

C.RO Ports Killingholme Limited

The Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

**The Able Marine Energy Park Development Consent Order**

**Planning Inspectorate Reference: TR030001**

**Summary of Written Representation of C.RO Ports Killingholme Limited (Interested Party  
reference: 10015532)**

29 June 2012

## **PART 1 - INTRODUCTION**

1. This is a summary of the first written representation ("WR1") prepared on behalf of C.RO Ports Killingholme Limited ("C.RO"). It relates to the application by Able Humber Ports Limited ("Able") to the Secretary of State for the Able Marine Energy Park Development Consent Order (the "Application").
2. C.RO has notified the Examining Authority of its objection to the Application and the specific elements of the proposed Able Marine Energy Park ("AMEP") for which the Application was made in a relevant representation made on 30 March 2012.
3. C.RO is the owner and operator of, and statutory harbour authority for, C.RO Ports Killingholme ("CPK"). CPK, is a six-berth ro-ro facility located to the west, and upriver, of AMEP. CPK has an annual throughput of 400,000 units. If it were to be promoted today, it would be a Nationally Significant Infrastructure Project.
4. C.RO has two existing rail heads and the benefit of an existing connection to Network Rail's network. The flexibility this provides is of vital importance to C.RO. It will enable C.RO to respond to changes in the market, and the move towards increasing the rail-share of freight. This accords with Government Policy.

## **PART 2 - STATEMENTS ON EXAMINING AUTHORITY'S INITIAL ASSESSMENT OF PRINCIPAL ISSUES**

### **5. Principal Issue 2: *Navigation or other marine impacts***

#### Navigation

- 5.1 C.RO is concerned that AMEP will adversely affect navigation at, and to and from, C.RO. This will have operational impacts on C.RO's port business at CPK and upon the functioning of CPK. Such impacts will also give rise to issues of safety. As matters stand, there is no protection for C.RO as a statutory harbour authority, and the potential disruption resulting from interferences with navigation during construction and operation will be unacceptable. The impacts on CPK have not been properly assessed nor addressed by mitigation.
- 5.2 Arrangements need to be put in place using protective provisions to ensure that these impacts are appropriately mitigated. C.RO also considers that protective provisions will be required in the Development Consent Order ("DCO") to ensure that any works that will affect approaches and navigational safety will be subject to approval by C.RO.

### Hydrodynamic and sedimentary regime

- 5.3 C.RO also has concerns regarding the effects of AMEP on the hydrodynamic regime, morphology and deposition patterns in C.RO's harbour. C.RO considers that there are serious deficiencies in the modelling that has been submitted as part of the Application. The consequence is that the assessment of the hydrodynamic effects of AMEP is deficient and cannot be relied upon. The Examining Authority cannot have confidence that the impacts have been adequately identified and assessed. Accordingly, judgements cannot be made as to adequacy of the proposed mitigation and what further mitigation may be required should AMEP proceed.
- 5.4 C.RO has discussed potential mitigation with Able, notwithstanding the deficiencies in the Environmental Statement that C.RO has identified as set out above. It expects any mitigation to be secured by protective provisions. AMEP should not be allowed to proceed unless the DCO contains protective provisions to address the monitoring of sedimentary deposition, any additional maintenance dredging required, and the costs of doing so, in C.RO's harbour.
6. **Principal Issue 3: *The scope and scale of the proposal* and Principal Issue 8: *Impacts on Network Rail***
- 6.1 C.RO's primary concern with the scope and scale of AMEP relates principally to the proposed compulsory acquisition and privatisation of the Killingholme Branch Line (the "Railway"), which connects CPK to the wider national railway network (the "Network"). C.RO considers that:
- 6.1.1 Able has failed properly to justify its proposal to compulsorily acquire the Railway;
- 6.1.2 Applying the statutory tests under the Planning Act 2008, Able has failed to establish that the acquisition is required for AMEP, and has not made a compelling case in the public interest for the acquisition;
- 6.1.3 There is a complete absence of detail on what alternatives Able has considered, if any, and why these are not possible. In particular, the feasibility of level crossings at the site should have been explored, as well as any other potential variations to the design of AMEP;
- 6.1.4 C.RO has reasonably foreseeable requirements for rail access; and

- 6.1.5 There are a number of genuine operational concerns, not least that C.RO would be required to depend on rights in contract against Able to obtain and maintain a connection and to allow it to use the Railway when Able wished to cross it for the purposes of AMEP.
- 6.2 The effect of any acquisition will be that although Able does not apparently need to use the Railway for the purposes of AMEP (other than to cross it), existing and potential users of a national, regulated railway asset (where there is a reasonable prospect of such use) are deprived of their ability to use that asset simply because it is considered to be an obstacle to a proposed private development. It is not acceptable, appropriate or in the public interest for part of the national railway network serving a statutory harbour which is a statutory undertaking to be privatised to benefit one person's narrow private interests to the detriment of the wider public interest. This is the more so where C.RO is already an operational facility with an existing connection to the network.
7. **Principal Issue 10: *The adequacy and efficacy of the draft DCO***
- 7.1 C.RO has two main concerns regarding the adequacy of the draft DCO. These are as follows:
- 7.1.1 Article 10 of the DCO as drafted gives Able unacceptably wide and unconstrained powers to carry out works that are not specified now, and which works have not been subject to assessment. There is no explanation of why these powers are needed, and if or how they relate to the construction or operation of a facility for the manufacture of marine energy components. The DCO does not contain any constraints on what these works might be, including any requirement for prior approval. Able should specify the works - or at least the scope of them - now because they need to be assessed as part of AMEP. If this does not occur, the Secretary of State can have no confidence that the environmental effects of such works have been assessed and thus cannot know that such effects are acceptable or whether any mitigation is appropriate or effective. However, if the Secretary of State is satisfied that such a provision is appropriate, even with amendments, C.RO must be adequately protected so that where any such works may affect it and its harbour, including vessel movements, they may not be constructed without the prior approval of C.RO; and
- 7.1.2 AMEP has been assessed on the basis of its future operations as a facility for the manufacture of marine energy components only. Able's ability to deviate from this purpose must be constrained. This will ensure that its environmental effects

are limited to those assessed, in particular regarding sedimentation and navigation. The mechanism to do so would be to insert a requirement into Schedule 11 restricting operations to the functions listed in Schedule 1. C.RO is concerned that if such a requirement is not inserted AMEP may be used for purposes other than that for which it has been assessed and justified under the Habitats Regulations. The environmental impacts of those other uses have not been identified and thus would be uncontrolled.

### **PART 3 - COMMENTS ON THE RELEVANT REPRESENTATIONS**

8. C.RO notes the objections of Network Rail, the Harbour Master and Associated British Ports ("ABP") to AMEP and supports them.

### **PART 4 - RESPONSES TO FIRST WRITTEN QUESTIONS**

9. WR1 includes C.RO's response to:
  - 9.1 The three questions directed primarily to C.RO (questions 57, 58 and 59); and
  - 9.2 Questions directed primarily to Able, the Harbour Master, ABP and Network Rail that raise issues in which C.RO is concerned.

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## **PART 1 - INTRODUCTION**

1. This first written representation ("WR 1") has been prepared on behalf of C.RO Ports Killingholme Limited ("C.RO"). It relates to the application by Able Humber Ports Limited ("Able") to the Secretary of State for the Able Marine Energy Park Development Consent Order, which bears the IPC's reference TR030001 (the "Application").
2. The Application was made on 19 December 2011 and accepted by the IPC on 12 January 2012.
3. C.RO has notified the Examining Authority of its objection to the Application and the specific elements of the proposed Able Marine Energy Park ("AMEP") for which the Application was made in a relevant representation made on 30 March 2012. That representation is attached at Appendix 1.
4. This Representation has been prepared in response to and in compliance with the Examining Authority's procedural letters of 1 May 2012 and 31 May 2012, and its rulings following the Preliminary Meeting which took place on 24 May 2012.
5. This Representation contains the following Parts:
  - 5.1 Statements in response to the Principal Issues identified by the Examining Authority in its Initial Assessment of Principal Issues, set out in its letter of 1 May 2012 (Part 2);
  - 5.2 Comments on the Relevant Representations received by the Examining Authority (Part 3); and
  - 5.3 Responses to the first written questions posed by the Examining Authority in its procedural letter of 31 May 2012 (Part 4).

## **C.RO**

6. C.RO is the owner and operator of C.RO Ports Killingholme ("CPK"). CPK, is a six-berth Roll-on, Roll-off ("ro-ro") facility located to the west, and upriver, of AMEP.



7. CPK was formerly known as Humber Sea Terminal ("HST"). The current jetties and associated facilities were constructed in the late 1990s, and subsequently revised/extended.<sup>1</sup>
8. C.RO is the statutory harbour authority for CPK. The limits of its harbour are shown on the plans at Appendix [2].
9. C.RO's facilities comprise six lock-free ro-ro berths. They are capable of handling vessels up to 230m Length Overall ("LOA") and are suitable for stern or quarter ramp vessels.
10. Three of the berths can handle deep sea car vessels. The port includes a pre-delivery and inspection ("PDI") centre for the automotive industry. This enables all necessary activities to be carried out for the onward transport/sale of cars, including washing, de-waxing, technical work, and other post-production activities.
11. C.RO also has two existing rail heads and the benefit of an existing connection to Network Rail's network. The flexibility this provides is of vital importance to C.RO. It will enable C.RO to respond to changes in the market, and the move towards increasing the rail-share of freight. This accords with Government Policy.
12. CPK has an annual throughput of 600,000 units<sup>2</sup> although the berths at CPK have a much greater capacity than this. The current annual throughput is being achieved with a 33% berth capacity. If C.RO were to promote CPK today, it would be a Nationally Significant Infrastructure Project ("NSIP").

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<sup>1</sup> The principal empowering orders for C.RO are The North Killingholme Harbour Empowerment Order 1994 and the Humber Sea Terminal (Phase 3) Harbour Revision Order 2006.

<sup>2</sup> Pursuant to Section 24(6) of the Planning Act 2008 a "unit" in relation to a ro-ro ship means any item of wheeled cargo (whether or not self-propelled).

