

Date: 08 December 2020
Our ref: 334958
Your ref: TR030001 NMC



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Dear Sir/ Madam

NSIP Reference Name / Code: The Able Marine Energy Park (AMEP) Development Consent Order 2014 – S.I. 2014 No. 2935

1. a non-material change to amend the certified drawings set out in Requirement 6 of Schedule 11 (Requirements) of the DCO to remove reference to Area A and to introduce a new drawing which identifies the new site at Halton Marshes; and
2. a non-material change to Schedule 1 to confirm that the ecological mitigation will be provided in accordance with the environmental monitoring and management plans but to reflect that the re-siting of Area A to Halton Marshes will be outside of the Order limits.

Thank you for your consultation which was received by Natural England on 20 November 2020. In addition to our previous responses dated 24 October 2018, 13 December 2018 and 17 May 2019, below Natural England sets out our response to the additional information that has been provided by the Applicant in support of the application for a non-material change.

Natural England welcomes the additional information and confirmation that the current Mitigation Area A land will not be developed as part of the DCO and is excluded from the development limits.

For clarification, we confirm that we did not review the sHRA (dated 17 May 2019). We were not aware of its availability and did not receive a request from the SoS to review the document. Therefore, our letter of 17 May 2019, is not based on the contents of the sHRA (dated May 2019).

Revised shadow Habitats Regulations Assessment (dated November 2020)

The sHRA has considered the relocation of mitigation from Mitigation Area A to the Halton Marshes Wet Grassland site within the likely significant effects test, with reference to the conservation objectives for the relevant SPA features. These features have been identified as:

- SPA breeding marsh harrier.
- SPA waterbird assemblage

Regarding SPA breeding marsh harrier, Natural England is of the opinion that the main impact pathway would be through disturbance impacts during the construction phase of the wet grassland. As the construction phase is complete, we do not envisage any further significant impacts.

The focus of the HRA should be whether the relocation of the mitigation area from Area A to HMWG site will result in any impacts on the designated site features. The impacts of construction HMWG have been covered in a separate HRA. The Terrestrial Ecological Monitoring and Management Plan

has been agreed in principle, Natural England is therefore satisfied that HMWG is capable of delivering the required mitigation.

A key aspect which has not been addressed in the sHRA will be the timing of the relocation: it would be useful to specify the formal date of the relocation for future reference (once agreed). It is also worth noting that whilst construction works have been carried out at HMWG and the site is being managed in line with the TEMMP, it has not yet met all of the site objectives (i.e. it is not yet fully providing the functional habitat that is required). It may take a number of years for the site to fully meet its mitigation objectives and this should be addressed within the sHRA.

Target: Restore the overall abundance of the assemblage to a level which is above 153,934 whilst avoiding deterioration from its current level as indicated by the mean count or equivalent.

5.6.6 The relocation of Mitigation Area A is likely to have a neutral or potentially beneficial effect on the abundance of the assemblage. This is evidenced in Natural England's consultation response to the Application, dated 24 October 2018, which states that:

*'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**, (emphasis added, refer to Annex K).*

In a number of locations in the sHRA Natural England's previous comment that a larger wet grassland habitat at the HMWG site will potentially have a significant value for SPA birds has been used to support the relocation of Mitigation Area A (resulting in a neutral or beneficial effect). We advise that these are separate issues and NE's comment should not be used to evidence that the relocation will be beneficial. Separate evidence should be used to show that there will be no likely significant effect on the designated site.

Target: Maintain the structure, function and supporting processes associated with the feature and its supporting habitat through management or other measures (whether within and/or outside the site boundary as appropriate) and ensure these measures are not being undermined or compromised.

The assessment refers to the desirability of having 3 or 4 larger mitigation areas secured as part of the South Humber Gateway Mitigation Strategy and that by consolidating the mitigation areas this is helping to deliver this objective. Note 1 below addresses this point.

