



The National Infrastructure Directorate
Room 3/18
c/o Mike Harris
3/18 Eagle Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Our reference BJJ/0956072/O15027016.1/SAMF

Your reference PINS: TR030001

17 July 2012

Dear Sir

**Planning Act 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010
Proposed Able Marine Energy Park**

We write on behalf of our client Associated British Ports. At the Specific Issue Hearing convened to consider the draft Development Consent Order which was held on the 12 July 2012, counsel Robert McCracken Q.C. on behalf of ABP submitted at the beginning of the hearing that consideration of the application should be suspended under Regulation 17 of the IP (EIA) Regulations 2009.

At the conclusion of the hearing, Mr Robert Upton, Lead Member of the Panel asked Mr McCracken to provide these submissions to the Examining Authority in writing.

In accordance with that request, ABP's submissions are now attached.

We would be grateful if you could acknowledge safe receipt – by email as noted below.

Yours faithfully

Contact details removed

ABLE ‘AMEP’ APPLICATION: TR030001

SUBMISSION re INFRASTRUCTURE PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2009 REGULATION 17

On behalf of Associated British Ports

1. The written representations of a wide range of bodies, including ABP, observed that the environmental information supplied by Able was inadequate.
2. ABP submitted at the outset of the oral hearing on July 12th 2012 that the consideration of the ‘AMEP’ application should be suspended under Reg 17 IP (EIA) R 2009 because the Environmental Statement (‘ES’) supplied by Able was inadequate. Other bodies, such as the Environment Agency (‘EA’) and Natural England (‘NE’), orally reiterated their written observations that the environmental information supplied by Able was inadequate.
3. It became apparent (from exchanges with the Chairman during submissions) that the Chairman (although accompanied by a lawyer) did not understand the nature of the obligation under Regulations 17. He did not appreciate that the Regulation not only required adequate information be supplied to the Panel but that also full publicity should be given to the material so that the public should have an opportunity for effective participation in the decision making process.
4. At the end of the oral hearing on July 12th not only ABP, but also the Environment Agency (‘EA’), asked for an early decision on a suspension. The Chairman of the Panel indicated to ABP that he would not give any decision on ABP’s submissions, or give reasons for the Panel’s decision, unless they were put in writing.
5. ABP submit that the Panel’s consideration of the Able application be suspended for the following reasons:
6. First: the Environmental Statement does not supply data about, nor assess, a general cargo port. The material in it is confined to facilities dedicated to wind energy. The DCO, however, as currently drafted, if approved, would authorize a general cargo port.
7. Second: The 1500 pages of ‘Supplementary Environmental Information’ which was not supplied in full until July 9th, only very shortly before the oral hearing of July 12th suggest that Able now recognise that the Environmental Statement was inadequate even for a facility limited to wind energy.
8. Third: although the material supplied a few days before the oral hearing has not yet been fully analysed by ABP (nor by the time of the hearing by others such as the EA and NE) it appears to be inadequate even if the assessment were limited to wind energy facilities. For example it is not cross referenced to the original ES, nor is its significance explained.

9. ABP calls on the Panel to perform its **duty** under Reg 17 to suspend consideration of the Able application.
10. ABP further calls on the Panel to give its **reasons** for its decisions **separately on the first, second and third points made at paragraphs 6, 7 and 8 above.**
11. Public authorities have a duty to give reasons for decisions relating to environmental assessment under Directive 2011/92/EU (ex 85/337/EEC) (see ECJ decisions C 222/86 UNCTEF v Heylens [15] and C75/08 Mellor [58-61] and Aarhus Convention 9.3)
12. ABP calls for a prompt communication of the decisions on each of the 3 points made above and the reasons for them. The need for an early decision is obvious; the parties do not at present know on what basis they should plan for the current and future stages of the Examination. They are, however, required to submit material on 23rd July, 27th July and 3rd August. The Panel has had before it the written representations of ABP, and others such the EA and NE, which set out the detailed factual basis for the 3 points made above since the written representations were submitted on 29th June 2012

ROBERT McCracken QC
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July 17th 2012