## **PART 2 - STATEMENTS ON EXAMINING AUTHORITY'S INITIAL ASSESSMENT OF PRINCIPAL ISSUES**

### **13 Introduction**

- 13.1 This part of the Representation contains statements on behalf of C.RO that address certain aspects of the Examining Authority's Initial Assessment of the Principal Issues contained in Annex C of its letter dated 1 May 2012. In each case, the Principal Issue in question is set out in bold italics as stated in the Examining Authority's letter and C.RO's case in respect of the relevant Principal Issue follows. C.RO reserves the right to comment further in relation to the Principal Issues, particularly if further information emerges at a later stage of the examination.

### **14 Principal Issue 2: *The extent to which the proposed port might have significant adverse navigation or other marine impacts on other operators in the Humber estuary, and possible mitigation requirements***

- 14.1 C.RO has two primary concerns in relation to this Principal Issue:

14.1.1 navigation and navigational safety; and

14.1.2 the effects of the AMEP on the hydrodynamic regime, morphology and deposition patterns in C.RO's harbour.

#### Navigation

- 14.2 In summary, C.RO is concerned that AMEP will adversely affect navigation at, and to and from, C.RO. This will have operational impacts on C.RO's port business at CPK and upon the functioning of CPK. Such impacts will also give rise to issues of safety. As matters stand, there is no protection for C.RO as a statutory harbour authority, and the potential disruption resulting from interferences with navigation during construction and operation will be unacceptable. These impacts have not been properly assessed nor addressed by mitigation. There is also a concern AMEP will create navigational risk issues for C.RO as harbour authority in C.RO's statutory harbour undertaking.
- 14.3 These concerns are practical in nature but are exacerbated (in part) by two broad deficiencies with the Environmental Statement, which fails properly to assess the impacts of AMEP in a number of ways:

- 14.3.1 The modelling of AMEP that has been carried out is based on hydrodynamic data that is not current and is based upon a quay design that has been superseded. The navigation impacts cannot be properly known until modelling is carried out using the final iteration of the AMEP design and up to date hydrodynamic data. As things stand, there is no modelling of AMEP and this cannot be addressed by later modelling of up to date data after development consent is granted;
- 14.3.2 The assessment that has been undertaken - such as it is - is confined to considering impacts on the Humber estuary as a whole. It fails to consider the local impact of AMEP on neighbouring facilities, and in particular CPK. The potential for conflict with operations and vessel movements associated with CPK has not been fully assessed and indeed is numerically down-played. The Environmental Statement fails to take account of existing - or projected - levels of vessel traffic associated with CPK, and makes little reference to its activities. This is a matter of great concern - and it is submitted - should be an issue of considerable concern to the Examining Authority - given the close proximity of AMEP to CPK, and the fact that the approach and turning areas of CPK and AMEP overlap.
- 14.4 The consultation that has been carried out in relation to navigation is also inadequate and the Environmental Statement overstates its thoroughness. The consultation that was carried out was on the basis of the earlier quay wall design and, so far as C.RO is aware, no further consultation was carried out on the final iteration of the scheme. The consultation also had limited scope and did not fully address the impact of AMEP's construction and operating phases on other users of the Humber. This is of considerable concern given potential volumes of traffic on the river, and the operational and safety consequences. C.RO was not expressly consulted about these matters in sufficient detail.
- 14.5 Of particular concern to C.RO is the very large number of vessel movements that will be required for the construction of AMEP and the failure of Able to properly assess its impact or suggest appropriate mitigation. Able has provided conflicting information as to the volume of marine construction traffic that will be generated. Paragraph 3.3.1 of Annex 14.2 to the Environmental Statement suggests that construction vessel movements would number approximately 3,600 movements in total over an 18 month period. However paragraph 14.6.27 of the Environmental Statement refers to a figure of 5,500 movements in total over that same period. Moreover, it refers to a peak of 700 movements per month over the last year of construction (which is effectively a six month period given the 18 month construction period). This represents a 600% increase in traffic within C.RO's area of operation, which is

the most sensitive area and the area where impacts will be greatest. The Environmental Statement refers to an estuary-wide increase of 10% over the total 18 month period but does not specifically consider the increased traffic within C.RO's harbour. This plainly underrepresents the effects numerically.

14.6 C.RO is concerned with this figure. There has been no assessment of the local impact of this increased traffic on CPK, only on the Humber Estuary as a whole. Moreover there is no clarity about how the increase in vessel movements will be managed. C.RO is particularly concerned by the implication in paragraph 14.6.28 that there may be an increased risk of groundings as vessels manoeuvre around the construction traffic. The limited manoeuvrability of vessels involved in the construction is also referred to. This part of the Environmental Statement implies, therefore, that Able's approach to controlling traffic will give precedence to construction traffic over other vessel movements. This is not acceptable as a blanket approach. This is a misleading and deficient approach, as a result of which the existing environmental information cannot be relied upon.

14.7 It must be recognised - and nowhere is this addressed in the Environmental Statement - that the majority of vessel arrivals/sailings at CPK are scheduled. Furthermore, C.RO and its customers rely upon this schedule. It is of the utmost importance to C.RO's business and operations that construction vessels for AMEP do not disrupt scheduled sailings. In any case, there is no need for construction vessels to disrupt C.RO's scheduled sailings. Given that a schedule exists today, and will do so in future, it is appropriate and acceptable that construction vessel movements for AMEP are managed around scheduled vessel arrivals/sailings at CPK and Able could undertake to do so (although it has not). Able should provide clarity over how priority rights will be organised. Priority should be given to scheduled sailings. The purpose of any management arrangements should be to fit construction vessel movements safely around fixed sailings. It would not be acceptable or appropriate for C.RO's sailing schedule to be disrupted by construction vessels. C.RO requires that it is part of any arrangements and that no interference with its scheduled arrivals/sailings should be permitted without it first approving them, particularly in the vicinity of C.RO's port itself. This is appropriate and necessary given the proximity of AMEP to C.RO, and the potential interference with C.RO's approach channel.

14.8 C.RO is also concerned that once AMEP is constructed its operations will have impacts on C.RO's navigation and access arrangements. Vessels plying to/from AMEP with a classification of VLS ("Very Large Ship") will be required to transit the river passage on or about High Water. It is understood that it is expected that vessels of this classification will

take priority, due to the constraints of their draft, and will normally be accompanied by tugs. However this takes no account of how the slow manoeuvring of VLS in and around C.RO's approaches and downstream manoeuvring areas will impact on C.RO. It can be expected that VLS will at some stage conflict with the normal schedule of arrivals and sailings associated with C.RO's operations. This could cause delays to C.RO's vessels without proper management of the manoeuvring area and prior consultation between both Harbour Authorities and the River Authority as a whole. C.RO is not satisfied that this impact has been adequately assessed, nor mitigation suggested. VLS movements should not be allowed to interfere with C.RO's scheduled arrivals/sailings, and certainly not on a "first come, first served" basis. C.RO would expect to be part of any liaison and management arrangements given the identified and inevitable interference with vessel movements at CPK.

- 14.9 Able has to date only proposed that a management regime be put in place. However, there are no details of this regime, or clarity as to how it would be secured. C.RO submits that in absence of any detail, the Examining Authority could not consider such proposals to be proper mitigation, and as a result cannot consider that the effects of AMEP's construction and operational vessel movements are acceptable. In fact, the reverse is the case. Without any assessment of mitigation, the Secretary of State cannot make the Development Consent Order ("DCO"). He cannot be satisfied that the effects on C.RO are acceptable, and/or have been appropriately mitigated. To do so would not only ignore the requirements of the EIA Regulations. It would also be contrary to the Directive, and therefore to European Law.
- 14.10 C.RO will suffer in particular as a result of activities proposed in connection with AMEP. It is likely that such effects as are predicted would impact C.RO particularly adversely as AMEP's nearest neighbouring port. Further, these effects would be suffered by C.RO's business and would not be easily compensated, relating to matters such as demurrage and the reputational effect upon CPK and C.RO generally.
- 14.11 A vague assertion as to the mitigation proposed by Able is not sufficient to alleviate C.RO's concerns regarding the impacts of AMEP during both the construction and operation stages. In particular:
- 14.11.1 The Environmental Statement states that traffic management procedures will be required to ensure that large vessels operating to and from AMEP do not adversely impact on the passage of other vessels on the Humber. However no detail is provided as to what these traffic management procedures might involve, other than stating that they will be achieved via consultation with the relevant Harbour Authority when

required. This is not sufficient to alleviate C.RO's concerns regarding the likelihood of significant adverse navigational impacts. It is not even suggested how such management might work with C.RO. No requirement has been proposed.

14.11.2 Able states that during the construction stage it will investigate the viability of establishing a "Berth Manager" or Marine Control Centre. The Berth Manager would have responsibility for managing construction vessel movements and liaising with Humber VTS. This will not mitigate any impact that the high volume of construction traffic may have on existing traffic. The Humber VTS will only advise, and, should the need arise, control the order of vessels into C.RO's Harbour as a result of the AMEP works, which could have a serious impact on scheduled vessels arrivals and sailings. A Berthing Manager would only be responsible for AMEP vessels and not those associated with C.RO. Therefore areas of conflict will exist, without any means of resolving conflicts being proposed.

14.11.3 Issuing Temporary Notices to Mariners and VHF communications are normally used to warn vessels of activities within their area of transit and to keep clear. The Environmental Statement contains no detail on how this will be controlled or whether there is any assurance that construction traffic must 'fit' around existing traffic. C.RO is not aware of any direct consultation taking place relating to the management of construction traffic and the mitigation that should be introduced to avoid any disruption to existing vessel movements.

14.11.4 The Environmental Statement also provides that the upstream and downstream extents of the AMEP quay and the upstream extent of the AMEP swinging area will be identified with navigation marks and lights to reduce the risk of vessels colliding with structures associated with AMEP (both during the construction and operational phase). This area overlaps with C.RO's approach channel and it is C.RO's position that this is not an appropriate mitigation measure.

14.11.5 C.RO considers that protective provisions will be required in the DCO to ensure that any works that will affect approaches and navigational safety will be subject to approval by C.RO.

