

Associated British Ports

Able Marine Energy Park Development Consent Order

Comments on the additional information provided by Able Humber Ports Ltd. in support of its application to extend the life of the AMEP DCO by seven years.

1 Introduction

- 1.1 Able Humber Ports Ltd. ("Able") is seeking to extend the life of the AMEP DCO which came into force on 29 October 2014 having been approved on the basis that the project was an urgently needed nationally significant infrastructure project that would bring investment to the region together with major employment opportunities – thereby ostensibly meeting the statutory and regulatory tests in the Planning Act 2008 ("2008 Act") and amongst others, the Habitats Regulations – albeit whilst destroying some 44 ha of nationally protected mudflat. After eleven years, Able has still not identified an occupier that has either a need for or firm intention to occupy the project.
- 1.2 Associated British Ports ("ABP") draws attention to these facts for two reasons:
- i) First, the entire ethos of the DCO process introduced by the 2008 Act was to "fast track" applications which qualified as being nationally significant and, therefore, were required urgently. The 2008 Act was not designed to be an instrument for speculative applications.
 - ii) In addition, however, ABP, in its capacity as the owner and operator of the immediately adjacent Port of Immingham whilst having to review this latest application by Able has also had to review Able's Material Change 3 proposals currently before the Secretary of State which contemplate a change of use of the AMEP, with development now being proposed in undefined phases with no end date.
- 1.3 In light of the Material Change 3 application, ABP does query the relevance and acceptability of this current extension application insofar as it relates to a development formulated at least 13 years ago which it would appear that Able has no intention of building out.

2 Natural England

- 2.1 ABP appreciates that this current consultation exercise is designed essentially to enable the Secretary of State to consider Natural England's comments on Able's responses to the questions raised by the Secretary of State in October 2024. In that context ABP is content to defer to the expertise of Natural England as the Government's statutory adviser although it has, as noted below, identified a number of residual concerns which it is suggested merit careful consideration and there are a number of further queries as to questionable conclusions and issues of fact.
- 2.2 **Baseline** – The concern noted above at para. 1.3 as to the relevance of this application is underlined at para. 2.9 of the Able Response in its Introduction where reference is made to the need to establish a "*contemporaneous baseline for monitoring of the compensation and mitigation measures*". The theory belies the practicality unless Able actually intends to implement the DCO and complete the development within the extended timeframe – as required by paragraph 2 of

Schedule 11 of the DCO. The submission of the Material Change 3 application would seem to suggest otherwise.

