

**THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER 2014 (SI 2014/2935)**  
**('THE DCO')**

**APPLICATION FOR A NON-MATERIAL CHANGE TO THE DCO**

**RESPONSE TO REPRESENTATIONS**

**1 Introduction**

- 1.1 Able Humber Ports Limited's ('Able') application for a non-material change was submitted to the Secretary of State on 17 September 2018 (the 'Application').
- 1.2 A deadline of the 29 October was set for consultees and members of the public to submit representations. The Planning Inspectorate received eight representations relating to the application. Three of these representations were made by objectors to the original DCO application (C.GEN Killingholme Limited, C.RO Ports Killingholme Limited and Associated British Ports).
- 1.3 This document responds to the key points raised in the eight representations.

**2 C.GEN Killingholme Limited and C.RO Ports Killingholme Limited**

Two separate representations were received from C.GEN Killingholme Limited and C.RO Ports Killingholme Limited. However, as the points raised are substantially the same we have addressed them together.

Key points raised	Comments/Actions/Response
The proposals require an updated environmental statement: this means they are not a non-material change	<p>Able, has been advised by ERM Consultants Ltd, who have carefully considered the potential environmental effects of the proposed change and have concluded that the re-siting of Mitigation Area A will not give rise to any new, or materially different, likely significant effects on the Environment. Further details have been provided in <b>Section 3.4</b> and <b>Table 3.1</b> of the <b>Application Statement</b>.</p> <p>Able also considers that the change is neither captured by the definition of Schedule 1 development at paragraph 24 of Schedule 1 nor the definition of Schedule 2 development at paragraph 13(a) of Schedule 2 of the <i>Infrastructure Planning</i></p>

	<p><i>(Environmental Impact Assessment Regulations 2017.</i></p> <p>On this basis Able has concluded that an updated environmental statement is unnecessary. Further detail on this point is set out in section 3.4 of the <b>Application Statement</b>.</p>
<p>The environmental information is incomplete. It only assesses the consolidation of mitigation at Halton Marshes. It does not assess the impacts of any development on the land freed up.</p>	<p>The subject of the application is the relocation of Mitigation Area A to the Halton Marshes site. Any future development of the current site of Mitigation Area A would need to be the subject of further permissions and assessment at that time.</p> <p>If such development were likely to have significant effects on the environment, any such application would need to take into account the in-combination effects of the amended AMEP scheme.</p>
<p>The Applicant (Able UK) is using processes under the Planning Act 1990 and the Planning Act 2008 to materially change the nature and details of the Project approved in its 2014 development consent order without proper scrutiny. The Applicant is using the benefit of its development consent order to progress a project that is not in itself a nationally significant infrastructure project.</p>	<p>The Application is for the relocation of a single mitigation area only. No elements of the Able Marine Energy Park ('AMEP') scheme are being removed and neither are new elements being added.</p> <p>Able consider that a non-material change application is the appropriate process for making the proposed change to the DCO.</p> <p>A similar change has recently been made to The Ferrybridge Multifuel 2 Power Station Order 2015 using the same process.</p>

### 3 North Lincolnshire Council

Key points raised	Comments/Actions/Response
<p>The proposed amendments to the DCO are material in nature because the proposed mitigation area is outside of the existing DCO limits.</p>	<p>Able does not consider that moving Mitigation Area A to a new location outside of the Order Limits has any bearing on the materiality of the change. This is supported by the Department for Communities and</p>

	<p>Local Government Guidance on changes to development consent orders<sup>1</sup> which does not include this as a factor to be taken into account when deciding whether or not a change is material.</p>
<p>The proposed amendments to the DCO are material in nature because Mitigation Area A was a significant factor in the consideration of the DCO application as the site was required to ensure that there were no adverse effects on the qualifying features of the European Site (Humber Estuary). Therefore, the quality, scale and nature of that particular area of land was integral to the consideration of the environmental impact of the development.</p>	<p>As described in the Application Statement, Able has carefully considered the effect of relocating Mitigation Area A and has concluded that it will not give rise to any new, or materially different, likely significant effects on the environment.</p> <p>Able agrees the mitigation area is a significant part of the project but in this instance its precise location is not, as the negative impacts of the scheme can be equally mitigated at both the consented site and the proposed site.</p> <p>As the appropriate assessment that North Lincolnshire Council themselves undertook when granting permission for the Halton Marshes site (PA/2016/649) states that, <i>'it is reasonable to conclude that the mitigation for loss of feeding, roosting and loafing habitat for curlew from Killingholme Marsh, that would have been provided by Area A, can effectively be delivered by the provision of 20 hectares of core habitat along with appropriate buffers at HMWGS'</i> (emphasis added), Able further considers that the change will not affect the integrity of the Humber Estuary European Site. Further detail is set out at <b>Section 3.3</b> of the <b>Application Statement</b>.</p> <p>Able also notes that Natural England observes in its response to the Application that <i>'the proposed change of location to Halton Marshes for the mitigation for the loss of functionally linked land at Killingholme Marshes, alongside mitigation measures for other permissions, will create a larger, contiguous area of wet grassland habitat</i></p>

