



BIRCHAM DYSON BELL

Ellen Duffy  
Maritime Commerce and Infrastructure Division  
Department for Transport  
Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

Your Ref

Our Ref  
ADW/Y059258

Date  
26 March 2012

BY EMAIL AND  
POST

Dear Ellen

**Planning Act 2008  
Proposed Able Marine Energy Park**

Able UK submitted an application under the Planning Act 2008 to the Infrastructure Planning Commission in December 2011 and it was accepted in January 2012. A period for making representations is currently running and ends on 2 April.

The application made by Able is for a quay and associated onshore facilities on the south bank of the Humber north of Immingham, together with a compensatory environmental site on the north bank. The onshore facilities are intended to be used for the manufacture and assembly of marine energy infrastructure, which will then be shipped to sites in the North Sea and elsewhere via the quay. Some raw materials may also arrive by sea to the quay.

Although Able owns the vast majority of the land that will be used for the project, some powers of compulsory acquisition are included in the application. One particular parcel of land belongs to Associated British Ports (ABP), operators of Hull, Grimsby, Immingham and other ports, and harbour authority for the Humber conservancy. This is a triangular area of land of about 5 hectares with a frontage to the River Humber, and is shown as parcel 03020 on the land plan accompanying Able's application (attached).

It is likely that ABP will object to the acquisition of this land, given past correspondence on the matter (see the paragraph at the bottom of page 2 of the enclosed letter as an example), and will forward the objection to you once it has been made.

I am therefore writing to you to seek either a declaration that a certificate under section 127 of the Planning Act is not necessary, or to apply for such a certificate if you do not agree with that contention.



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### **No certificate required**

Section 127 applies to land that has been acquired by statutory undertakers for the purposes of their undertaking. Although the land is owned by ABP, who are a statutory undertaker, it is not at all clear that it has been acquired for the purposes of their undertaking. It is not developed and has not been so since it was acquired, according to the registered title, in 1967. It does not share a boundary with any other land owned by ABP, has no access to the road network and we do not believe it to be 'operational land' within the meaning of sections 263 and 264 of the Town and Country Planning Act 1990. The land appears to be a speculative acquisition for possible future development that has not been forthcoming for 45 years so far.

If, as we contend, the land has not been acquired by ABP for the purposes of their undertaking, then there is no need to apply for a certificate under s127, as the land is not covered by that section.

### **A certificate should be granted**

If, on the other hand, you are satisfied that the land has been acquired by ABP for the purposes of their undertaking, then we contend that its nature and situation mean that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking and that a certificate should be issued to that effect under s127.

As mentioned above, the land is not currently used for the carrying on of the undertaking, nor is it contiguous with any land that they use in relation to their undertaking. It would therefore be difficult to demonstrate that it would cause any detriment – never mind serious detriment – to the carrying on of the undertaking if it were acquired from ABP. It will not cause financial detriment to ABP either, as they will be compensated for the market value of the land according to the compensation code.

The only evidence Able has found of ABP's intentions for this land is contained in a Consultation Draft Masterplan for the period 2010-2030 in relation to the Port of Immingham that was produced by ABP and published in 2010. The Masterplan has never been finalised and, to all intents and purposes, has been withdrawn. In that document, the triangle of land was proposed for a 'western deepwater jetty' and described as follows:

#### ***Western Deepwater Jetty***

*7.40 There is potential for a further deep-water river jetty capable of accepting Panamax-sized vessels west of Humber International Terminal and the Oil Pipeline Agency-operated South Killingholme Jetty. The development site fronts an existing 12-acre area of strategic development land owned by ABP.*

*7.41 This opportunity to construct a new facility will be driven by future market demand and progressed when remaining port capacity is full or when a specific demand arises in association with a new industrial user or inward investor.*

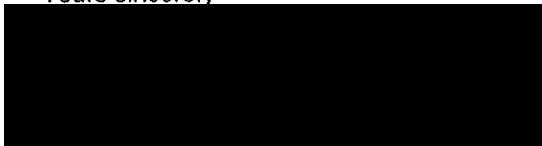
*7.42 It is envisaged that the development will be required between 2020 and 2030. Any development will require a Harbour Revision Order and additional consents as required, for which the appropriate planning process would be completed.*



It is clear from the above that although little weight should be attached to it since it is taken from a draft plan that has never been finalised, at best ABP has a long-term aspiration to develop this land for port-related purposes and would need an application for consent under the Harbours Act 1964 before this could be realised.

