

# **ABLE MARINE ENERGY PARK (MATERIAL CHANGE 2 – TR030006)**

## **UPDATED ENVIRONMENTAL STATEMENT**

### **CHAPTER 3: CHANGES TO PLANNING POLICY AND LEGISLATION**

**Able Marine Energy Park, Killingholme, North Lincolnshire**



SLR Ref: 416.01148.00005  
Version No: FINAL  
June 2021



## BASIS OF REPORT

This document has been prepared by SLR Consulting Limited with reasonable skill, care and diligence, and taking account of the manpower, timescales and resources devoted to it by agreement with Able UK Limited (the Client) as part or all of the services it has been appointed by the Client to carry out. It is subject to the terms and conditions of that appointment.

SLR shall not be liable for the use of or reliance on any information, advice, recommendations and opinions in this document for any purpose by any person other than the Client. Reliance may be granted to a third party only in the event that SLR and the third party have executed a reliance agreement or collateral warranty.

Information reported herein may be based on the interpretation of public domain data collected by SLR, and/or information supplied by the Client and/or its other advisors and associates. These data have been accepted in good faith as being accurate and valid.

The copyright and intellectual property in all drawings, reports, specifications, bills of quantities, calculations and other information set out in this report remain vested in SLR unless the terms of appointment state otherwise.

This document may contain information of a specialised and/or highly technical nature and the Client is advised to seek clarification on any elements which may be unclear to it.

Information, advice, recommendations and opinions in this document should only be relied upon in the context of the whole document and any documents referenced explicitly herein and should then only be used within the context of the appointment.

## CONTENTS

<b>3.1.0 INTRODUCTION .....</b>	<b>3-1</b>
<b>3.2.0 LEGISLATIVE FRAMEWORK .....</b>	<b>3-2</b>
Overview .....	3-2
Environmental Impact Assessment .....	3-2
Habitats Regulations Assessment .....	3-2
Environmental Permitting Regulations 2016 .....	3-3
Groundwater (England and Wales) Regulations 2009 .....	3-3
The Hazardous Waste (England and Wales) (Amendment) Regulations 2016 .....	3-3
The Waste (Circular Economy) (Amendment) Regulations 2020.....	3-3
Resources and Waste Strategy for England, 2018 ('Our Waste, our Resources: A Strategy for England')..	3-3
UK Fisheries Act 2020 .....	3-3
Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 .....	3-3
Other Consents and Approvals.....	3-4
Legislation Relevant to the Humber Estuary.....	3-4
<b>3.3.0 PLANNING POLICY &amp; GUIDANCE .....</b>	<b>3-5</b>
National Planning Policy .....	3-5
Local Planning Policy .....	3-5
East Inshore and East Offshore Marine Plans .....	3-6
<b>3.4.0 PLANNING HISTORY .....</b>	<b>3-8</b>

## DOCUMENT REFERENCES

### TABLES

Table 3-1: Planning Policy contained within the UES.....	3-5
Table 3-2: Local Planning Applications to The Site Since the DCO Application.....	3-8

### APPENDICES

Appendix UES3-1: East Inshore and East Offshore Marine Plans Compliance Table	
---	--

## 3.1.0 Introduction

- 3.1.1 This chapter of the Updated Environmental Statement (UES) presents an overview of the changes in legislation, planning policy and guidance of relevance to the site since the original Environmental Statement prepared for the DCO application in 2012 (the original ES).
- 3.1.2 As detailed within the original ES, the terrestrial areas of the site lie within the administrative boundaries of two local authorities, North Lincolnshire Council (NLC) and East Riding of Yorkshire Council (ERYC), and within close proximity to the boundary of North East Lincolnshire Council (NELC), changes to local planning policy will be considered for all three areas.
- 3.1.3 The policies within the East Riding of Yorkshire Local Development Framework (LDF) only apply to the compensation site. Whilst the material amendment does not affect this element of the DCO, changes to planning policy and legislation for this administrative area have still been identified for completeness.