14.12 C.RO therefore has significant concerns regarding the impacts of both construction and operational vessel traffic on its operations. These impacts have not been properly assessed, and the mitigation proposed is not sufficient to address them. Arrangements need to be put in place to ensure that these impacts are appropriately mitigated. These arrangements should be

secured by protective provisions. In addition, the modelling that Able has carried out does not take account of the current throughput of CPK, its actual capacity, and any potential increase in arrivals/sailings at CPK. C.RO has raised its concerns with Able a number of times, both before and after Able submitted the Application. C.RO has not sought to rely on making written representations as part of this examination to obtain mitigation and/or appropriate protection. At Appendix 3 of the Representation is a copy of the most recent letter C.RO has sent to Able, through its lawyers DLA Piper UK LLP. A response is awaited. Whilst C.RO is receptive to any clarification, it is not for C.RO to propose a solution to the issues likely to be caused by AMEP, particularly in the absence of adequate detail about AMEP on which any solution reasonably must be based.

- 14.13 Importantly, C.RO cannot make any assessment of the suitability of any mitigation without sufficient detail. It submits that the Examining Authority is in the same position. Should Able not provide such detail, the Examining Authority should require it to do so as part of the examination.

Hydrodynamic and sedimentary regime

- 14.14 C.RO's second core concern is the effects of AMEP on the hydrodynamic regime, morphology and deposition patterns in C.RO's harbour. In relation to the information that has been provided with the Application C.RO considers that:

14.14.1 It is confusing and does not allow conclusions to be drawn in relation to the effects of AMEP;

14.14.2 The modelling has been carried out inconsistently on the basis of different quay wall designs;

14.14.3 There is no evidence that this modelling has included the existence of berths at C.RO, nor of vessels moored alongside AMEP's quay.

- 14.15 The consequence of these observations is that the assessment of the hydrodynamic effects of AMEP is deficient and cannot be relied upon. The inadequacy of the modelling is of serious concern to C.RO. Chapter 8 of the Environmental Statement states that while the various technical studies appended to it are based on different iterations of AMEP, there is no need to repeat the modelling in full and thus reassess the impacts as the final layout mitigates impacts when compared with the larger earlier layouts. However, it is not clear how this conclusion

has been reached, assessments as to effects have been made, or on which iteration of the layout the modelling being relied on was based.

- 14.16 It is not sufficient to infer that the impacts of the final layout will be less than those modelled for an earlier layout iteration, simply because the footprint of AMEP has been reduced and it has been moved closer towards the shoreline. Such an approach is conjecture. It also ignores the clear evidence that the River Humber is a chaotic and dynamic estuarine environment in this location. A structure of the dimensions of the quay wall for AMEP will have different effects depending on its location. If it is moved, there is no basis for saying that the effects will be less. Even if this were to be true, there is no evidence in the Environmental Statement that supports this conclusion. Relying on this approach would mean that the effects of AMEP have not been assessed; and it would be unlawful to make the DCO. In fact, a layout closer to the shoreline could compound the effects already identified for the earlier layouts or introduce additional impacts. C.RO has particular concerns about the level of dredging that will be required as a result of the scheme being moved closer to the shoreline. The final layout should have been the subject of full modelling and its effects properly assessed.
- 14.17 Other serious flaws can be identified in the modelling. C.RO has been unable to establish whether the models incorporated vessels moored alongside AMEP's quay. Large vessels berthed alongside a facility, particularly at low water, could have detrimental effects on tidal flow and rate. Further information is required in this respect.
- 14.18 Similarly, it is unclear whether the berths located at CPK were inputted into the model. The existence of physical structures will have an effect on the transfer of sediment in the Humber Estuary. If these structures have not been incorporated into the model this raises further doubts as to the accuracy of the assessment of effects.
- 14.19 The result of these issues is that the assessment of effects on the hydrodynamic and sedimentary regime that accompanies the Application is incomplete and inadequate and cannot be relied upon by the Examining Authority. The Examining Authority cannot have confidence that the impacts have been adequately identified and assessed. Accordingly, judgements cannot be made as to adequacy of the proposed mitigation and what further mitigation may be required should AMEP proceed.
- 14.20 Similarly, C.RO is not able to assess the adequacy of any proposed mitigation (such as it is) when the modelling is incomplete and thus the effects of AMEP have not been fully identified and assessed. C.RO has carried out its own review of the Environmental Statement, and



made assessments of AMEP, in order to understand AMEP's implications for C.RO's statutory harbour. It has had to do this at its own expense

14.21 C.RO has discussed potential mitigation with Able, notwithstanding the deficiencies in the Environmental Statement that C.RO has identified as set out above. It expects any mitigation to be secured by protective provisions. If Able and C.RO are not able to agree the text of protective provisions, C.RO will propose its own version as part of subsequent written representations, and reserves the right to do so. Any such protective provisions should include at least the same protections as is normally afforded to statutory harbour authorities elsewhere. It has decided not to submit a draft of the protection it will require subject to receiving more information from Able, and a draft set of provisions. The Examining Authority will note that this is the case from the letter at Appendix 3.

14.22 In summary, AMEP should not be allowed to proceed unless the DCO contains protective provisions to address the monitoring of sedimentary deposition, any additional maintenance dredging required, and the costs of doing so, in C.RO's harbour.

**15     *Principal Issue 3: The scope and scale of the principal and associated development constituting the proposal, and the extent of the land proposed for compulsory acquisition***

15.1 C.RO's primary concern with the scope and scale of AMEP relates principally to the proposed compulsory acquisition and privatisation of the Killingholme Branch Line (the "Railway"), which connects CPK to the wider national railway network (the "Network"). This is further discussed in relation to Principal Issue 8 below.

**16     *Principal Issue 8: The impacts of the proposed development on the assets and operations of Network Rail***

16.1 The DCO makes provision for the compulsory acquisition of the track and track-bed of the Killingholme Branch Line, which connects CPK with the wider Network. C.RO is entitled to access to the Railway through a connection agreement with Network Rail.

16.2 CPK is a nationally significant port, capable of handling a six berth ro-ro facility handling more than 400,000 ro-ro units annually. It is an important port not only because of its capacity to handle such a significant quantity of ro-ro units, but also because of its potential to handle freight via the Railway. This has always been a key attraction of this port for C.RO as a port operator, even if it is not currently used.

- 16.3 C.RO has considerable concerns about the operational impacts on its future use of the Railway if compulsory acquisition proceeds.

Government and Network Rail policy on rail freight

- 16.4 Before setting out the arguments against Able's proposed acquisition of the Railway, it is important to consider the policy and factual background that underlies the need to maintain and develop the rail freight capacity of the Network. This is in the context of a proposal that seeks to remove infrastructure from the Network that has an important place in allowing freight to be transported by rail. The Railway would also have an important role in developing the capacity of the Network to carry freight by rail. As matters stand, there are no proposals to accommodate or protect the future rail freight needs of C.RO in so far as they may be affected by AMEP. There is no, or at least insufficient, clarity, and no detail, about how the Railway (if acquired by Able) would be protected so that rail freight associated with C.RO is accommodated and allowed to grow.

- 16.5 Able's proposal to acquire the Railway is inconsistent with the thrust and direction of Government policy, all of which in recent years has aimed to increase the modal share of rail freight transport and enhance the Network's ability to transport freight effectively by rail. These policies accentuate the need to maintain rail connections to existing ports. It also conflicts with the legislative regime relating to railways.

- 16.6 These policy documents include:

16.6.1 *Delivering a Sustainable Railway* (Department for Transport (July 2007)) - This report states that the long term ambition is for a railway that "can handle double today's level of freight and passenger travel" and that the Government was confident "that rail freight will continue to grow over the next 10 years". The document cites the Eddington Study<sup>3</sup>, and states that "international links via ports...showing signs of congestion and unreliability" are "crucial to the productivity and competitiveness of the economy". The Secretary of State noted that the railway is well placed to serve such markets;

16.6.2 *Strategic Business Plan update, Supporting Documentation, Strategic Freight Network* (Network Rail (April 2008)) - In this update Network Rail asserts that it is a

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<sup>3</sup> *The Eddington Transport Study*, Department for Transport, 2006.

reasonable assumption that there will be a need to carry an increasing level of imported goods by rail between expanded ports and conurbations;

16.6.3 *Britain's Transport Infrastructure Strategic Rail Freight Network: the Longer Term Vision* (Department for Transport (September 2009)) - Increased freight capacity and the protection of strategic freight capacity are stated as key elements of the Government's longer term vision. It follows from this that, although the Railway on the Able site would not be defined as part of the strategic freight network, that privatising the Railway would be inconsistent with the implicit Government objective of achieving a more developed and fully functioning Network able to transport freight effectively;

16.6.4 *Value and Importance of Rail Freight* (July 2010) - Network Rail states in the summary to this document that "enabling rail freight to expand and thrive is a key responsibility of the rail industry, especially if rail is to play its part in supporting economic recovery and long term sustainable growth". Network Rail "forecast that rail freight could increase by as much as 140% by 2030" and that "even the most conservative scenario shows rail freight growing strongly". Network Rail's vision is to increase the modal share of rail and to take freight off Britain's roads, improving the economy, our quality of life and substantially reducing carbon emissions". Moreover in the main document Network Rail asserts that the UK Government recognises that rail freight "can have significant environmental and social benefits" and that accordingly the Government encourages its use with two key grants, which provide capital and revenue support;

16.6.5 *Planning ahead: Control Period 5 and beyond - Britain's railway from 2014* (Network Rail, Association of Train Operating Companies, Rail Freight Operators' Association) - This document confirms that demand for rail freight services is set to rise due to a return to economic growth, increasingly congested roads and skies, and a commitment that the UK cut its carbon emissions. The authors' vision includes "rail connections to terminals and distribution centres, making rail a natural choice and increased market share from 11.5 per cent to 20 per cent of surface freight"; and

16.6.6 *The National Policy Statement for Ports* (Department for Transport (January 2012)) - The National Policy Statement ("NPS") for Ports requires the planning system to objectively considers the modal share of traffic entering and leaving ports in the context of external congestion and environmental costs. It states that "broadly

speaking, rail and coastal or inland shipping should be encouraged over road transport, where cost effective." The Secretary of State will be aware of the provisions of Section 104 of the Planning Act 2008, which require that in deciding the Application the Secretary of State must have regard to "a relevant national policy statement". That will involve having regard to the extent to which elements of a proposed development would frustrate, or impede, or conflict, with the requirements of a relevant NPS, including in relation to other existing nationally significant infrastructure. Further, the extent to which AMEP will impede C.RO's use of the Railway is an important and relevant matter, to which the Secretary of State must also have regard under Section 104(2)(d) of the Planning Act 2008.