- 2.3 ***In-combination assessment*** – Paragraph 3.6 of the Introduction to the Able Response offers a serious over-simplification of the legal position vis-à-vis the tests in the Habitats Regulations. To suggest that an in-combination assessment can ever become “*superfluous*” is incorrect in law in that one has to undertake the assessment to establish the need for mitigation, its extent, type and quantity. Bearing in mind the close proximity of ABP’s Port of Immingham and the AMEP site, the generalised comments made in that paragraph regarding the masking of noise are misleading.
- 2.4 ***IERRT/IGET*** – As the Secretary of State is aware, ABP’s application for the Immingham Eastern Ro-Ro DCO (“IERRT”) has recently been approved by the Secretary of State as has the Immingham Green Energy Terminal (“IGET”). At para. 3.11 of the Able Introduction Response, Able state that there is “*no evidence for the assertion that the IERRT and IGET assessments were based on the AMEP consent lapsing in October 2024.*”
- 2.5 In assessing AMEP in combination with IERRT and IGET, ABP – in the absence of any reliable information – had to assume that AMEP would be brought forward at some point in the future. The exact timing of this could not be and was not known. Assessing the projects in combination with AMEP was, therefore, a precautionary measure. Under these circumstances, it is quite clear that assessing ABP’s projects in-combination with the construction of AMEP within an undetermined and, therefore, uncertain timeframe is not the same as Able assessing the impacts of AMEP in combination with ABP’s projects on a now clearly defined timescale.
- 2.6 In addition, at para. 3.12, Able state that “*ABP’s shadow HRA does, in fact, contemplate the construction and operation of the AMEP scheme in full at some point in the future and if the timeframe for AMEP were extended this would not affect the conclusion.*” In certain circumstances this may be the case – however Able are now bringing a specific timescale to bear on their sHRA so this fact, in and of itself, merits further consideration of in-combination effects. Indeed, it militates against the determination of this application at this time in light of the Material Change 3 application now before the Secretary of State.
- 2.7 Able state in para. 3.13 that “*AMEP has been considered, and it has been concluded that IERRT has no significant adverse effect on the Humber Estuary SPA/SAC/RAMSAR site in-combination with the effects of AMEP. It invariably follows that the converse is true; AMEP has no adverse effect on the integrity of the protected sites in-combination with IERRT either.*” This is not the case – one cannot simply infer the converse based on different facts, timescale and consequences. Whilst logic would dictate that in-combination effects assessed both ways may well arrive at similar conclusions, this cannot be a foregone conclusion as both projects are very different. AMEP’s compensation should be capable of ensuring the overall coherence of the Natura 2000 network and, therefore, replicate ecological function that is lost. There may well, however, be significant effects benefitting from mitigation that would manifest themselves differently when similar effects predicted for IERRT are considered in-combination. Able cannot proceed on such an overly simplistic assumption.
- 2.8 At para. 3.15 Able again make a general statement based on an incorrect assumption. Just because IGET has no adverse effects on the integrity of the Humber Estuary SPA/SAC/Ramsar sites in combination with other projects – it does not automatically follow that “*AMEP has no adverse effect on the integrity of the*

protected sites in-combination with IGET either". Such a broad and incorrect assumption throws into doubt the integrity of the information now being provided by Able.

- 2.9 Paragraph 3.31 onwards deals with the subject of dredging. Again, Able contend that the fact that the IERRT and IGET application documentation concludes no in-combination effect, then the reverse is also true. The reality, however, which Able do not wish to acknowledge, is that the Secretary of State is now being asked to consider this extension application within a completely different timescale. The position is different in that there is now a known timespan for the assessment envelope within which AMEP may interact with IERRT and IGET in-combination.
- 2.10 It should be noted in this context that Able appear to have reviewed only the potential for in-combination effect with regard to dredging. This is of course only part of the story – they should also be taking into account the many impact pathways that flow from the act of disposing of dredged arisings.
- 2.11 Natural England, as part of Able's consultation process, have highlighted the same points as summarised above namely that, whilst IERRT and IGET have been properly and correctly assessed in combination with AMEP, they have not been assessed in combination with an AMEP project that is now being contemplated within a materially different timescale, namely an additional seven years but in the context of a continuously evolving natural environmental baseline.
- 2.12 It is surely unarguable that the rigid application of specifics is critical if an HRA is to be judged accurate and fit for purpose. All applications for consents should be subjected to the same legislative rigour. The relevant legislative and regulatory framework is not designed to be used as a flexible instrument simply to fit the purpose. To proceed on such a basis would lead to inequitable decisions based on a distortion of the facts.
- 2.13 **Alternatives** – It is noted that the AMEP project objectives appear to have been altered in line with more recent geopolitical events. Given the significant amount of time that has elapsed since the submission of the AMEP application and its supporting statement and assessment of alternatives at the time of the project's original examination – thirteen years ago – some subtle and some less than subtle shifts in underlying economic trends may well have manifested themselves.
- 2.14 These changes, however, go to the heart of the project, not just the assessment of alternatives. If the AMEP project objectives have changed and geopolitical drivers have contributed to that change, then it must be the case that the original assumptions underpinning the EIA will also have changed. Able do not appear to have addressed this.
- 2.15 The needs case made in the Alternatives Statement is recognised and acknowledged by ABP which is itself in any case fully supportive of the government's green agenda. This application to extend what seems increasingly to be an unimplementable DCO, however, raises a serious dilemma as to what Government wishes to or can achieve in terms of its green energy agenda in the specific context of the AMEP development itself and the practical realities now under consideration – which it should be borne in mind Able themselves seem to have recognised by submitting their Material Change 3 application.
- 2.16 In this context, it is queried whether reviewing alternatives can properly be restricted simply to investigating alternative sites or designs and means of operation. Whilst these factors should indeed form part of that study, a holistic review of alternatives

should concern itself with whether there are alternative means of achieving the project's objectives which of itself introduces a much wider and necessarily more extensive discourse – which Able have avoided to date.

