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Marine Management Organisation
Lancaster House,
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Your Ref:

Our Ref: JS.AME-AMEP DCO.A.L20-118

Date: 15 April 2020

By Email

Dear Sirs

Application for a variation to the Able Marine Energy Park Development Consent Order 2014 (No. 2935) deemed Marine Licence under Section 72(3)(d) of the Marine and Coastal Access Act

The Able Marine Energy Park Development Consent Order (the Order), incorporating a Deemed Marine Licence (DML), came into force on 29 October 2014.

Schedule 8, Condition 14 (3) of the Order reads:

(3) This licence is for 6 years from the date of coming into force of this Order whereby—

(a) the construction and capital dredge activities are carried out within the first 3 years; and

(b) maintenance dredging is permitted within the second 3 years.

On 23 June 2017, the MMO amended the DML to, *inter alia*, extend the time limits in the licence to allow the construction and capital dredge activities to be carried out up until 29 October 2020, and the maintenance dredging up to 29 October 2023. However, construction of the works is yet to commence, so the Company now needs to extend the time limits for a further 3 years. This would allow construction and capital dredging activities up until 29 October 2023 and the maintenance dredging up to 2026.

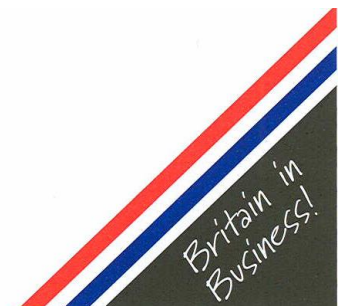
We are aware that Article 7 requires the works to be completed within 10 years of the coming into force of the Order and that the extended date for the maintenance dredging would take us beyond the 10 year limit (29 October 2024). Accordingly, such an extension may not be possible without the approval of the Secretary of State. If this is the case, we would suggest that the maintenance dredging be extended to match the DCO completion date.

For your information because Article 23 of the Order requires approval of the plans by the Secretary of State (SoS) if the construction of the tidal works has not commenced within 5 years of the Order coming into force, an application to the SoS has been made for the re-approval of the plans listed in Schedule 11 paragraph 6 of the Order.

Annex 1 provides a supporting statement for this application and Annex 2, further information.

Yours faithfully

Jo Salisbury
Project Civil Engineer
For Able UK



Annex 1 - Proposed changes to Able Marine Energy Park Development Consent Order 2014 (No. 2935) deemed Marine Licence (Schedule 8)

ABLE UK wishes to request a variation to the deemed Marine Licence ("DML") within Schedule 8 of the Able Marine Energy Park Development Consent Order 2014 (No. 2935) in relation to the following provisions:

DML PROVISION	ORIGINAL TEXT	PROPOSED TEXT
Part 4 - 14 (3) General Conditions	(3) This licence is for 9 years from the date of coming into force of this Order whereby— (a) the construction and capital dredge activities are carried out within the first 6 years; and (b) maintenance dredging is permitted following capital dredging until the expiry of this licence.	(3) This licence is for 12* years from the date of coming into force of this Order whereby— (a) the construction and capital dredge activities are carried out within the first 9 years; and (b) maintenance dredging is permitted following capital dredging until the expiry of this licence. *If it is not possible to extend the deemed marine licence past the completion date of the DCO, then we apply to extend the time limit to 10 years.

Supporting Statement

Able UK wish to extend the duration of the DML by an additional three years, whereby construction and capital dredge activities can be carried out within the first 9 years from the date of the order coming into force, and maintenance dredging will be permitted within 3 years after completion of construction and capital dredging.

In accordance with the DCO, development is valid for a period of 10 years following which further development is subject to the continued permission of the Secretary of State (Article 7). Works should also commence within 7 years of the date on which the Order came into force (Schedule 11 paragraph 2). However, if tidal works have not commenced within the first 5 years, then those particular works may only proceed subject to any conditions or restrictions (if any) imposed by the Secretary of State (Article 23). On 7 April 2020 Able Humber Ports Limited sought permission from the Secretary of State to commence tidal works as the 5 year period had passed. Non-tidal works can still commence, without any further approval by the Secretary of State, so long as they do so by 29 October 2021.

Tidal work is defined in Article 2 of the DCO as being, "*any work or operation authorised by the Order as is on, under or over tidal waters or tidal land below the level of high water*". As the jurisdiction of the Marine Management Organisation also extends to the areas below the level of mean high water, tidal work essentially comprises all of those activities listed in Part 2 of the Deemed Marine Licence at Schedule 8 of the DCO.