You will naturally wish to seek the views of ABP on these points and suggest you contact Peter Jones at the address shown on the attached letter. We would wish to have an opportunity to comment on their response before you made a final decision.

Yours sincerely



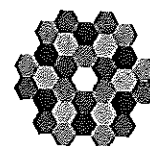
**Angus Walker**  
**Partner**  
**For and on behalf of Bircham Dyson Bell LLP**

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**cc:** Neil Etherington, Able UK Ltd

The electronic official copy of the register follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.



Official copy  
of register of  
title

Title number HS360474

Edition date 20.01.2011

- This official copy shows the entries on the register of title on 26 JAN 2012 at 14:27:12.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 26 Jan 2012.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- For information about the register of title see Land Registry website [www.landregistry.gov.uk](http://www.landregistry.gov.uk) or Land Registry Public Guide 1-A *guide to the information we keep and how you can obtain it*.
- This title is dealt with by Land Registry, Kingston Upon Hull Office.

## A: Property Register

This register describes the land and estate comprised in the title.

NORTH LINCOLNSHIRE

- 1 (20.01.2011) The Freehold land shown edged with red on the plan of the above title filed at the Registry and being land at and on the north west side of Station Road, South Killingholme, Immingham.
- 2 (20.01.2011) The land has the benefit of the rights granted by but is subject as mentioned in a Conveyance of the land in this title dated 21 March 1967 made between (1) John Fletcher Ratten and (2) British Transport Docks Board.

*NOTE: Copy filed.*

## B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

### Title absolute

- 1 (20.01.2011) PROPRIETOR: ASSOCIATED BRITISH PORTS of Aldwych House 71-91 Aldwych, London WC2B 4HN and of Regional Property Manager, Port Office, Cleethorpe Road, Grimsby, North East Lincolnshire DN31 3LL.
- 2 (20.01.2011) The value as at 20 January 2011 was stated not to exceed £500,000.
- 3 (20.01.2011) RESTRICTION: Except under an order of the registrar no charge by the proprietor of the land shall be registered unless the solicitor to the proprietor certifies that it is made in accordance with paragraph 21 of Schedule 3 Transport Act 1981 or some other Act or authority.

Title number HS360474

## C: Charges Register

This register contains any charges and other matters that affect the land.

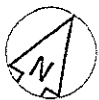
- 1 (20.01.2011) The land edged blue on the title plan is subject to the rights granted by a Deed of Grant dated 6 April 1964 made between (1) Susan Ratten and John Fletcher Ratten and (2) Minister Of Power.

*NOTE: Copy filed.*

- 2 (20.01.2011) A Wayleave Agreement dated 4 May 1972 made between (1) British Transport Docks Board and (2) Yorkshire Electricity Board relates to the construction and maintenance of an electric line.