<sup>1</sup> Department for Communities and Local Government (December 2015) '*Planning Act 2008: Guidance on Changes to Development Consent Orders*'

	<i>overall that will potentially have significant value for SPA birds’.</i>
<p>As part of the initial approach to the Local Authority requesting consent for the removal of Mitigation Area A, to be substituted by Halton Marshes, it was stated that this would have a neutral environmental impact as the area was not to be developed. North Lincolnshire Council has since received planning application Ref PA/2017/2141 to develop a large part of Mitigation Area A as a car storage and distribution facility and for port related storage. This would detract from the stated neutral impact.</p>	<p>Able initially submitted the proposed change to the LPA in accordance with the process set out in Schedule 11, Requirements 5 and 6. As part of that application the word <i>‘neutral’</i> appears at Paragraph 1.2.2 in the following context:</p> <p><i>‘For the avoidance of doubt therefore, the LPA is not being asked under this application to permit any new works within the space currently set aside on the application drawings for Mitigation Area A. The LPA is merely being requested to approve the deletion of Mitigation Area A as the environmental effect of doing so is <u>neutral</u> <b><u>because the functionality of Mitigation Area A is fully replicated within the Halton Marshes Wet Grassland (HMWG) scheme’.</u></b></i> (emphasis and underline added).</p> <p>As noted above, the subject of the application is the relocation of Mitigation Area A to the Halton Marshes site. Any future development of the current site of Mitigation Area A would need to be the subject of further permissions and assessment.</p>

4 **Sheila Henley**

Key points raised	Comments/Actions/Response
No objection to this change per se.	Able is grateful for the feedback on the application.
Please could further consideration be given to addressing in mitigation to assist the wider ecology, biodiversity of the flora and fauna in the area to help those land based animals, birds, amphibians and insects and other	<p>The development of the Halton Marshes Wet Grassland Scheme has been undertaken in consultation with North Lincolnshire Council’s Environment Team and Natural England.</p> <p>The application for the scheme was supported by numerous ecological surveys and</p>

<p>migrant birds; act as a windbreak and reduce soil erosion.</p> <p>Suggest:</p> <ol style="list-style-type: none"> <li>1. infilling any retained hedges as well as providing more trees to augment other planting and small areas of woodland.</li> <li>2. depth of screening at boundaries especially around the port, its associated compounds and other commercial areas. This seems to have reduced on looking south by reduction in size or removal / death of the surrounding hedges.</li> <li>3. planting bull rushes and other marshland plants / meadow seed in margins. A similar planting mix occurs on the east side of Skitter Road and attracts many insects, including bees, butterflies and dragon flies as well as small birds</li> <li>4. options to use adjoining land for similar schemes which is not being used for crops or appears to give low yields.</li> </ol>	<p>appropriate mitigation was agreed on a species by species basis with Natural England.</p>
<p>Help reduce the risk of fly tipping that occurs at north at end of Skitter Road by Skitter Beck / Sea Wall access and in gateway along Marsh Lane</p>	<p>Able understands that this takes place on a public road and is therefore a matter for the local authority.</p>

## 5 Associated British Ports

Key points raised	Comments/Actions/Response
<p>The Applicant has failed to genuinely assess the potential impacts and effects of the proposed change to the approved Order.</p>	<p>Able has carefully considered the potential impacts and effects of the proposed change. Further details of this assessment can be found in the <b>Application Statement</b>.</p>
<p>The Applicant has failed to consider, whether, in the light a properly undertaken assessment, the proposed change constitutes EIA development.</p>	<p>As explained in Section 2 above, Able has carefully considered whether the proposed change constitutes EIA development.</p>

