



BIRCHAM DYSON BELL

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Department for Transport
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Your Ref
TWA 8/1/4
Our Ref
ADW/124645.Y059258
Date
26 November 2013

Dear Martin

**The Able Marine Energy Park
Response to DfT consultation exercise**

1. This is a response on behalf of Able Humber Ports Ltd ('Able') to the consultation exercise that was undertaken by the Department for Transport on the two issues relating to the Able Marine Energy Park application referred to in the 'minded to approve' letter on 28 August 2013: the assessment of the environmental compensation proposals and the future use of the Killingholme Branch railway.
2. This response is confined to the narrow issues raised by the Secretary of State in the 'minded to approve' letter rather than addressing all the points raised by the consultees, but for the avoidance of doubt Able does not accept many of the wider points made.
3. In short, Natural England has maintained its position that its assessment of risk that the compensation proposals will not work has reduced from a 'substantial risk', its position at the time of the close of the examination, to a 'residual risk'. The Office of Rail Regulation did not respond to the consultation and so its previous position contained in a letter dated 14 October 2013 must be assumed still to be the case, where it said that *'all parties have agreed that ... the intent to maintain the functionality of the Killingholme loop, or an alternative, will be achieved'*. Able can therefore provide the requisite assurance to the Secretary of State on that point.
4. Natural England requests that contingency measures are put in place, albeit without giving any specifics, and Able's position on that issue can be summarised as follows. First, Natural England accept that Able's compensation proposals are 'entirely credible' – see for example the attached email from Rob Cooke (Land Use Director at Natural England) to Peter Stephenson (Able Executive Chairman) dated 29 October 2013. Secondly, Natural England suggests that a mechanism be put in place for agreeing what should happen if the compensation proposals do not work, even following the adaptive management that is proposed.
5. For clarity, Able's submission is that it would not be appropriate or feasible to develop a backup proposal now, due to there only being a residual risk of failure and it not being possible to know now what the nature of a failure might be. However, a mechanism is already in place for

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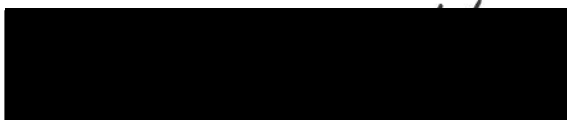


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addressing this issue, namely through the Steering Group referred to both in the management agreement concluded with Natural England on 29 April 2013 and the Compensation Environmental Monitoring and Management Plan required under the DCO, which has many of the respondents to the consultation as members, and is to monitor the effectiveness of the compensation scheme and make recommendations that Able must use reasonable endeavours to implement. There is no restriction on the recommendations that the Steering Group may propose.

6. Able submits that given the current positions of the relevant regulators, the conditions set out at paragraph 6 of the 'minded to approve' letter have been satisfied, and that the Secretary of State should now be in a position to grant the application for the Able Marine Energy Park.

Yours sincerely



Angus Walker
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For and on behalf of Bircham Dyson Bell LLP

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cc: Planning Inspectorate

From: Cooke, Rob (NE) [Rob.Cooke@naturalengland.org.uk]
Sent: 29 October 2013 11:34
To: Peter Stephenson
Cc: Hearle, Andrew (NE); Cram Richard
Subject: RE: AMEP:NE: Sos Request for further information

Dear Peter

Thank you for your response.

Natural England does, as we have said, believe the proposals you have developed for the provision of compensatory measures are entirely credible. The fact remains that as these are novel and untested with respect to mudflat creation and maintenance in dynamic estuaries we cannot guarantee that they will work. This is what, amongst other issues, the monitoring is designed to ascertain. As I said, I hope the compensatory measures do work, with or without the need for adaptive management, but if adaptive management is not able to rectify the circumstances then self-evidently the compensation would not be sufficient, either in quality and/or quantity.

Given this risk, which is due to the novel nature of the RTE proposal (and therefore is not an issue for the majority of other schemes requiring compensation), our advice is that consideration should be given to a 'Plan B'.

Rather than continue to debate this point though I think it is now for the Secretary of State to weigh up all the advice he has received, from you, us and any other interested parties.

Yours sincerely

Rob

Rob Cooke
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<http://www.naturalengland.org.uk/>

We are here to secure a healthy natural environment for people to enjoy, where wildlife is protected and England's traditional landscapes are safeguarded for future generations.

From: Peter Stephenson [mailto:pms@ableuk.com]
Sent: 24 October 2013 13:16
To: Cooke, Rob (NE)
Cc: Hearle, Andrew (NE); Cram Richard
Subject: AMEP:NE: Sos Request for further information

Rob

Thank you for your email 17 Oct 2013, at 18:56 please find attached a reply.

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