- 16.7 These policy documents illustrate the centrality of rail freight to ports and intermodal traffic, and the Government's focus on increasing its modal share. Despite the clear policy direction from the Government, Able is proposing that a freight railway line, for which connection agreements are in place for the purpose of moving freight by rail, and for which there will be increased demand from other users going forward, is to be removed from the Network to accommodate the requirements of one developer. Able has not even demonstrated a clear need to use that Railway. Similarly, it has not demonstrated the way in which it can or will affect the Railway. This is clearly contrary to the thrust of Government policy.

Able's purported justification

- 16.8 At paragraph 5.1.2 in the Statement of Reasons submitted with its application for AMEP, Able states that the Railway is to be acquired in order to allow the site to be operated as a whole. However, Able does not assert that (or explain why) it needs to use the Railway as part of AMEP. Similarly, it does not (or does not properly) explain why the presence of the Railway prevents the operation of AMEP as a whole or why, whilst still operating as a railway, the change in ownership so improves the operational characteristics of AMEP.
- 16.9 The Application does not include any proposals for railway infrastructure at AMEP. It is not clear for what purpose the Railway is required to serve AMEP, and how it could do in the absence of the necessary infrastructure, e.g. sidings, gantries, cranes, etc. If such infrastructure is proposed, it should be assessed.
- 16.10 It has also been suggested to C.RO that it should agree to limit its use of the Railway to two trains per day (see open letter at Appendix 3). No explanation of the need to do so has been given by Able, particularly as Able appears not to have a need for the Railway for AMEP

purposes or to allow operational ease for AMEP. There can be no certainty that the Railway would be maintained or retained.

16.11 The Statement of Reasons then goes on to assert that the remainder of the Railway (i.e. that extending beyond the north-western boundary of the AMEP site) is also required so that the Railway can be treated as a single unit. It is not clear what is meant by this. The Railway is already a single unit. It can only be speculated that Able considers it impracticable for the Railway to be owned by a number of different bodies, or that it foresees some connection with the Logistics Park for which it has planning permission, located on the north-west side of C.RO. However, such a purpose would be beyond the scope of this Application and no compelling case in the public interest has been made for the acquisition.

16.12 This, on the basis of available information, comprises Able's case for acquiring the Railway. As it stands it is considered to be inchoate, vague, and certainly far short of a compelling case in the public interest.

#### No justification for acquiring Railway

16.13 At no point, and certainly as things stand, has it been clear why Able needs to acquire the Railway at all as part of AMEP. No rail infrastructure is included as part of the Application. This asserted requirement has not been explained to C.RO. Neither is it at all clear from Able's application documents. To date, the available information remains uninformative and wholly unsatisfactory. No justification has been provided.

16.14 C.RO cannot agree to the privatisation of the Railway without understanding how this would be achieved in a way that is not detrimental to its rights. That in turn demands a rationale for the acquisition. On the face of it, Able does not need to acquire the Railway at all for AMEP. It should not, therefore, be empowered to do so. It is certainly not clear why it would need to limit C.RO's use of the Railway.

16.15 Able must satisfy the conditions of Section 122 of the Planning Act 2008. Pursuant to Section 122(2) a DCO may only include compulsory purchase powers if the land:

16.15.1 is required for the development to which the DCO relates;

16.15.2 is required to facilitate or is incidental to that development; or

16.15.3 is replacement land.

- 16.16 In relation to the test under Section 122(2), the Department of Communities and Local Government's *Planning Act 2008: Guidance related to procedures for compulsory acquisition* ("CLG Guidance") states that the promoter must be able to demonstrate to the satisfaction of the decision-maker that the land in question is needed for the development for which consent is sought. The decision-maker should be satisfied, in this regard, that the land to be acquired is no more than is reasonably required for the purposes of the development.<sup>4</sup>
- 16.17 Applying the CLG Guidance to the Application, it is not apparent why the relevant land (the Railway) is required for AMEP, nor that it is no more than is reasonably required for AMEP to go ahead. The documentation accompanying the Application fails to explain why:
- 16.17.1 AMEP requires the compulsory acquisition and privatisation of the Railway; or
- 16.17.2 AMEP cannot be constructed or operated unless the Railway is acquired.
- 16.18 In addition, pursuant to Section 122(3) there must be a compelling case in the public interest for the land to be acquired.
- 16.19 Able has also failed to make a compelling case in the public interest that the compulsory acquisition of the Railway is required. The compelling case applies not only to the acquisition of Network Rail's land itself, but also to the consequences of that acquisition in terms of the implicit injurious affection of C.RO's land caused by the removal of a direct connection to the Network. The requirement to show that there is a compelling case in the public interest applies equally to the proposed disapplication of the Railways Act provisions contained in Article 47(1) of the draft DCO because the effect of that legislative amendment on Network Rail's and C.RO's land will be the same.
- 16.20 The Statement of Reasons does not set out how acquiring the Railway in order for the site to be operated as a whole meets the tests in Section 122 set out above, or even what "as a whole" means. It is possible to speculate that Able intends for parts of wind turbines, vehicles, and other materials to cross the Railway on a flexible basis. However, a number of questions remain as a result: How will this operation affect the operation of the Railway? How will C.RO's train movement requirements be guaranteed and managed? What sensitivity analyses for future use of the Railway have been undertaken? How will this be done safely and

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<sup>4</sup> Department for Communities and Local Government, *Planning Act 2008: Guidance related to procedures for compulsory acquisition*, para 24.

efficiently? Are works proposed to facilitate this? In short, how can the interference be explained and then justified?

- 16.21 Neither does the Statement of Reasons explain how operating the Railway as a single unit would satisfy those tests. Clearly, it would not be sensible for the Railway to be operated by a number of different bodies. That is why the Network comprised in the Railway is properly in the hands of Network Rail, and should remain so unless a compelling case is made in the public interest. There is no obvious reason why compulsory acquisition is required to ensure the status quo. In fact, it would result in a wholly different, and detrimental, position from the point of view of C.RO.
- 16.22 In the context of the conditions in Section 122 of the Planning Act 2008, as well as the criteria in CLG's Guidance, Able is required to look at alternatives to compulsory acquisition. This includes examining how its proposals could (or could not) be modified, for example by building bridges or underpasses, or rearranging the layout of its development to have one bridge crossing accessed by gentle gradients, and/or diverting the Railway.
- 16.23 There is no evidence that Able has looked at alternatives. This would appear in part to be a result of it failing to consult properly. As a consequence, C.RO is being asked to give up its existing right to connect directly to the Network on the basis of a complete lack of any proper proposals. This is not an acceptable position. Able has failed to explain why there is no feasible alternative, including whether level crossings could continue to be used here, or why its development cannot be redesigned. The absence of any proper consultation - through which alternatives could have been properly explored, based on detailed proposals - has placed C.RO in a position where it is now being pressured to accept a solution that is detrimentally worse, and uncertain. This is not reasonable.
- 16.24 Network Rail and the Office of Rail Regulation ("ORR") have specific requirements in respect of works to level crossings in the interests of public safety. As part of their policies will generally not permit new level crossings because they are thought to be dangerous. However, level crossings are to be permitted in "exceptional circumstances".<sup>5</sup>
- 16.25 It is assumed that AMEP requires new or different level crossings (or conceivably inset track over a longer distance) but C.RO is not aware that any consideration has been given to whether new level crossings would be permitted. Whilst AMEP might be an enclosed site,

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<sup>5</sup> Office of Rail Regulation, *Level Crossings: A guide for managers, designers and operators*, Railway Safety Publication 7, p81.

which would be surrounded by appropriate security fencing, the Railway should be assumed to function as an ordinary branch line, rather than as an internal network in a particular ownership.

16.26 C.RO submits that Able must be required to set out (with evidence) the discussions it has had with Network Rail and the ORR about the feasibility of level crossings at AMEP, and requests the Examining Authority requires it to do so. It is not even clear whether Able proposes to install level crossings. The plans provided with the Application show a representation of crossings but the nature of these is not clear. Able must demonstrate the extent to which it has endeavoured to persuade Network Rail and the ORR that AMEP may be considered "exceptional circumstances", and the nature and content of any discussions in this regard, as well as technical and other submissions. For example, if level crossings might be acceptable subject to a redesign of AMEP, that should have been considered, and reported. It should be done now. This is of fundamental importance to determining whether the conditions in Section 122 Planning Act 2008 are met. The Secretary of State should have regard to this in making the determination as to whether there is a need to acquire the Railway, and if there is a compelling case in the public interest to do so (Section 122 Planning Act 2008). C.RO submits that if level crossings could be installed - even if this requires Able to redesign elements of AMEP - (and bearing in mind the general public will not have access to the AMEP site) there is no need for Able to acquire the Railway, and nor would any compelling case exist for it to do so, to the extent that any exists now (which it does not). If level crossings can be constructed, even if this means that Able has to manage/design AMEP differently, no party that will need to use the Railway, nor Network Rail, will be detrimentally affected.

16.27 As part of demonstrating the need to acquire the Railway, it would need to be demonstrated by Able why the Railway could not be retained by Network Rail if access was properly controlled. If Able cannot show this with Network Rail in place, the position is not helped if Network Rail is not present because the same considerations apply to the management of the Railway in any case. There would then be no compelling case to acquire the Railway on this basis.

#### Balancing AMEP and the rail needs of other users

16.28 Assuming that AMEP is indeed a NSIP (which is contested), it is not the case that because of this fact its needs (such as they are in relation to the Railway) override the existing and future requirements of other operators in the vicinity of AMEP. It is not the case that C.RO and



others must simply accept that Able should be able to acquire the Railway for its own purposes, and then rely on Able to provide them with the same level of connection/access that Network Rail does under the supervision of the ORR. As it stands, Able has not carried out a proper assessment of the impacts of it acquiring and managing the Railway, in combination with the operation of AMEP. The current position is entirely contrary to the usual method of assessing whether the impacts of a project are acceptable.