	<p>Able, has been advised by ERM Consultants Ltd, who have concluded that the re-siting of Mitigation Area A will not give rise to any new, or materially different, likely significant effects on the Environment. Further details have been provided in <b>Section 3.4</b> and <b>Table 3.1</b> of the <b>Application Statement</b>.</p> <p>Further, Able considers that the proposed change does not constitute Schedule 1 or Schedule 2 development for the purposes of the <i>Infrastructure Planning (Environmental Impact Assessment) Regulations 2017</i>. Further detail on this point can be found in <b>Section 3.4</b> of the <b>Application Statement</b>.</p>
<p>The Applicant has failed to consider, whether, in the light a properly undertaken assessment, a fresh Habitats Regulation Assessment is required.</p> <p>Question whether reliance by the applicant on the appropriate assessment undertaken by North Lincolnshire Council in respect of the planning permission to develop ecological habitat at Halton Marshes in terms of the NMA application is sufficient.</p>	<p>A Habitats Regulations Assessment is only required in respect of those features and interests that relate to a Natura 2000 site and any effects on them. In respect of this particular mitigation area the only significant HRA feature is the Curlew.</p> <p>The appropriate assessment undertaken in respect of the permission to develop habitat at the Halton Marsh site expressly included assessment of the development's intended purpose of providing mitigation habitat for Curlew that would be displaced by AMEP. This assessment concluded that the proposals would not result in an adverse impact on the integrity of the Humber Estuary European Site. This assessment was included with the application at <b>Appendix C</b> to the <b>Application Statement</b>.</p> <p>Able does not therefore consider that a further Habitats Regulation Assessment is required, and even if it was undertaken, there is strong evidence that it would reach the conclusion of no adverse effect on integrity, the same conclusion reached by North Lincolnshire Council when carrying out an appropriate assessment of the same relocation proposal, meaning the relocation was non-material.</p>

	<p>Further, Able will enter into a revised Terrestrial Environmental Management and Monitoring Plan (TEMMP) with Natural England to ensure that any adverse effects on the site integrity are avoided.</p> <p>Able has already discussed the revised TEMMP and the latest draft is included with the application at <b>Appendix F</b> to the <b>Application Statement</b>.</p>
<p>The Applicant has failed to properly assess the impact of the proposed change on the local area and local community.</p> <p>Given the potential size and scale of any future development that could be undertaken on the approximately 50 hectare site, we consider there is very real potential for significant impact on the amenity of the local area and community Accordingly, we are of the view that this factor alone is sufficient to constitute a material change.</p>	<p>The subject of the application is the relocation of Mitigation Area A to the Halton Marshes site and Able has carefully assessed the effects of this change. Further details of this assessment are included in the <b>Application Statement</b>.</p> <p>Any future development of the current site of Mitigation Area A would need to be the subject of further permissions and assessment.</p>
<p>The Applicant is attempting to secure a fundamental alteration to an approved Order on the basis of a high-level review lacking basic information and an analysis.</p> <p>For example, the assessment set out in Table 3.1 of the supporting statement is worryingly high-level. It lacks detail and does not contain any real or meaningful consideration of the impacts of the proposed changes compared with the impacts assessed in the original Environmental Statement.</p>	<p>The change applied for is the relocation of Mitigation Area A only. No elements of the AMEP scheme are being removed and neither are new elements being added.</p> <p>Where an amendment is non-material it is axiomatic that the environmental issues are capable of being addressed by a screening exercise, which Able and its Consultant has recorded at <b>Table 3.1</b> of the <b>Application Statement</b>. Able considers that the assessment carried out is appropriate for and proportionate to the change applied for.</p>
<p>The Applicant has failed to consider a range of relevant factors which may result in new or different changes to those identified or assessed in the Environmental Statement, such as the date the original Environmental Statement was prepared, changes to committed development, updates to planning policy and any changes to guidance affecting the assessment methodology used.</p>	<p>Able, with input from expert external consultants, ERM Consultants Ltd, has considered the effects of the proposed change and set out the result of this assessment in <b>Section 3.4</b> of the <b>Application Statement</b>.</p> <p>The respondent has not substantiated this allegation with any precision or evidence, in contrast to the applicant having instructed</p>