Tidal works are predominantly undertaken on the south bank of the estuary and relate to the construction and operation of the quay and associated dredging works. On the north bank of the estuary, tidal works are relatively minor and provide for the removal of a section of sea

wall and a relatively small volume of dredging works to create a channel from the new opening to the low water mark. The impacts of the construction and operation of the development on the marine environment are to be monitored and managed in accordance with a Marine Environmental Management and Monitoring Plan (MEMMP) to be agreed with the MMO (DCO Schedule 11, paragraphs 19 and 20). An interim plan to allow for the construction of a surface water pumping station was approved by the MMO on 23 June 2017.

The content of the Environmental Statement (ES) for the project shows that it is the construction of the tidal works on the south bank that gives rise to the most severe, i.e. worst case, environmental effects on the marine environment. In terms of the effects of the operation of the development once constructed, the effects are either demonstrably less than those assessed for the construction of the quay (for which mitigation is secured) or are not sensitive to the works commencing within 5 years of the Order coming into force. This is further summarised in the Table below.

ES Chapter	Title	Sensitivity of the AMEP ES to the Start of the Works after 5 years
1-6	Introduction; EIA Process; Planning Policy and Context; Description of the Development; Need for the Development; Choice of Site	No changes to the development are proposed.
7	Geology, Hydrogeology and Ground Conditions	The baseline geology and hydrogeology does not vary over such trivial timescales as considered here, and the original assessment is therefore insensitive to the timing of the development. The respective impacts that arise from construction are therefore insensitive to the precise timing of the works. The river sediment was re-surveyed in September 2017 (MMO ref: SAM/2017/00027) and tested for the presence of contaminants. The results are included in Annex 2; no material change occurred since the original testing in May 2011.
8	Hydrodynamic and Sedimentary Regime	The assessment is only influenced by physical changes caused by the development and since no change to the physical characteristics of the development is proposed the assessment remains valid and the mitigation comprising the monitoring of the water body appropriate and secured within the MEMMP. It is also noted that both power stations that operated outfalls adjacent to the development have now ceased operations.
9	Water and Sediment Quality	Constructions impacts on water quality will be monitored and managed in accordance with an active monitoring scheme to be approved by the MMO (DML paragraph 39). Baseline monitoring of the Humber Estuary water body was collected between July 2016 and June 2017 and is included in Annex 2. The results were not atypical from previous data and confirm the baseline used in the EIA is robust.

10	Aquatic Ecology	Environmental impacts on aquatic habitats and species arise from construction. Operational impacts were assessed to be either, ' <i>not predicted</i> ' (ES paras 10.8.12) or ' <i>not significant</i> ' (ES paras 10.8.10, 10.8.11 and 10.8.13). Construction impacts are managed by, <i>inter alia</i> , Environmental Management and Monitoring Plans (DCO, Schedule 11, paras 19 and 20) – these are live documents that will evolve over time in any event.
11	Ecology and Nature Conservation	Environmental impacts on habitats and species arise from construction and are independent of any operational use (paras 11.8.11 <i>et seq</i>). Impacts are managed by, <i>inter alia</i> , Environmental Management and Monitoring Plans (DCO, Schedule 11, paras 19 and 20) which will evolve over time overseen by an Environmental Steering Group. The key impacts during construction on the marine environment are loss of habitat and its consequential effects on Black-tailed Godwits (compensated for at Cherry Cobb Sands), and also on aquatic species potentially disturbed by underwater noise generated during piling; this is mitigated by conditions; DML paragraphs 37-43. Mitigation is effective no matter what the number of individuals present.
12	Commercial Fisheries	Para 12.8.2 records that, ' <i>(p)ermanent intertidal and subtidal habitat loss under the footprint of the reclamation area and further disturbances to habitats during dredging or altered sedimentary regime would be the main residual impact</i> '. These impacts are independent of the precise timing of the works and will be compensated for at Cherry Cobb Sands.
13	Drainage and Flood Risk	The only residual flood risk arises from a potential breach in the sea wall. This risk may occur at any time. Mitigation during the operation of AMEP is managed by a Flood Warning and Evacuation Plan, which will not be sensitive in any way to commencing tidal works after 29 October 2020 (DCO, Schedule 11, para 33 [ref]).
14	Navigation	Construction impacts are the likely significant effects on navigation. Construction vessel movements' number approximately 5,500 over an 18-month period, mostly comprising dredgers, which travel to and from the disposal ground near the mouth of the estuary. By comparison the operational assessment has identified only 262 vessel movements per annum. Mitigation for operational impacts is based upon appropriate management procedures and this is insensitive to even large variations in operational use (ES paras 14.8.12 to 14.8.14). Operational traffic on the Humber is dominated by freight and the tonnage through the Ports of Immingham and Grimsby is not materially different now compared to the timing of the ES (57.277M tonnes in 2011, cf. 55.617M tonnes in 2018).