- 16.29 As matters stand, it appears that Able proposes that the Railway - for which there is a reasonable prospect of use by others - is removed from the Network because it is an obstacle to the proposed development. C.RO submits that the fact that Able is an NSIP (if indeed it is) does not by itself justify the acquisition of land and rights in land.
- 16.30 The Secretary of State is empowered to confer powers of compulsory acquisition not simply because a project is an NSIP, but only where land is needed/required to facilitate the project, and there is a compelling case in the public interest for the acquisition of that land. It is not sufficient to rely on the fact that the project is an NSIP.
- 16.31 Where there are alternatives to compulsory acquisition, the land cannot be shown to be needed, and there is no compelling case.
- 16.32 Further, it is not Government policy that there is a hierarchy of projects, with some - such as an NSIP - trumping the needs of other projects or facilities. Where there are differing requirements, a compromise may be possible. It is not the case, however, that one project can justifiably remove access to publicly owned facilities for its own ends. Network Rail has an important role in this respect to ensure that access to its Network remains unimpaired.
- 16.33 There is an identified need for port facilities to support the construction of offshore wind generating capacity, but that is not an overriding policy that on its own justifies removing land and interests from others. That must be judged on a case-by-case basis having regard to the availability of alternatives to the acquisition, or indeed the project as a whole. That is particularly the case where existing or proposed projects that are affected by proposals are supported by NPS, and those NPS also support the requirement for rail access as currently enjoyed, and required in the future, by C.RO.
- 16.34 C.RO is a nationally significant port, handling in excess of 600,000 ro-ro units per year. It is worth noting that if it were to be promoted now, it would be an NSIP in itself. Its requirements for rail access are, therefore, no less significant than the considerations applicable to AMEP. C.RO is an important port not only because of its capacity to handle

such a significant quantity of ro-ro units but also because of its potential to handle freight via the Railway. This has always been a key attraction of this port for C.RO as a port operator, even if it is not currently used.

- 16.35 The fact is that C.RO is an existing port with a connection, and could today (subject to some works) commence rail operations. AMEP is not at that stage. The NPS for Ports recognises the value of rail connections for ports, including ro-ro facilities. Network Rail is aware of the increasing amount of freight handled by rail, and that it is only expected to increase. That is why it has a programme of capacity enhancements. It is contradictory to the general direction of Government policy to remove - or make very uncertain - the ability of existing port facilities to connect to the railway to transport freight. CPK may also require use of the railway in connection with C.GEN's project, handling fuel and/or other materials.
- 16.36 Under Section 104 of the Planning Act 2008, the Secretary of State is required to determine an NSIP with reference to the relevant NPS. That means having regard to policies that may also dictate that he should not allow certain elements of a proposal to go ahead, where they would conflict with a NPS. In this respect, a decision about AMEP must have regard to the relevant NPS that require rail access to be maintained. In this case, what is proposed by Able is that an NSIP with no identified need to use the Railway - other than, put simply, for it not to be there at all - will deprive a nationally significant port operator of its currently unimpeded connection to the regulated Network. This is despite Able not having a connection agreement, and failing to show how it would obtain one.

#### Practical considerations

- 16.37 There are a number of practical issues that are fundamental to C.RO's concerns about the use of the Railway if it becomes a private siding. A private siding is a portion of railway track that connects to Network Rail's Network but is managed, owned or controlled by a person other than Network Rail. Control by Able is not appropriate or acceptable if the Railway became a private siding. As a result, the Railway should remain in the ownership of Network Rail.
- 16.38 C.RO has not been given any detail about how its future requirements to connect to Network Rail's Network can be guaranteed. The Environmental Statement notes that existing rights of access would be retained, but gives no information as to how this would be achieved. The DCO does not address this expressly. There is no guarantee that Able could operate the Railway without prejudicing other users. Indeed, if Able considers the Railway to be detrimental to AMEP's operations, it is implicit that the Railway and its operation would be

subsidiary to AMEP. There is a worrying lack of clarity as a result of Able not considering or addressing these points.

16.39 A number of further concerns arise:

16.39.1 Network Rail owns and operates the Railway and is responsible for its maintenance, repair and renewal. It has been appointed for that purpose pursuant to the Railways Act 1993 and Able has failed to establish any reason why Network Rail should not continue to be responsible in this manner or is not an appropriate person to do so for the Railway. It is not appropriate, or proportionate, to acquire the Railway and remove it from the existing regulatory framework to accommodate the private interests of Able in operating AMEP;

16.39.2 It is also of concern that Able has no demonstrated experience of operating main line railway facilities, let alone safely and efficiently. It has not explained how it would manage to do so. Given that C.RO would rely upon safe and efficient operation of the Railway, operation by Able is not appropriate. It is Network Rail's role to provide safely and efficiently operated railways where required. Able has not set out what its safety case would be for operating the Railway as a siding, with components crossing the Railway while trains are using it. There is no reason why this responsibility should be handed to a third party where there is no evidenced requirement to use the Railway as part of AMEP, but only the ability to cross it;

16.39.3 Further, it is questionable whether it is appropriate for the Railway to be operated as a private siding given the likely volume of rail traffic. It is noted that the Planning Inspectorate's first round of written questions include a number of questions to Able about the Logistics Park that is to the north-west of C.RO and how it would be connected to the Railway. That development includes proposals for a railway siding. It is reasonable to assume that if this Project is implemented it will generate train movements. However, that project is not the purpose of this Application and it is not appropriate to justify acquisition of the Railway on this basis.

16.39.4 In combination with movements from C.RO, the Able Logistics Park (and potentially others) there will be relatively heavy - and potentially conflicting - use of the Railway. It is appropriate that such use and timetabling is regulated, quite apart from the need to regulate conflicts with AMEP and its operation. It will be noted that there is no in-combination assessment of such use, including of projected increases in

C.RO's (and other potential users' train movements). No signalling proposal is provided;

16.39.5 Able has not applied for a connection agreement - or explained where AMEP's connection to the Network would be - and cannot evidence how this will be secured, and maintained, or that it will be able to obtain such an agreement. The proposed acquisition leaves C.RO reliant on Able to give it access via the Railway, which would then be in Able's ownership and control, to the Network;

16.39.6 Currently C.RO can rely on Network Rail to regulate access and maintain the track. There is a framework for ensuring that this happens. If the Railway is privatised, C.RO would have to rely on enforcement of access, maintenance and other provisions through the Courts. In circumstances where track was not maintained, or access was blocked, C.RO would have no immediate recourse. This is unacceptable given that it would have been put in this position by the unnecessary privatisation of the Railway;

16.39.7 A private agreement between C.RO and Able would be wholly dependent on Able - a potential competitor or conflicting user - performing its contractual obligations as to maintenance, access, and an agreed method of operation that could only be enforced in the Courts. This is distinguished from a position in which all parties are able to use the Railway as part of the regulated network, where access, maintenance and other matters are controlled by Network Rail and the ORR; and

16.39.8 There is no safeguard proposed for the possibility that AMEP is not built out but the Railway is acquired. In such a case, C.RO would have been unnecessarily deprived of its right to access and would have to seek access by other means. It would be entirely unacceptable for C.RO to have to seek powers of compulsory acquisition to be able to use the Railway.

16.40 It will be noted (see Appendix 3) that C.RO has set out in full to Able the information that it requires in order to be able to assess the practicability of Able's proposals for the Railway. In the absence of this information, it is unreasonable to expect C.RO to agree to the proposed acquisition. There is too much uncertainty about how its ability to use the Railway would be affected, or guaranteed. C.RO submits that, in the circumstances, the Secretary of State should not grant Able powers of compulsory purchase in relation to the Railway.

### Conclusion

16.41 In conclusion:

16.41.1 Able has failed properly to justify its proposal to compulsorily acquire the Railway;

16.41.2 Applying the statutory tests, Able has failed to establish that the acquisition is required for AMEP, and has not made a compelling case in the public interest for the acquisition;

16.41.3 There is a complete absence of detail on what alternatives Able has considered if any, and why these are not possible. In particular, the feasibility of level crossings at the site should have been explored, as well as any other potential variations to the design of AMEP;

16.41.4 C.RO has reasonably foreseeable requirements for rail access; and

16.41.5 There are a number of genuine operational concerns, not least that C.RO would be required to depend on rights in contract against Able to obtain and maintain a connection and to allow it to use the Railway when Able wished to cross it for the purposes of AMEP.

16.42 The effect of any acquisition will be that although Able does not apparently need to use the Railway for the purposes of AMEP (other than to cross it), existing and potential users of a national, regulated railway asset (where there is a reasonable prospect of such use) are deprived of their ability to use that asset simply because it is considered to be an obstacle to a proposed private development. It is not acceptable, appropriate or in the public interest for part of the Network serving a statutory harbour which is a statutory undertaking to be privatised to benefit one person's narrow private interests to the disadvantage of the wider public interest. This is the more so where C.RO is already an operational facility with an existing connection to the Network.

**17     *Principal Issue 10: The adequacy and efficacy of the draft Development Consent Order and the draft Marine Licence***

17.1     C.RO has three main concerns regarding the adequacy of the draft DCO. These are as follows:

17.1.1     Article 10 of the DCO is unacceptably wide and contemplates development that has not been assessed;

17.1.2     The use of AMEP should be constrained by a requirement and/or provision in the DCO to ensure that the environmental effects of AMEP are not greater than those which have been assessed; and

17.1.3     There are no mechanisms in place to ensure that Able Humber Ports Limited will have the resources necessary to meet its compensation and other liabilities (such as performance of protective provisions).

Article 10

17.2     Article 10 of the DCO as drafted gives Able unacceptably wide and unconstrained powers to carry out works that are not specified now, and which works have not been subject to assessment. There is no explanation of why these powers are needed, and if or how they relate to the construction or operation of a facility for the manufacture of marine energy components. The DCO does not contain any constraints on what these works might be, including any requirement for prior approval, even though they may themselves constitute an NSIP.

17.3     It is recognised that historically, private Acts and orders made under the Harbours Act 1964 have included such provisions to provide powers of permitted development. The exercise of such powers is then regulated by Parts 11 and/or 17 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) ("GPDO"). It is submitted that this approach is inappropriate here and is not authorised by the Planning Act 2008.

17.4     If Able considers this sort of power is necessary to enable AMEP, it is presumably because it envisages that such works may be required in future. If that is the case, it should specify the works - or at least the scope of them - now because they need to be assessed as part of AMEP.