	its consultants ERM to consider each environmental topic as to whether the change gives rise to significant new or different environmental effects (See <b>Section 3</b> of the <b>Application Statement</b> ).
The Applicant has failed to properly to assess the environmental effects of the proposed change being sought, particularly those impacts relating to ecology, landscape and cumulative and in-combination impacts that may have changed from those assessed in the Environmental Statement.	<p>A summary of the assessment of environmental impacts of the change has been provided with the Application at <b>Section 3.4</b> of the <b>Application Statement</b>.</p> <p>Able considers that this assessment is proportionate to the change applied for.</p>
Query whether the proposed relocated area can actually provide the ecological benefits required for those species that will be displaced, such as curlew and bats.	<p>Able considers that the relocated Mitigation Area A will provide the ecological benefits required.</p> <p>This is supported by the conclusions of the appropriate assessment carried out by North Lincolnshire Council in relation to the planning permission (PA/2016/649) for the Halton Marshes Wet Grassland (see <b>Appendix C</b> of the <b>Application Statement</b>) and the results of Able's own assessment of the environmental effects of the proposed change (See <b>Section 3</b> of the <b>Application Statement</b>).</p>
Concerned that the applicant appears to have failed properly to assess the impacts arising from the reduction in the overall size of the mitigation area	<p>When relocated, the core area required to support relevant species will remain the same and will not be reduced.</p> <p>The extent of buffer land, required to ensure that the core area is undisturbed, will be reduced as a consequence of the move to the new, combined site. However, the buffer needed for this new site has been discussed with and approved by Natural England. Furthermore, the width of the buffers was taken into account in the Appropriate Assessment for HMWG (see <b>Section 4.6 et Seq</b> of <b>Appendix C</b> to the <b>Application Statement</b>).</p>
The applicant has failed to properly take into account cumulative and in-combination	The subject of the application is the relocation of Mitigation Area A to the Halton



<p>effects including whether any potential cumulative effects could arise as a result of the use of the area for car storage and port uses.</p>	<p>Marshes site. Able has carefully considered the effect of relocating Mitigation Area A and has concluded that it will not give rise to any new, or materially different, likely significant effects on the environment.</p> <p>Any future development of the current site of Mitigation Area A would need to be the subject of further permissions and assessment.</p> <p>Impacts on all species are addressed in the Feasibility Study included in <b>Appendix A</b> of the <b>Application Statement</b>.</p> <p>The principal impact being mitigated at this site was the loss of existing terrestrial land used as roosting/foraging habitat by Curlew. This impact is <u>fully mitigated</u>, leaving no residual impact to act either cumulatively or in combination with the effects of any other project.</p>
<p>The Applicant has considered the wrong scheme when assessing whether the scheme is EIA development.</p>	<p>Section 3.4 includes an assessment of the proposed change.</p>
<p>The Applicant's assessment is insufficient to allow it to conclude that the changes will not result in any significant adverse effects on the environment.</p> <p>The applicant must request a screening opinion from the Secretary of State in respect of the proposed change to establish whether environmental impact assessment is required in accordance with the EIA Regulations. In the absence of such a screening opinion, it must be the case that the Application cannot be considered to be a non-material change.</p>	<p>Able considers that the assessment it has undertaken is appropriate and proportionate to the change applied for and the conclusions are robust.</p>
<p>Our client is concerned that the applicant has actually failed to assess the material impact of the proposed location in accordance with the stated landscape mitigation objectives. In particular, the proposed relocation would result in the loss of a very large area of boundary planting that was specifically</p>	<p>Mitigation area A was to be developed to create open areas in the interest of roosting birds, not a screen. Accordingly, the proposals included hedge removal and tree clearance. The details of the proposals are set out in the Indicative Landscape</p>

identified as an important measure to break up the scale and mass of buildings and hardstand forming part of the AMEP and its consequential impact on the SRFLWS and surrounding landscape character areas.	<p>Masterplan which was submitted with the application for the DCO.</p> <p>The potential Landscape and Visual effects of the proposed change have been properly and fully, considered and the results set out in <b>Table 3.1</b> in the <b>Application Statement</b>. The re-siting of Mitigation Area A is not considered to give rise to any material change.</p>
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## 6 Natural England

