

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

The Secretary of State for Transport
Able Marine Energy Park Team
The Planning Inspectorate Temple Quay House
Temple Quay
Bristol
BS1 6PN

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

██████████@clydeco.com
██████████

Our Ref
BJG/10254449

Your Ref

Date
16 March 2021

Dear Sir/Madam

**Planning Act 2008
APPLICATION TO MAKE NON-MATERIAL CHANGES TO THE ABLE MARINE ENERGY
PARK ORDER 2014**

We write on behalf of our client Associated British Ports and thank you for the opportunity offered in the letter of 2 March to comment on the Secretary of State's proposed Test for Likely Significant Effects produced in the context of the requirements of the Habitats Regulations and Able's revised Shadow Habitats Regulation Assessment.

As you will be aware, our client has throughout this process deliberately refrained from commenting on the environmental aspects of Able's application as confirmed in our letters of 26 October 2018, 17 May 2019 and 8 December 2020 – and in this context, therefore, we would draw your attention to paragraph 5 of our letter to you of 8 December.

Indeed, our response of 8 December 2020 does, we believe, comprehensively summarise ABP's position namely that, for the reasons set out in that response and our earlier submitted responses, regardless of the environmental considerations, in terms of the legal and indeed equitable process, we do not see how such a significant amendment as Able now seeks to make to the DCO in the face of the careful consideration given to the issues arising by the ExA and various interested parties at the NSIP examination and later by the Secretary of State, can be viewed in law, or indeed equitably, as a "non-material change".

We suspect you will agree that there is little to be gained, however, if we were simply to repeat those comments in this letter, although we would take this opportunity to emphasise that the consistent views expressed on behalf of our client remain unchanged and on the record.

In closing, however, we would reiterate a point raised in our earlier letter concerning the ostensible purpose of the non-material application as intimated by Able. In paragraph 1.16 of the Test for Likely Significant Effects Report" document (2 March 2021) it is suggested that the

10254449 104526002.1

intention of the application is to "co-locate" three areas of ecological mitigation. Whilst that may indeed be the ultimate consequence of the application if permitted - be it as a either a material or non-material change - we would draw your attention, in light of Able's proposal that the boundary of the AMEP DCO should be re-drawn to exclude Mitigation A, (paragraph 1.21), to paragraph 20 of our letter of 8 December. In that paragraph, we drew attention to the fact that, from documents submitted by Able to the local planning authority, it would appear that Able is contemplating the construction of a monopole factory on Mitigation A. Such a development would clearly not be permitted if Mitigation A remained protected habitat as examined and approved by the Secretary of State. Indeed, such a development would appear to run contrary to paragraph 4.8 of the HRA Conclusions Document (2 March 2021) which refers to - *"the nature and current agricultural land use of Area A remaining unchanged within the Change Application ..."*

We trust our comments above are of assistance.

Yours faithfully 



Partner

Clyde & Co LLP