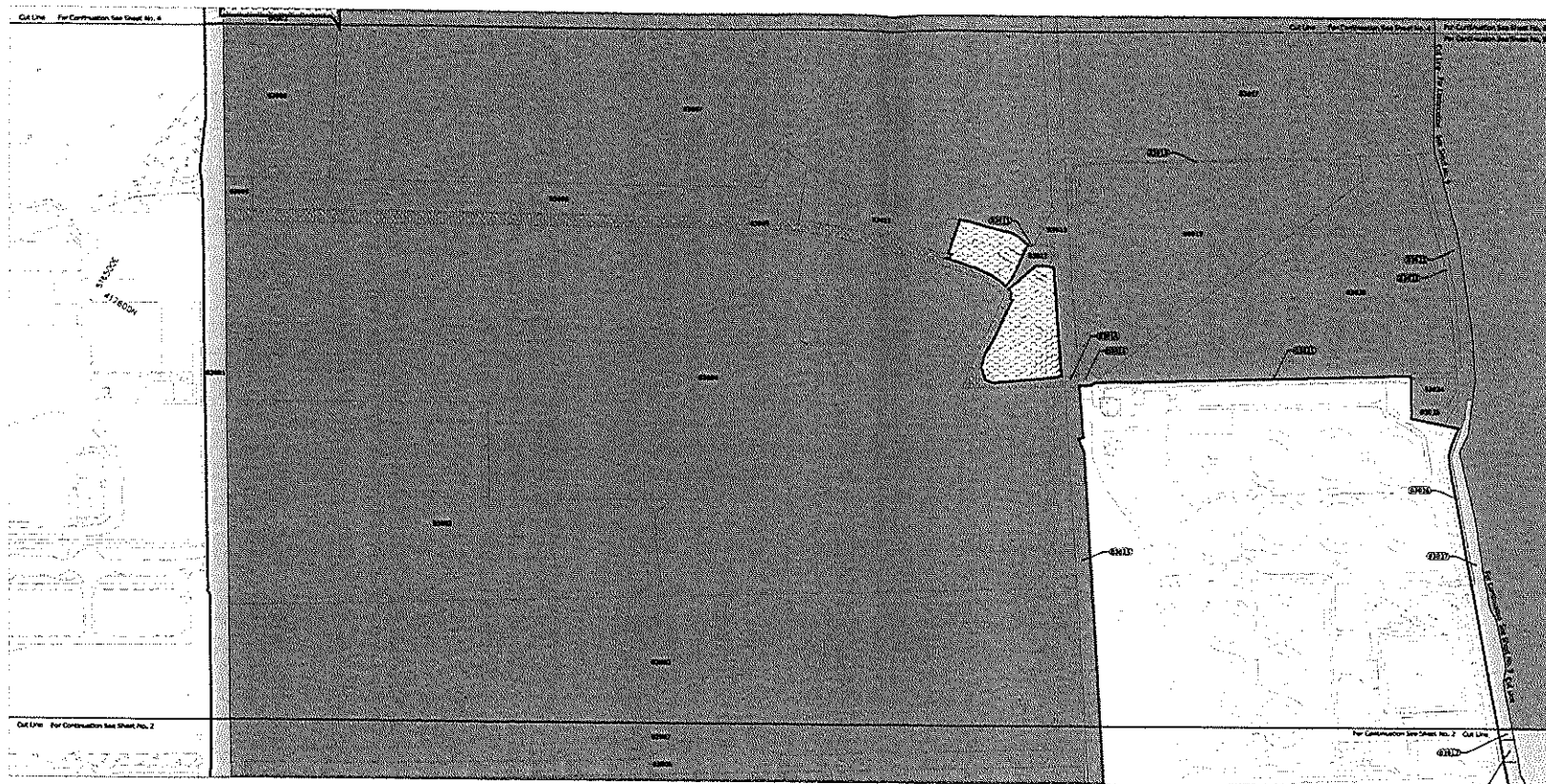
*NOTE: Copy filed.*

End of register



Planning Act 2008  
**ABLE Marine Energy Park**  
 NORTH LINCOLNSHIRE

Sheet No. 3 of 14



**KEY**

- Order land
- Temporary Land
- Land in relation to which it is proposed to extinguish easements, servitude's and/or other private rights
- Land not included
- Boundary of land required for or affected by the proposed development

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Land Plan

50 0 50 100 150 200 250 metres  
 HORIZONTAL SCALE FOR PLAN AT A1 1:2500



**Peter A. Jones**  
CHIEF EXECUTIVE

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5 March 2012

Peter Stephenson  
Executive Chairman  
Able UK Ltd  
Able House  
Billingham Reach Industrial Estate  
Billingham  
Teesside TS23 1PX

Dear Peter

Thank you for your letter of 31 January 2012. I feel it is necessary to respond to a number of the statements in that letter and will do so by reference to your sub-headings.

**The Planning Process**

ABP does not accept that the issue of whether or not Able's MEP application constitutes a nationally significant infrastructure project (NSIP) is closed. Indeed, now that we have had an opportunity to undertake a review of your application, we remain firmly of the view that Able's application does not constitute an NSIP as it does not meet the relevant threshold requirements.

In this regard, I should perhaps point out that we are in fact having some difficulty in understanding what exactly you have applied for. Are you applying for a new port designed specifically for the manufacture of wind turbines for the off-shore energy sector or for a general port facility capable of handling any cargo? What you have assessed, namely an offshore wind turbine manufacturing facility, is quite clearly not capable of achieving the NSIP threshold.

In response to your question about the planning consent process for the Logistics Park which forms part of the overall Able MEP, I am afraid that I am not able to provide the confirmation that you seek. As you know, ABP believes that the planning process for the Logistics Park was fundamentally flawed. It is quite clear, that the application that Able made for a Logistics Park in 2009 is inextricably linked with its more recent MEP application and should therefore have been assessed in combination with the MEP project. ABP's view on this matter was made very clear back in 2010 to both North Lincolnshire council and Able. Neither North Lincolnshire Council nor Able has been able to address the concerns which we have raised with regard to this planning process and accordingly ABP continues to believe that the planning process which has been followed is flawed and that North Lincolnshire Council could not reasonably have reached the view it did in granting consent. Accordingly ABP reserves its position with regard to any final consent which is issued by North Lincolnshire Council.



