

From: [O'Connor, Alison](#)
To: ablemarineenergypark@pins.gsi.gov.uk
Cc: [Greenwood, Brian](#)
Subject: ABLE application to make non-material change to the Able Marine Energy Park Order 2014 [CC-UK1.FID22460430]
Date: 17 May 2019 16:03:38
Attachments: [image001.png](#)
[Letter to the Secretary of State for Transport re Able Marine Energy Par....pdf](#)

Dear Sir/Madam,

Please see the attached letter in relation to the above matter.

We would be grateful if you could confirm receipt of this email.

Kind regards,

Alison

Alison O'Connor

Associate (NSW Qualified) | Clyde & Co LLP

Direct Dial: +44 20 7876 6149



The St Botolph Building | 138 Houndsditch | London EC3A 7AR | UK
Main +44 20 7876 5000 | **Fax** +44 20 7876 5111 | www.clydeco.com

Winner, Law Firm of the Year 2016, The Lawyer

If our account details change, we will notify these to you by letter, telephone or face-to-face and never by email.

This email is sent for and on behalf of Clyde & Co LLP, a limited liability partnership registered in England and Wales under number OC326539 and with its registered office at The St Botolph Building, 138 Houndsditch, London, EC3A 7AR, United Kingdom (Tel: +44 20 7876 5000. Fax: +44 20 7876 5111). Clyde & Co LLP is authorised and regulated by the Solicitors Regulation Authority under number 460690 and uses the word "partner" to refer to a member of the LLP, or an employee or consultant with equivalent standing and qualifications. A list of members is available at: www.clydeco.com. This email and any attachments are confidential and may also be privileged. If you have received this message in error, please notify the sender immediately, destroy this email and any attachments, and do not use, copy, store and/or disclose to any person this email and any attachments.

This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit <http://www.symanteccloud.com>

Clyde & Co LLP
The St Botolph Building
138 Houndsditch
London
EC3A 7AR
United Kingdom

Telephone: +44 (0) 20 7876 5000
Facsimile: +44 (0) 20 7876 5111
DX: 160030 Lime Street 5
www.clydeco.com

brian.greenwood@clydeco.com
Dir Line: +44 (0) 20 7876 6140

Email: ablemarineenergypark@pins.gsi.gov.uk

Able Marine Energy Park Project Team
The Secretary of State for Transport
c/o The Planning Inspectorate
Eagle Wing 3/18
Temple Quay House
Temple Quay
Bristol
BS1 6PN

Our Ref
BG/ALO/10028350

Your Ref
TR030001

Date:
17 May 2019

Dear Sir,

Associated British Ports

Application to make a non-material change to the Able Marine Energy Park Development Consent Order 2014

Thank you for your letter of 29 April regarding the above. In responding on behalf of our client Associated British Ports, the owner and operator of the Port of Immingham, we note that you have asked Able Humber Ports Limited to provide a shadow Habitats Regulations Assessment, so as to enable you to be in a fully informed position to consider Able's proposal to amend their consented DCO in terms of the relocation of their consented habitat mitigation.

In terms of your invitation to provide further information on this matter, our letter of 26 October 2018 was intentionally comprehensive and as such, we suspect that additional representations from us, apart from our brief comments below, are unlikely to assist you further – unless that is, there are any specific points that you would wish us to address? That said, we would take the opportunity to record that the views expressed in our earlier letter remain.

We do, however, have some more general points to make on the overall AMEP development itself, which we feel are germane to the decision that sits before you currently.

Over the last year or so, Able have submitted a number of planning applications in relation to the AMEP DCO footprint for automotive storage. Whilst these planning applications have previously been limited to temporary uses for a maximum of 2 years, and therefore justified on the basis that they would not ultimately impede the construction of the AMEP consented project, we have noted that the 'temporary' nature of these applications does seem to be increasing in duration.

In addition, you should perhaps be aware that a planning application was recently submitted to North Lincolnshire Council for car storage on the DCO consented 'Mitigation Site A'. Whilst the

10028350 93831990.1

planning authority have indicated, correctly in our view, that it is not within their powers to determine that application due to the site's current proposed use as a mitigation area, we would take the opportunity to reiterate the obvious, namely that the AMEP DCO authorises the construction of a marine energy park - that is to say, a marine facility for the manufacture, handling and assembly of offshore wind turbine components - not the storage of cars.

As you are aware, the AMEP proposal was taken forward as a Nationally Significant Infrastructure Project with clear underpinning Alternatives and IRPOI cases, neither of which were made on the basis of automotive storage. It also goes without saying that powers of compulsory acquisition, enshrined within the DCO, were also only justified on the basis that the project was an NSIP and therefore in the national interest for the purpose of furthering the development of offshore wind energy capacity in UK territorial waters.

We believe that the points that we have made above may be of assistance in the general context of Able's proposal now before you, bearing in mind that Able are in fact actively promoting the AMEP site as 'Able Humber Port'. A screenshot from their promotional material (shown below) does not appear to acknowledge that the Able Marine Energy Park as such exists - nor that it will be developed within the DCO consented timescale. Relevantly, the title clearly states that the Port is used for the purposes of "Vehicle Importation, Storage & Distribution", not the Able Marine Energy Park.