## 3.2.0 Legislative Framework

### Overview

- 3.2.1 The Localism Act 2011 abolished the Infrastructure Planning Commission (IPC) and transferred the decision-making powers of the IPC to the Secretary of State. The Planning Inspectorate has been delegated the responsibility of accepting, examining and making recommendations on applications for Nationally Significant Infrastructure Projects (NSIP) and the Secretary of State takes the final decision on whether to grant or refuse an application.

### Environmental Impact Assessment

- 3.2.2 The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 came into force on 16<sup>th</sup> May 2017 and supersede the EIA Regulations utilised to undertake the original ES and assess the DCO.
- 3.2.3 These Regulations included the introduction of a number of new ‘topics’ for consideration within EIA’s, including Infrastructure, Waste, Population and Human Health, Climate and Carbon Balance, and Risks of Major Accidents and/or Disasters.
- 3.2.4 The assessments contained within this UES have duly considered the requirements of the more recently adopted Regulations and duly comply with the requirements laid out therein.

### Habitats Regulations Assessment

- 3.2.5 The Conservation of Habitats and Species Regulations (2010) was updated in 2017, and then again in 2019 to make them operable from 1 January 2021, with functions transferred to ministers from the European Commission. The Conservation of Habitats and Species Regulations 2017 Regulations are one of the pieces of domestic law that transposed the land and marine aspects of the Habitats Directive (Council Directive 92/43/EEC) and certain elements of the Wild Birds Directive (Directive 2009/147/EC) (known as the Nature Directives). The changes are made by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.
- 3.2.6 Given that the site is within close proximity to the Humber Estuary SAC, Humber Estuary SPA and the Humber Estuary Ramsar Site, there is the obligation to undertake a further assessment process under the Conservation of Habitats and Species Regulations 2017(as amended) (the 2017 Regulations), which transpose into national law the land and marine aspects of the Habitats Directive (Council Directive 92/43/EEC) and certain elements of the Wild Birds Directive (Directive 2009/147/EC) (known as the Nature Directives).
- 3.2.7 One of the changes introduced by the 2019 Regulations is that Special Areas of Conservation (SAC) and Special Protection Areas (SPA) in the UK no longer form part of the EU’s Natura 2000 ecological network. Under the 2019 Regulations, a ‘national site network’ on land and at sea has been created which includes existing SACs and SPAs and new SACs and SPAs designated under the 2019 Regulations. Any references to Natura 2000 in the 2017 Regulations and in guidance now refers to the new national site network.

## **Environmental Permitting Regulations 2016**

- 3.2.8 The Environmental Permitting Regulations 2016 consolidate and replace the Environmental Permitting Regulations 2010. The Environmental Permitting Regulations 2016 have been duly considered within Chapter 7: Geology, Hydrogeology and Ground Conditions.

## **Groundwater (England and Wales) Regulations 2009**

- 3.2.9 The Groundwater (England and Wales) Regulations 2009 were revoked by the Environmental Permitting Regulations 2010, which have since been superseded by the Environmental Permitting Regulations 2016. The Groundwater (England and Wales) Regulations 2009 have been duly considered within Chapter 7: Geology, Hydrogeology and Ground Conditions.

## **The Hazardous Waste (England and Wales) (Amendment) Regulations 2016**

- 3.2.10 The Hazardous Waste (England and Wales) (Amendment) Regulations 2016 came into force on 1<sup>st</sup> April 2016, and they amend the Hazardous Waste (England and Wales) Regulations 2005. The 2016 Regulations revoke Part 5 of the 2005 Regulations which removes the requirement for hazardous waste producers to register with the Environment Agency. The Hazardous Waste (England and Wales) (Amendment) Regulations 2016 have been duly considered within Chapter 23: Waste.

## **The Waste (Circular Economy) (Amendment) Regulations 2020**

- 3.2.11 The Waste (Circular Economy) (Amendment) Regulations amend a number of pieces of primary and secondary legislation on waste to meet EU legislation and its requirements. The Waste (Circular Economy) (Amendment) Regulations 2020 have been duly considered within Chapter 23: Waste.