- 2.17 For example, paragraphs 2.82 *et. seq.*, of the Report produced by SLR Consulting Limited, which deals with Alternative Solutions and IROPI, references how Green Port Hull has been implemented to support the offshore wind sector. Indeed, in light of this, ABP is not entirely sure as to the relevance of the original IROPI statement quotation included at para. 2.85 in the context of the current AMEP alternatives assessment, given that it related to an entirely different proposal contemplating a feeder container terminal.
- 2.18 It would have been more appropriate to have included reference to the IROPI statement provided in support of the Green Port Hull development itself, which, although mentioned, is not for some reason considered in any detail. Neither, and more importantly, is there any consideration of the ability of the Port of Hull to use its potential capacity to support the further growth of the offshore wind sector – without causing the environmental damage that will undoubtedly arise if the AMEP project is implemented.
- 2.19 Whilst ABP does not dispute Able's assertion that Green Port Hull is "*an asset that can function alongside AMEP within the Humber cluster*", this functionality is not explained any further. Any examination of alternatives should include an extensive review of those alternatives if they have been specifically identified by the applicant as being part of a wider economic 'cluster.'
- 2.20 Indeed, Able's assumption that there is limited riverside berthing opportunity at the Port of Hull is simply incorrect. Able's consultants may have helped themselves by consulting ABP before relying on incorrect and misleading statements. To clarify, the Port of Hull's frontage extends to some 5km.
- 2.21 **Compensation** – ABP notes the review of Compensatory Measures, and their effectiveness, and does not have anything further to add. ABP is confident that Natural England will continue to apply the same rigorous procedures in this regard as they would for any other developer.
- 2.22 As regards the time lag for functionality, we note that the original stance on the matter, arrived at by the then Secretary of State, is reproduced here. Again, ABP has nothing further to add but presumes that Natural England are applying this precedent to all projects within their purview.

3 **Conclusion**

- 3.1 In summary, ABP certainly does not dispute the overall need for offshore wind capacity in the UK and is fully supportive of government policy in this respect. ABP also recognises the reality that the AMEP project is a consented project – albeit consented eleven years ago.
- 3.1.1 Nonetheless, ABP does continue to have serious concerns with regard to this latest application to amend yet again the original AMEP proposal – which would appear now to be unimplementable in its originally consented form.
- 3.1.2 ABP has consistently expressed its concerns with regard to this steady stream of modifications to the original application – reference letters dated 21 June 2024, 13 August 2024, and 1 October 2024 – and those concerns have not, in ABP's view, been satisfactorily answered by the latest provision of updated information.

- 3.2 In this response, ABP has deliberately not dealt with the details of the environmental information provided by Able in answer to the Secretary of State's questions in that we believe that these are more appropriately dealt with by Natural England.
- 3.3 ABP does, however, continue to have considerable concern as to the direction the AMEP project is taking and those concerns have, if anything, been amplified by the queries that have been identified above as to the integrity and reliability of some of the statements and assumptions made and upon which the updated information has been based. That alone raises questions as to the reliability of the conclusions reached.
- 3.4 In addition, however, as noted above, ABP does query whether this application should actually be determined at this stage in the context of a project which Able themselves recognise is potentially unimplementable and which has led to the Material Change 3 application and as a result of which AMEP would bear little resemblance to the originally consented project.
- 3.5 Having both applications under consideration at effectively the same time raises serious questions as to the overall viability of AMEP, a project for which all parties were informed some thirteen years ago that there was a pressing and urgent commercial need.

Clyde & Co LLP

- on behalf of **Associated British Ports.**

1 August 2025