ABLE Humber Port (AHP)

Vehicle Importation, Storage & Distribution



We are also aware that Able have recently met PINS to discuss a number of issues, one of which we believe was an enquiry as the process for changing the use of the project so that it can function commercially as a port. A copy of the PINS meeting note from the meeting of 8 March 2018 is annexed to this letter for your information.

Clearly, a change of use over the consented AMEP site would render the current DCO unimplementable and our client has some concern that the proposed relocation of Mitigation Area A could to be a first step in the overall process of converting the AMEP project to a general-purpose port, for which authority does not currently exist within the approved DCO.

Yours faithfully



Clyde & Co LLP



Meeting note

File reference

Status

FINAL

Author

Robert Ranger

Date

8 March 2018

Meeting with

Able Humber Ports Limited

Venue

Teleconference

Attendees

Able Humber Ports Limited (AHPL)

Angus Walker (BDB)

Andrew Lister (BDB)

Peter Stephenson (Able UK)

Richard Cram (Able UK)

The Planning Inspectorate (the Inspectorate)

Dave Price – EIA and Land Rights Manager

Kate Mignano – Case Manager

Rob Ranger – Case Manager

Meeting

objectives

Introduction to a potential Non-Material Change

Circulation

All

Summary of key points discussed and advice given:

The Planning Inspectorate explained the duties placed upon it under section 51 of the Planning Act 2008 (as amended) (the PA2008). A note of the meeting would be taken recording the key points discussed and any advice issued by the Planning Inspectorate. The note would be published on the Planning Inspectorate's website. Any advice issued by the Planning Inspectorate would not constitute legal advice upon which the Applicant, or others, could rely.

Project Introduction

AHPL introduced their proposed change to the Able Marine Energy Park Development Consent Order 2014 to allow for alternative provision of an area of mitigation land. The land is currently described as "Mitigation Area 4", and it is proposed to substitute for it an area currently outside the order limits, alongside Mitigation Area 3.

AHPL explained that Natural England had confirmed that they had no ecological concerns about the proposed change, and that Planning Permission for the new mitigation area had been granted by the local authority following an Appropriate Assessment.

The proposed change would be to include the new area of land within the Order Limits. There are no new landowners affected, and the land is currently under the control of AHPL.

The Inspectorate asked if the affected land was mitigation provision. AHPL confirmed that it was, and that compensatory measures applicable under the Habitats Regulations were a separate component of the DCO, located to the north on the other side of the Humber estuary.

The Inspectorate asked if the Appropriate Assessment undertaken by the local planning authority had considered the proposal in its entirety. AHPL confirmed that it had. The Inspectorate advised that any assessment will need to consider the in-combination effect of all elements of the proposal.

The Inspectorate asked whether, and AHPL confirmed that they were not aware of any reason why, the order having been through special parliamentary procedure would have an effect on the non-material change process.

The Inspectorate advised that AHPL should also consider the implications of their proposal in terms of the Environmental Statement (ES), and may wish to demonstrate that there are no different, or no significantly worse, environmental effects. They would also want to consider any implications applicable since the introduction of the 2017 Environmental Impact Assessment (EIA) Regulations and any applicable transitional provisions.

AHPL asked if there was a time period for consultation under the non-material change process. The Inspectorate confirmed that the period was 28 days, and began when the application for a non-material change was submitted. Prior to an application being made, there is an opportunity to apply to the Secretary of State for consent to reduce the list of prescribed consultees.

Further to this proposed change application, AHPL discussed a further potential change to remove the restriction in requirement 4 that the facility be used only for renewable energy related development.

The Inspectorate advised that it would be important to consider whether any change brings about any impacts that have not been assessed and the extent to which this may affect matters relating to the original decision to grant authorisation. The Inspectorate asked if the proposed changes were linked, and AHPL confirmed that they were not. The Inspectorate pointed out that the reason for the imposition of the requirement were important to understand and address in seeking any change.

AHPL expressed the view that associated development could be amended by way of a town and country planning application. The Inspectorate advised AHPL to take legal advice regarding this matter.

The Inspectorate noted that the Secretary of State is likely to have regard to any earlier changes when considering a change application; and that this second proposed change may be substantial.

AHPL noted that both changes were supported by the local planning authority.

Actions

AHPL to keep the Inspectorate advised of anticipated timescales and submissions.

Following the Meeting

After the meeting the Inspectorate had further regard to the points raised by AHPL relating to changes to requirement 4. The Inspectorate highlights the relationship between requirement 4 of the DCO and the AHPL position regarding Imperative Reasons of Overriding Public Interest (IROPI) for the Habitats Regulations Assessment. The Inspectorate notes that any proposed change which may affect the grounds for IROPI would need to be carefully examined in order to ensure compliance with the Habitats Regulations.