## **Resources and Waste Strategy for England, 2018 ('Our Waste, our Resources: A Strategy for England')**

- 3.2.12 The strategy sets out to preserve resources by minimising waste, promoting resources efficiency and moving towards a circular economy. The Resources and Waste Strategy for England, 2018 have been duly considered within Chapter 23: Waste.

## **UK Fisheries Act 2020**

- 3.2.13 The UK Fisheries Act 2020 replaces provisions under EU law and will provide the legislative framework for future fisheries management in the UK. The UK Fisheries Act 2020 have been duly considered within Chapter 12: Commercial and Recreational Fisheries.

## **Water Environment (Water Framework Directive) (England and Wales) Regulations 2017**

- 3.2.14 The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 consolidate, revoke and replace the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (SI 2003 No. 3242). They continue to transpose Directive 2000/60/EC, for England and Wales, establishing a framework for Community action in the field of water policy (the

Water Framework Directive).

- 3.2.15 They also transpose aspects of Directive 2006/118/EEC on the protection of groundwater against pollution and deterioration (the Groundwater Directive) and of Directive 2008/105/EC on environmental quality standards in the field of water policy (the Environmental Quality Standards Directive).
- 3.2.16 The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 have been duly considered within Chapters 8: Hydrodynamics and Sedimentary Regime; 9: Water and Sediment Quality; 10: Aquatic Ecology; 12: Commercial and Recreational Fisheries; and 13: Drainage and Flood Risk.

## Other Consents and Approvals

- 3.2.17 Requirements for other consents and approvals are duly considered within the individual technical chapters submitted in support of this UES.

## Legislation Relevant to the Humber Estuary

- 3.2.18 ABP is the harbour authority for the Humber Estuary, and its functions have been delegated to the Humber Estuary Services (HES) which is governed by a series of local acts of parliament. There has been no change to the legislation relevant to the Humber Estuary that was outlined in the original ES and is listed below:
- Humber Conservancy Act 1852
  - Humber Conservancy Act 1868
  - Humber Conservancy Act 1871
  - Humber Conservancy Act 1899
  - Humber Conservancy Act 1905
  - Humber Conservancy Act 1907
  - Humber Conservancy Act 1951
  - Humber Harbour Reorganisation Scheme 1966
  - Humber Navigation Byelaws 1990
  - General Directions for Navigation in the Humber 1974 (Standing Notice to Mariners No. S.H.1)
- 3.2.19 The legislation listed above is cross referenced within Chapter 14: Commercial and Recreational Navigation of the original ES.

## 3.3.0 Planning Policy & Guidance

- 3.3.1 This section duly outlines the changes in Planning Policy which is of relevance to the DCO. It does not seek to repeat the policies verbatim but should be used as a guide to the changes of relevance to the DCO. Further information regarding specific policies is contained within the individual technical chapters of this UES which are cross referenced in Table 3-1 below.

**Table 3-1: Planning Policy contained within the UES**

Planning Policy	Chapter(s)
North Lincolnshire Core Strategy 2011	Chapter 15 – Traffic and Transport Chapter 21 – Socio-Economic Chapter 24 – Health
North East Lincolnshire Local Plan 2013 to 2032	Chapter 20 – Landscape and Visual
East Riding Local Plan (adopted April 2016)	Chapter 16 – Noise and Vibration Chapter 19 – Light Chapter 20 – Landscape and Visual
East Inshore Marine Plan	Chapter 8 – Hydrodynamics and Sedimentary Regime Chapter 10 – Aquatic Ecology Chapter 12 – Commercial and Recreational Fisheries Chapter 18 – Marine Archaeology

### National Planning Policy

- 3.3.2 The National Policy Statement for Ports (NPSP) was designated in January 2012.
- 3.3.3 Following the enactment of the Localism Act 2011, the National Planning Policy Framework (NPPF) which was published in March 2012, and has since been updated twice, replaced Planning Policy Statements (PPSs). The NPPF sets out the government's planning policies for England and how these are expected to be applied.