Key points raised	Comments/Actions/Response
Mitigation Area A was required to offset the loss of Functionally Linked Land (FLL) for the Humber Estuary Special Protection Area (SPA) associated with the development of Killingholme Marshes. Therefore the alternative site at Halton Marshes also needs to be able to offset the loss of FLL.	<p>Able agrees that the alternative site at Halton Marshes needs to be able to offset the loss of habitat as a result of the AMEP development and considers that this will be achieved.</p> <p>This is supported by both the conclusions of the Appropriate Assessment North Lincolnshire Council undertook when granting permission (PA/2016/649 for the Halton Marshes site) and Able's own assessment of the potential environmental effects of the proposed change.</p>
The proposed change of location to Halton Marshes for the mitigation for the loss of functionally linked land at Killingholme Marshes, alongside mitigation measures for other permissions, will create a larger, contiguous area of wet grassland habitat overall that will potentially have significant value for SPA birds.	Able is grateful for NE's comments on the application.
Natural England considers that the proposal constitutes a significant change to the mitigation set out in the original assessment. Therefore, whether or not this is considered a material amendment, it is imperative that the Habitats Regulations Assessment is updated and that the	Able does not consider that an update to the Habitats Regulation Assessment is required. This is because the appropriate assessment undertaken in respect of the permission to develop habitat at the Halton Marsh site expressly included assessment of the development's intended purpose of providing mitigation habitat for SPA birds that would be

impacts of the relocation of the mitigation area are clearly defined.	<p>displaced by AMEP. This assessment concluded that the proposals would not result in an adverse impact on the integrity of the Humber Estuary European Site. This assessment was included with the application at <b>Appendix C</b> to the <b>Application Statement</b>.</p> <p>Further, Able will enter into a revised Terrestrial Environmental Management and Monitoring Plan (TEMMP) with Natural England to ensure that any adverse effects on the site integrity are avoided.</p> <p>Able has already discussed the revised TEMMP and the latest draft was included with the application at <b>Appendix F</b> to the <b>Application Statement</b>.</p>
An updated Terrestrial EMMP, that includes this updated mitigation scenario, will need to be submitted to and agreed by Natural England.	<p>Able intends to enter into a revised TEMMP with Natural England.</p> <p>A draft revised TEMMP which takes into account the proposed re-siting of Mitigation Area A has already been commented on by Natural England and Able welcomes the opportunity to finalise the document.</p> <p>A copy of the current draft of the revised TEMMP was included with the application at <b>Appendix F</b> to the <b>Application Statement</b>.</p>

## 7 ESP Gas Group Ltd

Key points raised	Comments/Actions/Response
Confirmation that ESP Gas Group Ltd has no gas or electricity apparatus in the vicinity of the site address and will not be affected by the proposed works.	<p>Able is grateful for the response to the application.</p> <p>No action required.</p>

Key points raised	Comments/Actions/Response
Suggest that a car storage facility does not constitute a nationally significant infrastructure project.	The subject of the application is the relocation of Mitigation Area A to the Halton Marshes site.
<p>The DCO was granted on the premise that wind turbines would be constructed, and along with other infrastructure, would provide employment for c.3,000 people and reduce fossil fuel consumption.</p> <p>In contrast, the proposed car-storage Area, which is the reason for the non-material change application, would provide low quality, zero hour contracted, unskilled employment for a fraction of this number of people.</p> <p>The extra vehicles imported would also increase the consumption of fossil fuels, which is completely hostile to the original scheme.</p>	<p>The subject of the application is the relocation of Mitigation Area A to the Halton Marshes site. Any future development of the current site of Mitigation Area A would need to be the subject of further permissions and assessment.</p>
Mitigation Area A was intended to provide a haven for the wildlife of this area that would be displaced by the AMEP. I assume that the proposed replacement at Halton Marshes exists at the present time alongside that of mitigation Area A so therefore unless Halton Marshes was destined to be built upon, the change is not a replacement but a reduction in habitat.	<p>The baseline habitat at both sites is very similar, as are the proposed enhancements. The aim of the mitigation is to avoid an assessed impact.</p> <p>As demonstrated in the submitted documents, the adverse impact of the development will be avoided if the mitigation is provided at Halton Marshes.</p>
The amendment would result in a massive car storage facility being built less than 10 metres from my property on green fields that are currently reserved as habitat for wildlife and therefore cannot be described as a 'non material change'	<p>The subject of the application is the relocation of Mitigation Area A to the Halton Marshes site.</p> <p>Any future development of the current site of Mitigation Area A will be the subject of further permissions and assessment.</p>

<p>The AMEP has become something so different from what was originally conceived that the amendment should not be granted and the DCO should be revoked.</p>	<p>The change applied for is the relocation of Mitigation Area. No elements of the Able Marine Energy Park ('AMEP') scheme are being removed and neither are new elements being added.</p>
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