This is a clear requirement of the EIA Directive<sup>6</sup> and EIA Regulations.<sup>7</sup> If this does not occur, the Secretary of State can have no confidence that the environmental effects of such works have been assessed. As a consequence, the Secretary of State cannot know that such effects are acceptable or whether any mitigation is appropriate or effective.

- 17.5 It would be ultra vires, having regard to the Courts decision in Hardy<sup>8</sup>, for the Secretary of State to allow environmental impact assessment to be carried out at a later time. The effects of these works must be assessed now.
- 17.6 If Able cannot identify and assess these works now, Article 10 should be deleted and at the time Able requires any such works to be carried out, it should seek approval from the relevant regulator(s) and authority/authorities.
- 17.7 Further, Article 10 would allow Able to construct works without notice, and which may adversely affect C.RO. If the Secretary of State is satisfied that such a provision is appropriate, even with amendments, C.RO must be adequately protected so that where any such works may affect it and its harbour, including vessel movements, they may not be constructed without the prior approval of C.RO.

Need for a limitation on the use of AMEP

- 17.8 The second concern held by C.RO in relation to the DCO is that it is not restricted as to the purpose for which it may be used, even though the environmental consequences may be quite different. C.RO considers that AMEP should be controlled by the insertion of a requirement in the DCO that AMEP operates only as a marine energy park. This will ensure that the environmental effects of AMEP are limited to those assessed, in particular regarding sedimentation and navigation. AMEP has been assessed on the basis of AMEP's future operations as a facility for the manufacture of marine energy components only. The Imperative Reasons of Over-riding Public Interest ("IROPI") as contained in AMEP's Habitat Regulation Assessment Report is based on this assumption. Presumably this is also the basis of Able's purported compelling case in the public interest for compulsory acquisition.

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<sup>6</sup> Council Directive 85/337/EEC, on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC and Article 3 of Council Directive 2003/35/EC.

<sup>7</sup> Town and Country Planning (Environmental Impact Assessment) Regulations 2011

<sup>8</sup> *R v Cornwall County Council, ex parte Hardy* [2001] JPL 786, QBD. In this case a planning permission was quashed as it contained a condition requiring a bat survey to be undertaken prior to the commencement of development. The presence of bats, and if necessary the likely impacts of the development upon them, should have been established as part of the EIA process.

- 17.9 Requirement 4 in Schedule 11 of the DCO states that the authorised development shall be carried out in accordance with the design drawings unless otherwise approved in writing by the relevant planning authority. The authorised development is the development and associated development described in Schedule 1. However Schedule 1 works as a permissive provision only, allowing the development listed to take place but not restricting activities to those listed. It is C.RO's position that Able's ability to deviate from AMEP must be constrained. The mechanism to do so would be to insert a requirement into Schedule 11 restricting operations to the functions listed in Schedule 1. This is contemplated by Question 5(c) posed by the Examining Authority.
- 17.10 C.RO is concerned that if such a requirement is not inserted, AMEP may be used for purposes other than that for which it has been assessed and justified under the Habitats Regulations. The environmental impacts of those other uses have not been identified and thus would be uncontrolled. This would be an unacceptable outcome, particularly given the national and European nature conservation sites that are likely to be adversely affected by a use other than that which has been assessed.

Need for mechanisms to enable performance of financial obligations

- 17.11 C.RO is concerned how Able will be in a position to meet its obligations and liabilities in the absence of parent company guarantees and other appropriate mechanisms.
- 17.12 The Planning Act 2008 requires that the application be accompanied by a statement indicating how a DCO that contains the authorisation for compulsory acquisition is proposed to be funded. The Funding Statement that accompanies the Application states that Able is a subsidiary of the "Elba Group", whose assets exceed £300 million. The Funding Statement provides little detail, but states that AMEP will be financed with a combination of the Elba Group's resources and external borrowing.
- 17.13 Able is registered in Jersey, with apparently minimal assets. There is no certainty as to the assets or identity of the Elba Group, which is also registered in Jersey and has the same registered office as Able. There is very limited information available, and there are no references to the group on the Able Humber Ports Limited or Able UK Limited websites.
- 17.14 There is considerable uncertainty regarding Able's financial position, and whether it can meet its obligations and liabilities. C.RO submits that it is necessary to ensure that a parent company guarantee and/or other protection is put in place for interested parties who may be subject to loss as a result of compulsory acquisition of the Railway in particular, and/or the



failure of Able to perform its obligations (for example in relation to meeting the costs of additional dredging).

- 17.15 There is an immediate and relevant precedent at Covanta's Rookery South Resource Recovery Facility project, where such arrangements were required to ensure that the applicant was able to draw on resources of the wider group to meet compensation and/or other liabilities, and so that the Infrastructure Planning Commission could have confidence that the applicant had sufficient resources to meet those liabilities.

### **PART 3: COMMENTS ON THE RELEVANT REPRESENTATIONS RECEIVED BY THE EXAMINING AUTHORITY**

#### **18 Introduction**

This part provides C.RO's comments on the Relevant Representations that have been made to the Examining Authority. The name of the party who has made the Relevant Representation is identified in bold, with C.RO's comments on that Relevant Representation immediately following.

#### **19 Network Rail Infrastructure Limited**

- 19.1 C.RO notes the objections of Network Rail to AMEP set out in its Relevant Representation and supports them.

#### **20 Harbour Master, Humber**

- 20.1 C.RO notes the objections of the Harbour Master to AMEP set out in its Relevant Representation and supports them.

#### **21 Associated British Ports ("ABP")**

- 21.1 C.RO notes the objections of ABP to AMEP set out in its Relevant Representation and supports them.

**PART 4: RESPONSES TO EXAMINING AUTHORITY'S FIRST WRITTEN QUESTIONS****22 Introduction**

22.1 This Part of the Representation sets out responses to the Examining Authority's first written questions included at Annex D1 to its letter dated 31 May 2012. In particular, it includes C.RO's response to:

22.1.1 The three questions directed primarily to C.RO (questions 57, 58 and 59); and

22.1.2 Questions directed primarily to other parties that raise issues in which C.RO is concerned.

**23 Response to questions primarily for C.RO**

57. *What are the co-ordinates of C.RO's dredged approach channel?*

23.1 The document in Appendix 4 and plan in Appendix 2 illustrates the Latitude and Longitude points of reference for the Approach Channel for berths 1,2, 5 and 6. These are taken from the current dredge licence as issued by the MMO. The plan attached at Appendix 5, a preliminary document prepared by Able, also illustrates the location of C.RO's Approach Channel in relation to AMEP.

58. *What are the largest ships either using or capable of using C.RO, at what berths and at what state of tide?*

23.2 Table 1 sets out the type and dimension of vessels that visit CPK. Currently, the largest vessel using the berths on a regular basis is the Humbermax Class.

**Table 1**

Vessel	LOA	Beam	Draft	DWT	Berth	Tide
Humbermax Class	203m	31m	6.9m	17,023 tonnes	1-5	All states of tide
Ladybug Class	232m	32m	8.9m (current dredge level)	27,200 tonnes	3 & 5	HW arrival and sailing only
Handymax	up to 200m	25m	10m	58,000 tonnes	3	HW arrival and sailing

- 23.3 CPK is also used by car carriers. Arrivals/sailings of these vessels can be irregular. However, C.RO ensures that it is able to accommodate such vessels. The jetties at C.RO were also designed to handle larger vessels as required subject to dredging. C.RO made the capital investment to enable it to respond flexibly to the market. Large vessels would include those of Handymax and possibly Panamax size. This would require additional dredging of the berth pockets, subject to the necessary Marine Licence obtained from the MMO.
- 23.4 The irregular arrival and ongoing discussions with Car Carriers would bring the Ladybug Class of vessel to be the largest, albeit not the vessel with the deepest draft.
- 23.5 It should be noted that although the Handymax vessels are dimensionally smaller, in terms of deadweight they are considerably larger i.e. Humbermax is recorded at 17,023 tonnes.
- 23.6 If C.RO were to use the Panamax size vessel then this would involve a 275m LOA (with development of additional berthing points and fender upgrade), 32m beam and 12m draft. The deadweight would be some 65,000 tonnes.
- 23.7 Whilst it is recognised that certain vessels serving AMEP may be constrained by the need to arrive/sail at high water (e.g. bulk carriers), C.RO submits that it would not be an acceptable outcome if AMEP is approved in a way that means such vessels automatically take precedence over vessels serving CPK. The majority of arrivals and sailings at CPK operate according to a schedule. Spring high water tide times are on or around 0500 to 0800 hours, and 1700 to 2000 hours, which will clash with all states of tide vessel sailings - including scheduled vessels - at CPK. This will mean that there will inevitably be conflicts in vessel movements in and around CPK and AMEP. If the assumption is that high water vessels automatically take precedence, and/or there is no scheme in place which requires notice/agreement, C.RO's business and operations will be severely and prejudicially disrupted. Able must be required to explain its proposals and submit to a management scheme, which protects C.RO.

59. *What wind direction other than south-west does C.RO consider predominant at its facility?*

- 23.8 Appendix 6 illustrates the results of recent work C.RO has carried out analysing wind direction and wind force (worst case) for the last 17 months at CPK. The predominant wind direction is from a WSW direction with a frequency of 15.3%, SW recording 14.41%. The

predominant sector is WSW through to WNW which has a 36.48% frequency. However if the sector is expanded, then SW through to WNW shows a frequency of some 50.89%.

## 24 Response to questions primarily for Able

### Alternative uses

5. *Section 1.3.5 of the Introduction to the Environmental Statement refers to the possibility of the site supporting other forms of renewable energy. In this context -*

*(a) is it the intention to accept any cargoes other than those relating to the manufacture of wind turbines on either a temporary (interim) or permanent basis?*

*(b) if so, what would these cargoes be and how does the project documentation take account of their possible impact?*

*(c) if not, is a further Requirement in Schedule 11 restricting operation of the function described in Schedule 1 necessary and appropriate?*

*(d) what provisions in the Development Consent Order (DCO) might be appropriate and necessary to ensure no derogation from the Imperative Reasons of Over-riding Public Interest (IROPI) justification put forward in the proposal?*

24.1 C.RO has serious concerns in relation to these issues, which are discussed above (see paragraph 17.8 to 17.10) in relation to the principal issue of the adequacy of the DCO. As stated above, C.RO is concerned that the DCO operates to constrain the use of the facility once constructed. The insertion of a provision restricting the operation of the facility to those activities that have been assessed, and for which the IROPI justification has been made, is necessary and appropriate.