15	Traffic and Transport Assessment	The ES concluded that no significant impacts would arise during the construction phase, so extending the time for starting the works will have no impact. Further, traffic generated by the development will, be regulated under the DCO through Schedule 11, paragraphs 29 and 30, through plans to be approved contemporaneously at each stage of the development.
16	Noise and Vibration	The ES reports that the most significant airborne noise impacts are caused by percussive piling activities but these are controlled by Condition; DCO Schedule 11 paragraph 27, so the delayed start of the works will have no impact.
17	Air Quality	ES para 17.3.22 identifies the key pollutants of interest associated with the development to be from shipping due to PM10, NO ₂ , NO _x and SO ₂ . Increases of <1% are deemed to be an imperceptible impact (ES Table 17.4) ES Tables 17.10 and 17.11 show the impact on the level of these pollutants during the operational phase to be <0.1% (PC/AQS) on human receptors and <0.34% on ecological receptors (PC/CL). Accordingly, air quality impacts at the sensitive receptors will be imperceptible and there are no significant adverse environmental effects relating to air quality.
18	Historic Environment	Plainly the historic environment has not changed since the time of the ES and, as a consequence, the impacts are the same.
19	Light	The lighting levels on the quay are governed by an overriding requirement to ensure a safe working environment. The operational use of the quay is insensitive to the timing of the development.
20	Landscape and Visual	The impact of the project on landscape and visual amenity is governed by the physical scale of the works, not timing of its construction or operation.
21	Socio-Economic	The operation of the project generates 'highly positive' socio-economic benefits (ES Para 21.10.4), these will be retained.
22	Aviation	Mitigation is required in the form of lighting for tall structures (ES Section 22.7). This mitigation is regulated in the DCO through Schedule 11 paragraph 5.
23	Waste	Waste is generated during construction and from manufacturing activity on the site (ES Table 23.5). The ES reported that ' <i>any residual impacts resulting either in the construction phase or operation phase of the site are of no significance</i> ' (ES para 23.8.1).
24	Health	Impacts on health from the development are substantially neutral after mitigation with positive benefits from increased employment but greater potential for road traffic accidents. This balance of benefits/disbenefits is not sensitive to the level of use of the development (ES Section 24.8).

From the above, the adverse environmental effects of tidal works demonstrably arise from construction, rather than operation, and are generally mitigated by conditions requiring some form of Management Plan to be agreed on a stage by stage basis by one Regulator or another, as set out in Schedules 8 and 11. Such Plans are to be agreed contemporaneously at each stage

of the development over the 10 year period consented for development. The approval of these Plans must sensibly consider the environment at the time of their submission and because of that, such mitigation will be relevant to the precise timing of each stage of the works. Accordingly, extending the period for commencing tidal works will have no adverse impact on these mitigation measures.

Where Management Plans are not enough in themselves, physical mitigation is provided at Mitigation Area A (principally for Curlew displaced from terrestrial lands) and Mitigation Area B (principally for Great Crested Newts). Neither of these areas are required to mitigate the impact of tidal works. However, in the cases of habitat loss within the European sites and the displacement of Black-tailed Godwits from the European sites, both arising from tidal works, compensation is provided at Cherry Cobb Sands. It is therefore only relevant to review the on-going suitability of the compensation measures alone, as it is only the timing of the tidal works that is being extended.

In the absence of any material change in baseline conditions within the marine environment, then the physical compensation measures already consented at Halton Marshes (the development of wet grassland) and at Cherry Cobb Sands (the development of a regulated tidal exchange scheme), will logically remain suitable and sufficient. Much of the physical baseline is fixed (i.e. the form of construction) so the direct and indirect habitat loss is fixed, but the ecological baseline within the marine environment is subject to potential change and is therefore further reviewed below.

The Principal Ecological Sites

Tidal works are carried out within (to all intents and purposes) the common boundaries of: the Humber Estuary Special Protection Area (SPA); the Humber Estuary Special Area of Conservation (SAC); the Humber Estuary Ramsar Site; the Humber Estuary Site of Special Scientific Interest (SSSI). The works are also in close proximity of the North Killingholme Haven Pits SSSI. The citations for these sites are unchanged since the date of the decision to approve the DCO on 18 December 2013; for ease of reference the citation dates and relevant links, are listed below:

Humber Estuary SPA – 31 August 2007

(<http://publications.naturalengland.org.uk/publication/5382184353398784?category=5758332488908800>)

Humber Estuary SAC – 10 December 2009

(<http://publications.naturalengland.org.uk/publication/5009545743040512>)

Humber Estuary Ramsar Site – 31 August 2007

(<https://rsis.ramsar.org/ris/663>)

Humber Estuary SSSI – 3 February 2004

(<https://designatedsites.naturalengland.org.uk/SiteDetail.aspx?SiteCode=S2000480&SiteName=humber%20estuary&countyCode=&responsiblePerson=&SeaArea=&IFCAArea=>)

North Killingholme Haven Pits SSSI – 1996

(<https://designatedsites.naturalengland.org.uk/SiteDetail.aspx?SiteCode=S2000089&SiteName=Humber&countyCode=&responsiblePerson=&unitId=&SeaArea=&IFCAArea=>)

At the time of the Secretary of State's decision the conservation objectives of the European sites were:

Humber Estuary SAC

"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.

