within the Application, during the Examination and the representations made by all IPs, along with the ExB's Recommendation Report. The Secretary of State concludes that likely significant effects cannot be excluded at three sites, when the Project is considered alone or in-combination with other plans and projects. These sites were taken forward to an AA to consider whether the Project would result in any adverse effects upon the integrity of these sites.

Having given due consideration to the information and analysis presented to him, and having made a full assessment of the potential for AEoI at each of the protected sites for which the potential for LSE was identified, the Secretary of State concludes that an adverse effect on the integrity of as set out in section 5 cannot be excluded.

The Secretary of State is satisfied that there are no alternatives to fulfilling the objectives of the Project and that the Project provides a benefit that is imperative to the public interest. The Secretary of State is also satisfied that the public benefits of the Project would outweigh the impacts to the Humber Estuary SAC, SPA and Ramsar protected site.

The Secretary of State is satisfied that necessary compensatory measures to ensure that the overall coherence of the National Site Network can be secured. The final specifications of these compensatory measures are set out in section 5.1 and will be secured and delivered through the Able Marine DCO.