### Local Planning Policy

- 3.3.4 The Localism Act 2011 decentralised local planning policy thus abolishing regional strategies. Therefore, the Yorkshire and Humber Plan (Regional Spatial Strategy) to 2026 was revoked.
- 3.3.5 The site is within close proximity of the South Humber Bank area that is allocated for employment, port and estuary related uses in both the North East Lincolnshire Core Strategy and the North Lincolnshire Local Plan.

### North Lincolnshire Council (NLC)

- 3.3.6 A number of the saved policies from the North Lincolnshire Local Plan (2003) have been replaced by the Local Development Framework (LDF) for North Lincolnshire Council. The LDF comprises:



- North Lincolnshire Core Strategy 2011;
- North Lincolnshire Housing and Employment Land Allocations DPD;
- Lincolnshire Lakes Area Action Plan; and
- A number of supplementary planning documents (SPDs)

3.3.7 Notwithstanding, there are a range of saved policies from the Local Plan (2003) which remain extant and should be given due consideration in the decision making process.

3.3.8 The site is within close proximity to the South Humber Bank area which is identified under Policy CS1 (Spatial Strategy for North Lincolnshire) of the North Lincolnshire Core Strategy. This area is to be supported through the safeguarding of around 900 hectares of land in and around the port complex for estuary related development as well as to support the continued growth of the chemical and renewable energy industries.

#### North East Lincolnshire Council (NELC)

3.3.9 The Local Development Framework (LDF) for North East Lincolnshire Council has now been developed and it comprises:

- North East Lincolnshire Local Plan 2013 to 2032 (adopted 2018)

3.3.10 The site is within close proximity to the South Humber Bank area which is in *Policy 9 (Habitat Mitigation – South Humber Bank)* of the North East Lincolnshire Local Plan. The policy aims to protect the integrity of the Humber Estuary Natura 2000 site. The South Humber Bank area is also identified in *Policy 7 (Employment Allocations)* as an employment area allocated for B1 (Business), B2 (General Industrial) and B8 (Storage and Distribution) use classes.

#### East Riding of Yorkshire Council

3.3.11 As stated above, the policies within the East Riding of Yorkshire Local Development Framework (LDF) only apply to the compensation site.

3.3.12 The East Riding of Yorkshire Local Development Framework has since been updated to comprise:

- East Riding Local Plan (adopted April 2016);
- The Strategy Document (2016);
- The Allocations Document (2016); and
- A number of additional supplementary planning documents (SPDs), neighbourhood development plans, minerals and waste plans and a policies map.

#### East Inshore and East Offshore Marine Plans

3.3.13 Following the Marine and Coastal Access Act 2009, the UK government introduced a marine planning system which established the Secretary of State as the marine planning authority for the English Inshore and English Offshore marine planning regions. The Secretary of State delegated

these functions to the Marine Management Organisation in April 2010.

3.3.14 The Marine Plans together with the Marine Policy Statement constitute the planning system for England's seas.

3.3.15 AMEP lies within the area covered by the East Inshore Marine Plan.

### **Marine Policy Statement**

3.3.16 The Marine Policy Statement (MPS) was published on the 18<sup>th</sup> of March 2011 and provides a framework for the preparation of regional marine plans and taking decisions affecting the marine environment.

### **Guidance to the UK Marine Policy Statement from January 2021**

3.3.17 The Guidance to the UK Marine Policy Statement from January 2021 explains how the references to EU Law within the MPS should be interpreted from 1<sup>st</sup> January 2021 following the UK's withdrawal from the European Union on the 31<sup>st</sup> of January 2020.

### **Compliance Table**

3.3.18 During consultation on the PEIR, the Marine Management Organisation (MMO) requested that a policy compliance review of the East Inshore and East Offshore Marine Plans be undertaken. An excel table / tool was provided by the MMO for the undertaking of this exercise.

3.3.19 This policy compliance review exercise is presented within Appendix UES3-1 and clearly shows that the proposed material amendment (Material Change 2) is compliant with the overall thrust of the policies contained within the East Inshore and East Offshore Marine Plans.

## 3.4.0 Planning History

- 3.4.1 There are a number of local planning permissions that have been granted on the site since the DCO application. They are listed in Table 3-2 below.