### Adequacy of consultations in respect of AMEP

I am afraid that we will have to agree to differ on the question of the adequacy of Able's consultation process. The fact that the IPC has chosen to accept Able's application does not in any way demonstrate that Able carried out a full and proper consultation exercise.

We maintain our position that until 13 January 2012, ABP had no idea about the final marine structure that Able was proposing to construct as part of the MEP application. Able's pre-application consultation document and other documents that had been made available described a significantly different marine structure (i.e. it was larger, involved a longer quayside and extruded further into the river) than the actual structure that has been applied for. The dimensions and design of the current proposed structure only became available to us as a result of your application on 13 January 2012 - they had not been provided to ABP's port of Immingham prior to that date.

Your contention appears to be that because you had indicated you would build a bigger structure than you have in fact applied for, it was possible for interested parties such as ABP to assess that structure in order to conclude whether it gave rise to any problems. Given that your eventual structure is smaller than this you appear to assume that this means any impacts and effects of the actual proposed structure must be more limited than those of the bigger structure you originally consulted on. If this is indeed your assumption, then the reasoning behind it is clearly wholly incorrect. The fact that the structure is smaller in scale does not of course mean that its impacts will be either the same as or less than the larger structure you actually consulted on. The marine environment is a very dynamic one and small changes to marine structure design, shape and location can make a very material difference to the way in which the river dynamics such as current flows and sedimentation behave. As a result, in the absence of ongoing and further consultation, as and when your proposals, including as to marine structure, were revised, it was not possible for interested parties such as ABP to assess or model your actual proposals until your application was finally made in January.

### Impact on ABP's operations

I do not accept your statement that "you [sic. ABP] made it clear that you were not happy, from a commercial view point, with aspects of our [sic. Able] proposals". That is in fact a complete misrepresentation of ABP's position and of the concerns that have been raised with you. I believe that my previous letter of 20 January 2012 properly reflects the nature and content of the discussions we had and I therefore see no merit in commenting further on your misleading statement.

### Compulsory acquisition of ABP land

I believe that ABP's position with regards to the proposed compulsory acquisition of ABP land which we hold for the future development of our statutory undertaking has been made very clear both at our meeting on 17 January and in my previous letter. ABP requires the land you are seeking to compulsorily purchase for the purposes of its statutory undertaking. We made our opposition to any attempt by Able to acquire this land absolutely clear right at the start of your MEP process back in 2010. The fact that you have chosen to ignore our opposition to this aspect of your proposals and in fact not made any attempt to explain your need for our land nor made any attempt to understand our own port operational requirements is unfortunate as there is no reason why you could not have drawn up your plans in a manner which would have excluded this land.

### Compensation land at Cherry Cobb Sands

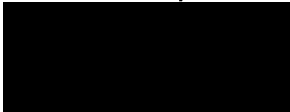
I see no merit in going further into this issue here except to say that ABP continues to believe that it has made a clear case for its requirement of land at Cherry Cobb Sands and has made what it considers to be a very fair and reasonable proposal, indeed in the circumstances probably the only equitable way of dealing with the land, namely to split the 130 acres ABP has for a considerable time been seeking to acquire to meet its development needs, equally between the two parties. ABP intends to continue to pursue an equitable decision with regards to Cherry Cobb Sands.

We note your comment with regard to the Humber LEP Board and would comment that we do not agree that the common goal of working for the benefit of the Humber region as a whole precludes any member of the Humber LEP Board from having, and raising, differences of opinion which might exist with other Humber LEP Board members. You are surely not suggesting that the membership of the Humber LEP Board should require all members to refrain from voicing any criticism or objection to the actions of other LEP members however legally flawed or objectionable such actions might be?

We are of course open to further discussion and dialogue on any of the issues raised in this letter and indeed would welcome dialogue on any of the points that we may raise in our representations to the IPC on your MEP application. We remain of the view that such issues, could, of course, have been discussed prior to your application had you conducted a more thorough and open consultation process.

We also support your view that there are a number of significant opportunities for the Humber region as a whole in relation to the offshore wind renewables sector and we fully agree that this is a real opportunity for the Humber to establish itself as a centre of excellence in this field to the benefit of the region and its economy. We do not, however, believe that such opportunity should permit any projects or proposed developments to be pushed through without all relevant and due legal process being satisfied.

Yours sincerely



Peter Jones  
Chief Executive