At 5.7.42, it states that cumulative impacts of North Killingholme Power Project and Able Logistics Park in relation to disturbance have been assessed 'in combination'. Since there were no disturbance effects identified alone (as the construction works have already been completed for HMWGS), we are unsure why it is deemed necessary to consider disturbance impacts in combination. If there are no effects at all causing disturbance to SPA/Ramsar birds, then it follows that there can be no LSE in combination.

Natural England's previous comments and how they have been addressed in the sHRA

The following comments (in italics) have been taken from our letter of 17 May 2019. We have indicated whether we consider that these points have been addressed.

In the original HRA, the screening assessment concluded that the effects of loss of terrestrial habitat within the AMEP site, which is used by foraging and roosting SPA birds (predominantly curlew), required mitigation to ensure that there were no adverse effect on the integrity of the Humber Estuary SPA and Ramsar site. It was agreed that Mitigation Area A was adequate to mitigate these losses. Natural England recommends that the updated HRA should address the complete loss of this Functionally Linked Land (FLL) on the development site. In addition, we advise that the HRA demonstrates that the proposed off-site mitigation at Halton Marshes will ensure that the overall coherence of the Natura 2000 network remains protected.

As mitigation Area A will remain as an open field in relation to the AMEP DCO development, the complete loss of functionally linked land does not need to be assessed as part of this application, however any future development proposals for this site should address this aspect.

SPA/Ramsar bird species are known to use both terrestrial and intertidal habitats at different times, for example, when water levels are high and there is little intertidal habitat available, terrestrial habitat provides an essential foraging and roosting habitat. Natural England recommends that the HRA should assess whether the new location of the mitigation at Halton Marshes can adequately provide this alternative terrestrial habitat function for birds that use the North Killingholme marshes fronting and North Killingholme Haven Pits (NKHP).

(Note 1) This aspect is not specifically addressed within the revised sHRA. As the mitigation area at HMWG site is at approximately the same distance as Mitigation Area A from North Killingholme Haven (NKH) Pits, we consider that there will be no significant effect from relocating the mitigation area on SPA birds using NKH Pits. However Natural England advises that additional information is required to confirm that SPA/ Ramsar waterbirds using the Killingholme intertidal frontage will not be adversely impacted from the relocation of the terrestrial mitigation area.

In the original HRA, the screening assessment also determined that the disturbance effects on birds using NKHP from construction activities (other than piling) and operation of AMEP required mitigation. It was concluded that based on a commitment to achieve 65 dB(A) L_{Amax} at the NKHP site boundary that there would be no adverse effect on birds within NKHP [Schedule 11 Requirement 42]. Therefore, if Mitigation Area A becomes part of the AMEP development site, Natural England would like assurance that the noise level commitment will continue.

This is not specifically addressed within the sHRA. However it is Natural England's view that as mitigation Area A will remain as an open field in relation to the AMEP DCO development, there will be no increase in noise levels at North Killingholme Haven Pits associated with relocating the mitigation area to Halton Marshes Wet Grassland site.

For any future applications for development on Mitigation Area A, Natural England considers that an assessment should be carried out to determine if there are any additional environmental impacts as the application has only previously considered this area as grassland. In particular it will be important to assess the ecological function provided by HMWG site at the time of any development proposals for Area A and whether HMWG will fully mitigate for the loss of Area A.

Application Statement Rev D

We note that section 3.1.3 refers to a letter from NE to PINS which was dated 13 Dec 2020, this should be 13 Dec 2018.

Indicative Masterplan

It is unclear why the red line boundary remains in the same location, although it is understood that this would now be removed from the DCO development limits. No further comment.

For any queries relating to the specific advice in this letter please contact Hannah Gooch at Hannah.Gooch@naturalengland.org.uk on 02082 258503 . For any new consultations, or to provide further information on this consultation please send your correspondence to consultations@naturalengland.org.uk.

Yours faithfully

Susan Wilson
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Natural England