**Table 3-2: Local Planning Applications to The Site Since the DCO Application**

Planning Application Reference	Description of Development	Decision	Decision Date
PA/2013/0519	Planning permission for consent for enabling works associated with the construction of AMEP, a Nationally Significant Infrastructure Project which will include and extend beyond this application site. The proposal is to remove topsoil from three fields currently in agricultural use (amounting to approximately 35,000 cubic metres of material) and to import, deposit and compact approximately 140,000 cubic metres of clean stone fill material, raising levels from approximately 2.4 m AOD to a minimum of 3.1 m AOD, and creating a level, durable surface for use as a site compound for the contractors constructing the AMEP quay. Works will include the installation of piped crossings across existing ditches and new sub-surface drainage that will discharge into existing surface water ditches that outfall into the Humber Estuary.	Approved	27/07/2014
PA/2014/0512	Planning permission to undertake enabling works in support of the AMEP project which will comprise site clearance, ground raising works, felling of a copse, creation of a footpath, removal offsite of the topsoil layer, importation spreading and compacting of approximately 275,000m <sup>3</sup> of fill material, new drainage ditches and the construction of a new twin cell drainage culvert.	Approved	18/02/2015
PA/2016/1654	Planning permission to erect a new two-storey PDI (pre-delivery inspection) vehicle facility, with associated separate ancillary facilities including a fuel station, security cabin, driver welfare, propane tanks, staff car parking facilities and additionally culverted ditch crossing works.	Approved	06/01/2017
PA/2017/27	Temporary Car Storage until January 2018	Approved	08/05/2017
PA/2017/1780	Application to vary condition 1 of PA/2017/27 dated 08/05/2017 to extend the restoration period for a further 2 years until 8th January 2020	Approved	11/05/2018
PA/2017/265	Planning permission for foul water pumping station, autoscan building, driver welfare. Relocation of fuel station.	Approved	31/05/2017
PA/2018/1416	Planning permission to construct new railway siding parallel to existing railway including loading and unloading ramps	Approved	05/12/2018
PA/2018/114	Planning permission to change the use of land for car storage and distribution for a temporary period, the construction and operation of an electricity substation and the construction of	Approved	04/01/2019

Planning Application Reference	Description of Development	Decision	Decision Date
	new access along Station Road, including a new junction with Rosper Road		
PA/2019/497	Planning permission for change of use to car storage and distribution for a temporary period, provision of an access road, security cabin, drainage ditches and new foul drainage system	Approved	10/09/2019

## EUROPEAN OFFICES

### United Kingdom

#### AYLESBURY

T: +44 (0)1844 337380

#### BELFAST

T: +44 (0)28 90732493

#### BRADFORD-ON-AVON

T: +44 (0)1225 309400

#### BRISTOL

T: +44 (0)117 9064280

#### CAMBRIDGE

T: + 44 (0)1223 813805

#### CARDIFF

T: +44 (0)2920 491010

#### CHELMSFORD

T: +44 (0)1245 392170

#### EDINBURGH

T: +44 (0)131 3356830

#### EXETER

T: + 44 (0)1392 490152

#### GLASGOW

T: +44 (0)141 3535037

#### GUILDFORD

T: +44 (0)1483 889800

#### LEEDS

T: +44 (0)113 2580650

#### LONDON

T: +44 (0)203 6915810

#### MAIDSTONE

T: +44 (0)1622 609242

#### MANCHESTER

T: +44 (0)161 8727564

#### NEWCASTLE UPON TYNE

T: +44 (0)191 2611966

#### NOTTINGHAM

T: +44 (0)115 9647280

#### SHEFFIELD

T: +44 (0)114 2455153

#### SHREWSBURY

T: +44 (0)1743 239250

#### STAFFORD

T: +44 (0)1785 241755

#### STIRLING

T: +44 (0)1786 239900

#### WORCESTER

T: +44 (0)1905 751310

### Ireland

#### DUBLIN

T: + 353 (0)1 296 4667

### France

#### GRENOBLE

T: +33 (0)4 76 70 93 41