

Rt Hon. Patrick McLoughlin MP  
Secretary of State for Transport  
Department for Transport  
Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

By email and post

10 July 2013

Dear Secretary of State

**Re: Able Marine Energy Park, Nationally Significant Infrastructure Project Examination and Associated Planning Applications**

We write further to the Examination into the above Nationally Significant Infrastructure Project ("AMEP") to express our concerns on related matters that have material bearings on your decision.

In summary the RSPB, and other objectors, has been excluded from consultation on material that is fundamental to assessing the environmental impacts, mitigation, and compensation resulting from the AMEP proposals. In addition Able have made, and continue to make, post-examination changes to the compensation and mitigation package for AMEP. As a result of the above, the information that you are considering has been, or will be, superseded.

Specifically, the decision on 16 May 2013 by East Riding of Yorkshire Council ("the Council") to consent a planning application by the Applicant for AMEP (Able Humber Ports Ltd) for the creation of wet grassland and other habitats (Ref 12/04154/STPLF). Conditions of this planning permission rely on the terms of a legal agreement ("the Agreement") and a Compensation Environmental Management and Monitoring Plan ("CEMMP") between Able and Natural England ("NE") in respect of AMEP. Our understanding is that the finalised versions of the Agreement and the CEMMP were sent to you after the Examination and without further consultation with any of the objectors involved in the Examination process. Neither of these documents are in the public domain nor have they formed part of any statutory process in relation to either the planning application or AMEP examination.

**The Planning Application to East Riding of Yorkshire Council**

The planning application forms part of Able's proposed compensation package for the loss of habitat from within the Humber Estuary Special Protection Area ("SPA"), Special Area of Conservation ("SAC") and Ramsar site through the proposed construction of AMEP. As such, the planning application details should have been available during the Examination process of AMEP, rather than as a separate application (containing new details) after that Examination had closed.

The RSPB wrote in support of the planning application, in general terms, as it is needed as a component of the proposed compensation package for AMEP. We also acknowledged that the details included in the

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planning application were helpful to the objectives of those compensatory measures. However, while the level of detail provided in support of the planning application was found to be sufficient for the Council to determine the planning application in isolation, it falls short of what would be required for the compensation package being determined by you. We therefore remain to be convinced that the planning application will deliver AMEP's specific compensation objectives, and it is our view that it fails to overcome the RSPB's outstanding objections to the main proposed compensation site at Cherry Cobb.

As mentioned above, the Council also relied on details that were not publicly available either during the Examination or the planning application process and despite being sent to you by Able for inclusion in your consideration of AMEP, these documents have not been made available to the objectors of that scheme nor have we been given the opportunity to comment on them.

#### **The Legal Agreement between NE and Able and the CEMMP**

We are aware that NE has recently written to you (by letter dated 1 May 2013) setting out its position on the legal agreement, the CEMMP and two other ecological management and monitoring plans created by Able in support of AMEP.

In that letter, NE's advice to you is that the roost habitat component of the planning application:

*"...should be a permanent feature of the compensation package"*

and that:

*"The wet grassland may be required on a permanent basis depending upon whether the main compensation site provides functionally adequate compensation".*

The RSPB agrees with this advice, but would like to highlight our assessment that the main compensation site will not deliver functionally adequate compensation and that therefore the wet grassland will be required on a permanent basis, although please note it will not be able to make up for the shortcomings of the main compensation site.

#### **The RSPB's Concerns**

On the basis of the above information, the RSPB considers it necessary to draw the following matters to your attention:

1. The RSPB has not received nor been consulted on the above legal agreement or the CEMMP (or the two other EMMPs) following closure of the Examination. We reiterate the point made in the RSPB's Closing Submission at the end of the Examination (*Written Summary of the Oral Case put at the Issue Specific Hearing on Compensation Proposals held on 12 and 13 November 2012*) (Paras. 88 and 89) that the CEMMP is fundamental to the confidence in any compensation package, and that by considering the material described in NE's letter you will be making a decision based on information and evidence that has not been through the statutory processes.
2. By proceeding with the planning application, Able is making post-examination changes to the compensation package for AMEP. The changes described here may be material to your consideration and determination of AMEP. We restate our case made in RSPB's Closing Submissions (*Written Summary of the Oral Case put at the Issue Specific Hearing on Compensation Proposals held on 12 and 13 November 2012*) (Paras. 98 and 99) that there is no power to amend the Development Consent Order or any associated applications or agreements that have not gone through the Examination process. In granting consent for the planning application, the Council has pre-empted your decision in respect of the main AMEP application. Your considerations and those of the Council have been undertaken separately but on material that, in itself and in terms of any changes to it, is material to your ecological considerations and could significantly affect the viability of the AMEP's compensation package.

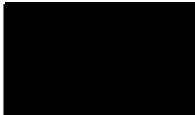
3. For all these additional details to have been submitted to you following the closing of the Examination is wholly inappropriate. The RSPB has been actively involved in the whole AMEP process from pre-application all through the Examination to ensure that there is sufficient information, assessment and consideration of the impacts on the protected sites and their species. To not have had the opportunity to consider and comment on this further information now before you is entirely improper. It fundamentally undermines the Examination process, the required public participation it contains and is contrary to the Planning Inspectorate's commitment to openness, transparency and impartiality in the conduct of its business.

In addition the RSPB has recently been notified by Able (on 24 June 2013) that the mitigation required for both AMEP and another proposed development (Able's Logistics Park, also located along the southern Humber Estuary bank) are to be combined meaning that AMEP's mitigation will be moved from its present proposed location to near Able's proposed Logistics' Park. This would require further changes to the information considered through the Examination process and now before you and the RSPB has concerns about the effectiveness of the mitigation's new location, including its long term viability and whether it is *fit for purpose*.

As set out the RSPB, and other objectors, has been excluded from consultation on material that is fundamental to assessing the environmental impacts, mitigation, and compensation resulting from the AMEP proposals. In addition Able have made, and continue to make, post-examination changes to the compensation and mitigation package for AMEP. As a result of the above, the information that you are considering has been, or will be, superseded.

In light of the above, the RSPB is extremely concerned by the potential implications of these issues for the soundness of any decisions made in relation to AMEP. We therefore look forward to hearing from you on these matters and when a post Examination consultation on all the new material is going to be carried out.

Yours sincerely



Martin Harper  
Director of Conservation

cc: Neil Etherington, Able Humber Ports Limited  
Angus Walker, Bircham Dyson Bell  
Emma Hawthorne, Natural England  
Peter Ashcroft, East Riding of Yorkshire Council