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Mr Robert Upton
The Planning Inspectorate
3/18 Eagle Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Our reference BJK/0956072/O15507028.1/SAMF

Your reference TR030001

26 September 2012

Dear Mr Upton

Application for Development Consent by Able Humber Ports Ltd for the Proposed Able Marine Energy Park
The Infrastructure Planning (Examining Procedure) Rules 2010 - Rule 17 Further Information

On behalf of my client, Associated British Ports, I am responding to your request for further information under Rule 17 of the IP (Examining Procedure) Rules.

I should say at the outset that we are somewhat disturbed by your Rule 17 request in that, whilst we fully accept that interested parties are bound to comply with requests from the Panel, it does appear in this case, that the Panel is treating ABP quite differently from the applicant, Able.

We should perhaps remind you that when our counsel, Mr Robert McCracken Q.C. asked Able, through you, for specific documents, you as Chairman did say, very clearly, that the Panel has no power to require the production of documents. I would remind you that ABP did request, some many months ago, sight of the draft section 106 Agreement which is either currently being negotiated with the Planning Authority or which will be negotiated in due course. Able refused to accede to our request – even though, I would add, that such a document should in any event be in the public domain.

Whilst, therefore, the Panel has stated very clearly to ABP that it has no power to require the production of documents, it now purports to exercise that very power in respect of an ABP document.

The request for the draft Master Plan was first made by Able at the hearing that took place on Thursday, 13 September. The Panel indicated the next day that it would find the document helpful. Mr McCracken on behalf of ABP indicated that he would take instructions. It is a little disappointing, therefore, that less than a week after the Panel first indicated that it would find the supply of this material by ABP to be helpful, and before waiting to be informed of the outcome of the taking of instructions, the Panel now purports to issue a Rule 17 requirement.

As you are aware, a letter has in fact been sent supplying, so far as available, the material sought by your purported Rule 17 requirement. That letter enclosed three copies of the consultation draft Master Plan. A further copy has been sent to Bircham Dyson Bell as solicitors for the Applicant.

Regrettable though it may be, the Panel has in fact no power to require the production of documents under Rule 17. As I believe you are aware, that power is limited. The parliamentary draftsman has deliberately chosen to omit any power to require the production of *documents* (in marked distinction to the formulation of powers to other planning bodies which do sensibly include the power to include the production of documents).

If, however, the Panel intends to maintain its new position that it has power to require the production of documents under Rule 17, then we invite it to exercise that power in relation to the documents which ABP has sought from Able.

As far as your Rule 17 requirement is concerned, the draft Master Plan has been supplied – indeed within a week of your request. There is no other version in the public domain and we have, for your assistance, highlighted the parts of the draft Plan relating to the western deep water jetty.

The final version will be made available to the Examination as soon as it is in the public domain.

Yours sincerely


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