### Marine matters

31. *During the capital dredge how is the dredging to be managed in respect of the operations of other river users?*

24.2 As set out at paragraphs 14.5 to 14.7 above, there is no information available about how construction vessels, including dredging vessels, will be managed other than vague proposals. There has been no assessment of the impacts on other users. For example, the EIA does not take account of scheduled arrivals/sailings at C.RO. It is, therefore, defective. Insofar as (which is not accepted) the DCO could be made at all, the DCO should not be made without

including protection for C.RO for its scheduled services, and measures to ensure that any other disruption is subject to agreement.

37. *Given that the approach channel to Humber Sea Terminals [sic] and the proposed approach channel for AMEP overlap and will be dredged to different depths, what guarantees are there that neither channel will interfere with the other in terms of siltation/scour?*

24.3 C.RO has not been given any information on this matter. It is not only relevant to its consideration of siltation/scour impacts at CPK's berths, but also in relation to the proposal by Able for a shared dredge (in respect of which no arrangements are in place, or have been proposed, other than at a vague level). As C.RO has made clear to Able (see the letter at Appendix 3), it needs to understand what is proposed for a shared dredge, including the management of that, so that it can consider the workability of such a proposal properly.

24.4 Given the chaotic and dynamic nature of the river, C.RO does not believe that Able can guarantee that there would be no interference with its approach channel. For this reason, C.RO must be given appropriate protection in the DCO through protective provisions.

#### Completeness of design

43. *In File 4, Planning Application Drawings, the (Building) Masterplan and the Landscape Masterplan are both described as 'Indicative' and the drawings are both specified as 'Preliminary'. Requirement 4 in Schedule 11 states that the authorised development shall be carried out in accordance with the design in drawings unless otherwise approved in writing by the relevant planning authority. In this context -*

*(a) to what extent do the drawings in the application represent a fully-evolved final design?*

*(b) what particular matters might the applicant need or wish to change should development consent be granted?*

*(c) what safeguards within the DCO would be appropriate to ensure that final detailed design remains compatible and consistent with the details of the scheme as submitted for approval? Specifically, what safeguards would ensure that the final detailed design could not have any new or greater impact than assessed through the Habitats Regulation Assessment and the Environmental Statement?*

- 24.5 C.RO will consider Able's response to this question, and may make further submissions because this is material to C.RO's consideration of the impact of AMEP on CPK, and its operations generally.
- 24.6 Subject to that response, C.RO does not consider that AMEP is currently appropriately or adequately designed, described, assessed and hence controlled. There is too much scope for variation without regulatory approval. As drafted, the DCO would allow Able to make variations to AMEP without proper scrutiny by avoiding the need to seek consent for such variations, and notifying the public or other undertakers, including those who might be affected and wish to make representations. There is no precedent for such an approach in planning law, and it is submitted that such a provision would be unlawful in any event given the requirement for a decision maker to consider the impact of a Project on the environment, the fact that it is not permissible to defer environmental impact assessment,<sup>9</sup> and the need to carry out an appropriate assessment.<sup>10</sup>

Railway construction and operation

44. *Is it the intention to operate the railway line within the application site solely as a single siding?*

- 24.7 C.RO has identified (see paragraph 16.8 onwards) that there are no details of how Able proposes to operate the Railway at all. C.RO submits that it is not appropriate to consider the Railway as a siding in any event; certainly not that part of the Railway that goes through AMEP. Any trains serving C.RO - or even the Logistics Park - will be through trains. As a result, the track comprised in the Railway cannot be considered to be a siding.
- 24.8 The Application documents do not identify additional siding or loops. Further, the Application does not deal anywhere specifically with works to the Railway. There is no specific provision for Able to carry out works to improve/upgrade the Railway. Further, if Able proposes to construct and operate level crossings, or inset track, these should be authorised by a specific work in the DCO. In the absence of a specific authorising provision, Able will not have the requisite authorisation to carry out the works necessary to the Railway. It must therefore be questioned whether Able proposes to carry out any works at all.

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<sup>9</sup> Pursuant to the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, implementing the Council Directive 85/337/EEC, on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC and Article 3 of Council Directive 2003/35/EC.

<sup>10</sup> Pursuant to the Conservation of Habitats and Species Regulations 2010, implementing the Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora and Directive 2009/147/EC on the conservation of wild birds.

- 24.9 Able has stated that it proposes to run two trains per day on the Railway, although it is not clear from where these trains would originate, where they would travel, or what purpose they would serve in connection with the construction and/or operation of AMEP.
- 24.10 Therefore, C.RO submits that if the Secretary of State authorises the acquisition of the Railway, the DCO must contain a provision requiring Able to carry out the requisite works to the Railway to enable its use by C.RO, and not to operate AMEP unless it has done so. Further, Able's use of the Railway should be limited to those levels that it has assessed in its Environmental Statement: not more than two trains per day. Able must also be required to operate the Railway in accordance with a methodology that allows C.RO to use the Railway, including increasing its use in future, according to a methodology approved by the Secretary of State. Able should be required to agree that methodology with C.RO. It should be prevented AMEP except in accordance with that methodology. C.RO would also require protective provisions to that effect. Such provisions would also need to protect its operational requirements.

*45. Is it the intention to reinstate the railway line along the section which is dismantled towards the Logistics Park, and if so where are the impacts of this assessed?*

- 24.11 It is clear that any such intention would require further consents in addition to the DCO. No such intention could be brought forward as part of the development proposed in the Application.
- 24.12 Nonetheless, there is a lack of clarity about Able's future proposals for the Railway. This is of considerable concern. The future use of the Railway is important and relevant to the determination of whether the proposed acquisition should be allowed. This is because if Able proposes to use the Railway to link AMEP and the Logistics Park, this may lead to an increase in the number of trains Able operates on the Railway above the two per day that have been assessed.
- 24.13 If Able proposes to operate more than two trains per day as part of AMEP, including those serving the Logistics Park, it must assess the environmental effects of this. That is a clear requirement of the EIA Regulations. Paragraph 20 of Part 1 of Schedule 4 requires an Environmental Statement include "a description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative ... effects". If the Logistics Park will use the Railway in addition to AMEP's use (even if not connected), that is a cumulative and in-combination effect. If the Logistics Park will use the Railway in relation to AMEP, that also needs to be assessed. Such



an assessment would need to include forecasts of the use of the Railway predicted for the Logistics Park. At present there is no assessment and the Secretary of State cannot be satisfied that the effects of AMEP will be properly contained.

*46. What would be the implications for the construction and operation of the proposed development if the compulsory acquisition of the Network Rail land was not approved?*

24.14 As stated elsewhere, there is a worrying lack of detail about Able's proposals for the Railway. This includes an outline of the main alternatives that Able has studied and the reasons for Able's choice to dispose of the structures and buildings for AMEP as it has done, including the need for acquiring the Railway to accommodate that. Able has, therefore, failed to comply with the requirements of the EIA Regulations. The Environmental Statement simply assumes that the Railway will be acquired. It is wholly dependent on that being the case. It does not show how the development might be otherwise laid out, or constructed in a different way, to avoid the effects of acquiring the Railway.

24.15 Further, Able cannot satisfy Section 122 of the Planning Act 2008 because it cannot show that the Railway land is needed for its development, and that there is a compelling case in the public interest to remove the Railway from public ownership and prejudicially affect the rights of those who currently are able to use it. This is explained fully in paragraphs 16.15 to 16.27 above.

24.16 Able has not complied with the Guidance on Procedures for Compulsory Acquisition. Able has also failed to show that it has looked at alternatives to compulsory acquisition of the Railway. Such alternatives might include the diversion of the Railway, constructing bridges or the provision of alternative access.

*47. Is it proposed that the railway track should be maintained at existing levels, or does the proposed development require that it should be raised to match new ground levels of working areas?*

24.17 That this question has been asked demonstrates the lack of detail about Able's proposals for the Railway, and the lack of proper assessment. If alterations to the Railway are proposed these must be assessed.

Transport and travel

48. *In Annex 15.1, Transport Assessment -*

.....

*(c) what if any assumptions about growth in port traffic at Immingham and C.RO have been built into the modelling?*

24.18 It is apparent that no such assumptions have been made, and no allowance has been made in respect of growth in vessel or rail traffic. The transport modelling has proceeded on the basis of existing traffic levels at C.RO. While future traffic levels as a result of committed development (and developments for which planning permission has been sought) have been inputted into the model, no assumptions based on the growth of traffic associated with existing facilities have been included. As a result the impacts of AMEP on C.RO have not been fully assessed. Given that CPK is only operating at part of its capacity on existing berths, the assessment is defective. It cannot properly assess the effect of AMEP on the environment. If AMEP were approved on this basis it would be contrary to the Directive.

**25 Response to questions primarily for the Harbour Master Humber**

55. *Is the Harbour Master Humber now satisfied that the applicant has demonstrated that vessels using C.RO or the Oil and Pipeline Agency facility will not be impeded in any way?*

25.1 C.RO does not believe that the Harbour Master can be satisfied that vessels using CPK will not be impeded. As discussed in relation to the principal issues above, C.RO has serious concerns regarding the impacts of AMEP on its navigation and access arrangements. The assessment undertaken by Able is confined to considering impacts on the Humber estuary as a whole and fails to consider the local impact on neighbouring facilities, and CPK in particular. Able has not specified any mitigation with which C.RO can be satisfied. The potential for conflict with operations and vessel movements associated with CPK has not been properly assessed. This approach ignores the requirements of the EIA Regulations. It seriously prejudices C.RO. If the Secretary of State were to grant consent on the basis of this approach it would be contrary to the EIA Directive.

## 26 Response to questions primarily for ABP

60. *With specific reference to Section 2 of ABP's Relevant Representation -*

...