Subject to natural change, to maintain or restore:

- the extent and distribution of qualifying natural habitats and habitats of qualifying species;*
- the structure and function (including typical species) of qualifying natural habitats and 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."*

Humber Estuary SPA

"Avoid the deterioration of the habitats of the 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.

Subject to natural change, to maintain or restore:

- 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."*

The conservation objectives for the Humber Estuary SPA and SAC were re-published on 21 February 2019 and 27 November 2018 respectively, as detailed below.

Humber Estuary SAC

"Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;

- The extent and distribution of 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."*

Humber Estuary SPA

"Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or 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 population of each of the qualifying features, and,
The distribution of the qualifying features within the site.”*

Given that the site citations have not changed at all, and that the conservation objectives (where these are applicable) have not changed in any material way since the decision to approve the DCO then there is no change to the features and species that could be impacted within these sites. Accordingly, and taking into account that the habitat impacts are fixed, the appropriate assessment undertaken by the Secretary of State remains sound so long as the number of individuals impacted by the tidal works has not increased from the ES baseline.

Review of the Ecological Baseline

Relevantly the principal objectives of the compensation site are explained in the Examiner’s Report which noted that:

“10.109 ..while the marshes have a general role as a feeding ground for wading birds, including seven species (shelduck, lapwing, ringed plover, dunlin, bar-tailed godwit, redshank and curlew) that are part of the SPA non-breeding waterbird assemblage, they have a much more significant, specific and particular function in providing a nutritional resource for BTG in very large numbers during what the experts agree is the critical period of the autumn moult.

10.110 Responding to Second Round Question 2, NE advises that all these species are likely to be catered for if the needs of the BTG population, the species present in the most significant numbers and with specific requirements are met

10.111 The Panel is consequently satisfied that the compensation site should thus be designed with the specific objective of being able to meet the feeding needs of BTG during the autumn passage”, (underline added).

The appropriate assessment by the Secretary of State found that

‘the impacts of this on ... Black Tailed Godwit (“BTG”) are of particular concern given that during the period of the autumn moult they make use of the inter-tidal mudflats at North Killingholme Marshes in their thousands (the peak count of 2,566 representing 66% of the SPA population). During this period even higher numbers of BTG use the nearby North Killingholme Haven Pits as a secure roost, which are likely to be lost if the associated feeding areas are lost. The Secretary of State therefore agrees that the compensatory measures necessary to satisfy the requirements of the Habitats Regulations must include the provision of suitable nutritional resource for BTG and a roost site in proximity to that nutritional resource’, (underline added).

An analysis of wetland bird survey (WeBS) data for the Humber Estuary SSSI, SAC, SPA and Ramsar sites by BTO, published in November 2018, concluded that there had been a natural decline in numbers of BTG’s over the short term (2009/10 to 2015/16) using North Killingholme Marshes and North Killingholme Haven Pits.

(https://www.bto.org/sites/default/files/publications/bto_rr_709_web.pdf , Table 3.1.ii)

Further, Able Humber Ports Limited commissioned JBA to undertake bird surveys of the Killingholme Marshes and the Pits during 2017/18 (see Annex 2) and also recorded numbers far less than the peak count recorded in the ES which was observed in October 2010.

Accordingly, there is good evidence that the relevant ecological baseline has not changed in any way that is material to the sufficiency of the compensation measures that have been agreed to offset the adverse effect of the tidal works on the integrity of the European sites.

It is also noted that the Compensation Environmental Management and Monitoring Plan was approved by Natural England on 15 January 2016, and provides an adaptive approach to the site's management.

Additional Information

Relevant survey reports are as follows and are included as Annex 2.

- Sampling and testing information from 2017 to inform the dredging and disposal strategy baseline in line with the MMO sampling plan SAM/2017/00027 in report "AMEP: Sediment Sampling 2017" – PMSL P018-01-0080\AMEPSed17, Jan 2018.
- A full years water quality information from the monitoring buoy (July 2016 and July 2017) in report "AMEP Limits of Acceptable Change" - Partrac P1428.03.05D16v2, March 2018.
- A survey of wintering birds in 2017/8 in report "Wintering Birds: Halton and Killingholme Marshes 2017/2018" – JBA Consulting 2017s6675 ALP AMEP Wintering Birds 2017.18 Final, Jan 2019.