*(c) does ABP consider the proposed restriction in s.3(b) of Schedule 1 of the draft Development Consent Order to 'the provision of onshore facilities for the manufacture, assembly and storage of components and parts for offshore marine energy and related items' to be an appropriate and adequate restriction? If not, why not, and what alternative provision would ABP wish to see?*

- 26.1 As discussed above, C.RO does not consider that AMEP is adequately constrained. Requirement 3(b) of Schedule 1 is permissive rather than restrictive. It does not prohibit other uses of the facility and does not constrain AMEP to the uses which have been the subject of environmental impact assessment.
- 26.2 C.RO considers that it is necessary to insert an alternative or additional provision that restricts the operation of the facility so that it can only operate as a marine energy park. This will ensure that the environmental effects of AMEP are limited to those assessed.

## 27 Response to questions primarily for Network Rail

62. *Would Network Rail explain further why it contests the validity or applicability of s.47(1) of the draft Development Consent Order to the effect that the proposed modification would constitute a minor modification for the purposes of Part 4 of the Railways Act (RA2005), given that -*

*(a) s.34(2) of RA2005 gives the power to determine that a closure is minor modification to the Secretary of State for Transport who would make the Order; and (or alternatively)*

*(b) s.35 of RA2005 relates to the impacts on passengers at stations?*

- 27.1 Irrespective of any response from Network Rail, C.RO contests the validity of Article 47(1) of the draft DCO. It agrees with Network Rail's statement in its relevant representation that the closure of the Railway does not constitute a minor modification under Section 34 RA 2005. Given this, it is not appropriate for the DCO to deem it otherwise. Doing so will

circumvent the regulatory requirements that pertain where a closure is not a minor modification, and in respect of which the appropriate decision maker is the ORR.

- 27.2 Section 34 RA 2005 provides that a proposal is a minor modification if it comes within the definition of Section 35 RA 2005. The main thrust of Section 35 is that a closure is only a minor modification where there are two alternative pieces of track that serve a destination and both are equally valid (in terms of journey time and an absence of stations on that part of track). Section 35 RA 2005 does not cover the closure of a section of track serving a particular destination (in this case CPK) or others, where there is no alternative rail access to that site. A closure of that nature is, by virtue of Section 33 RA 2005, network change. Therefore, in the RA 2005, Parliament has determined that where a closure is of the nature of removing rail access, as it is here, it is properly the responsibility of the ORR as regulator to determine whether it should go ahead. Therefore, properly this question should also be directed to the ORR.
- 27.3 C.RO acknowledges that Section 120 Planning Act 2008 provides that a DCO may "apply, modify, or exclude a statutory provision which relates to any matter for which provision may be made in the order". However, it does not consider - as a matter of policy at least - that the DCO should disapply the statutory provisions that would ordinarily require the network change procedure. This is for a number of reasons.
- 27.4 Able has not stated why it wishes to disapply the requirement to follow the network change procedure, apart from stating in the Explanatory Memorandum that by doing so it will avoid the detailed procedure involved. C.RO can only assume that Able wishes to avoid the need to obtain separate and additional consents, and therefore the time and expense of the relevant processes. That is not a basis on which a DCO should disapply or amend other statutory provisions.
- 27.5 The DCO application and examination process does not - and cannot be - a substitute for the network change process in terms of regulatory oversight. It is different and would introduce an anomalous procedure. The DCO process is concerned with land use planning, and the acceptability or otherwise of proposed powers of compulsory purchase, see for example paragraph 4.10.2 of the Overarching NPS for Energy (EN-1). Further, the network change process is concerned with rail regulatory matters that are the responsibility of the ORR. There are specific notice and other procedural requirements for network change that have not been followed here. Parties other than those who have registered as interested parties may therefore

be prejudiced. Article 47(1) is designed to avoid subjecting the proposed closure to the proper regulatory scrutiny;

- 27.6 The assessment that the ORR will make is as regulator rather than judgements based on NPS, important and relevant considerations or a compelling case. The Secretary of State cannot simply step into the shoes of the ORR. Indeed, the purpose of an independent regulator would be defeated by the Secretary of State doing so. That is why Parliament has determined that closures of the nature as proposed here are within the purview of the ORR, and should be subject to proper scrutiny and the relevant process. Article 47(1) undermines the purpose of the ORR.
- 27.7 C.RO submits that the same approach as used in Article 47(1) of the DCO in respect of the ORR's functions as regulator could be applied to the need for other consents and/or approvals, for example protected species licences under the Wildlife and Countryside Act 1981 or environmental permits under the Environmental Permitting (England and Wales) Regulations 2010. Under those provisions, matters which may well have been assessed as part of the environmental statement are nonetheless subject to further review by the relevant regulators. Parliament has not excluded their powers. That is appropriate. C.RO submits that the same applies in relation to network change. The Secretary of State is not the ORR and cannot purport to adopt its role. To include such a provision would infringe C.RO's convention rights.<sup>11</sup>
- 27.8 Further, C.RO wishes to bring to the Examining Authority's attention the normal requirements upon Network Rail to obtain the consent of the ORR to disposals of land, as required by condition 7 of Network Rail's licence. At Appendix 7 is a copy of the ORR document, *Land Disposal by Network Rail: regulatory arrangements* (October 2010). Paragraph 1.1 makes clear that the ORR's "objective is to protect land that may be required for future development of the railway network and to prevent the disposal of that land against the public interest". It will be noted that paragraph (g) of the general consent to land disposal only applies to land "which has no reasonably foreseeable use (i) for, or in connection with, services relating to railways ...". As there is a reasonably foreseeable use for the Railway, Network Rail would be required under the terms of its licence to obtain the consent of ORR. Article 47(1) does not address the need for consent from the ORR under Network Rail's licence. In any event it cannot and neither should it, as a matter of policy. Only the ORR can, and should, determine

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<sup>11</sup> See Section 121 Planning Act 2008

whether part of the Network can be disposed of. C.RO submits that remains the case even where another person seeks to acquire the Railway compulsorily.

*63. With specific reference to Section 12.3 of its Relevant Representation, what Protective Provisions would Network Rail consider appropriate if the proposed development were to be approved, with or without the acquisition of Network Rail land through the development site?*

- 27.9 The nature and content of any protective provisions is a matter for Network Rail. However, C.RO would expect any protective provisions to ensure that the operation, use, and integrity of the Railway is not affected by the construction and operation of AMEP without adequate protection for Network Rail as network operator, so that it can perform its functions in this respect to allow users unimpeded use of the Railway.

*64. With specific reference to Sections 7 and 8 of its Relevant Representation, would Network Rail clarify whether it would still now object to the acquisition of its land even if C.RO (formerly Humber Sea Terminal) were to give consent?*

- 27.10 As will be clear, C.RO has not given its consent to the acquisition of the Railway. In any event, the basis on which Network Rail could agree to the proposed acquisition of the Railway is not that C.RO agrees with it. The disposal of railway assets by Network Rail is strictly controlled by the terms of its licence. Any such disposal would also need to be approved by the ORR.

- 27.11 C.RO does not consider that Network Rail can agree to the disposal of the Railway where there is an identified need for its use as part of the Network - see paragraph 27.8 above. Even if the Railway is not in use at this moment, there is a defined, reasonable and reasonably foreseeable requirement for its use in future. The conditions of Network Rail's licence do not allow it to dispose of Network or assets that will be required or are likely to be required in the future (i.e. where there is a reasonably foreseeable use), without the ORR's approval. Therefore Network Rail's licence from its independent regulator would be overridden by this proposal. Network Rail is not in a position to agree the disposal without reference to the ORR.

**- END OF WRITTEN REPRESENTATION -**

## **APPENDIX 1**

### **Relevant Representation**

**Able Marine Energy Park**

Representation No. **54**

Received **30 March 2012**

From **Benjamin Dove-Seymour** on behalf of **C.RO Ports Killingholme Limited**

**Representation**

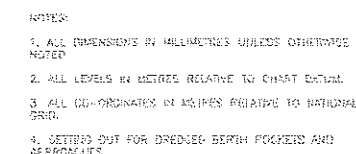
//

1. C.RO Ports Killingholme Limited ("C.RO") is owner, operator and statutory harbour authority of C.RO Ports Killingholme ("CPK"), a six berth ro-ro facility handling more than 600,000 ro-ro units annually.
  2. C.RO formally objects to the Project.
  3. C.RO has significant concerns about the effects of the Project on the hydrodynamic regime, morphology and deposition patterns in its harbour. The environmental information is confusing: modelling has been carried out inconsistently on the basis of different quay wall designs. C.RO finds no evidence that modelling has included the existence of berths at CPK, nor of vessels moored alongside the Project's quay, resulting in an unreliable assessment of tidal flow direction/rate. The construction and operation of the Project will increase sedimentation within CPK's harbour, corroborated by C.RO's own modelling. C.RO requires protection in the Order to address the monitoring of sedimentary deposition, any additional maintenance dredging needed, and the costs of doing so, in CPK's harbour.
  4. The application documents do not explain why the Project requires the compulsory acquisition and privatisation of Network Rail's railway, or why the Project cannot be constructed or operated unless the railway is acquired. CPK has an existing connection to the railway. Able's ES states that existing rights of access would be retained but gives no information about how this is ensured.
  5. The acquisition would not satisfy the conditions in section 122 Planning Act 2008. It is not required for the development; and there is no compelling case in the public interest. It would not be acceptable or appropriate for part of the national railway network to be privatised to benefit one person's narrow (and as yet unexplained) private interests to the disadvantage of wider interests.
  6. The Project will impact CPK's navigation/access, in terms of operational impacts on C.RO's port business, and navigational risk issues for it as harbour authority. Of particular concern is the very large number of vessel movements for construction of the Project. The environmental information states that traffic management procedures will be required, but information on such measures is too limited to be properly considered.
  7. C.RO objects to the proposal to mark the extent of the quay and swinging area with lights, which overlap CPK's approach channel. CPK requires protection in the Order to regulate any interference with its approach channel.
  8. C.RO objects to Article 10 of the Order. This gives Able unacceptably wide and unconstrained powers to carry out unspecified works that may affect CPK in future, which remain unassessed. The proposed works should be specified and assessed now; or the provision deleted. If included, CPK requires protection in the Order to ensure that such works cannot be constructed if they adversely affect it.
  9. The Project should be controlled by a requirement to only operate as a marine energy park ensuring that the environmental effects of the Project are limited to those assessed, and to protect C.RO.
  10. C.RO requests that the Commission treats these matters as principal issues and allows C.RO to make detailed representations on them during the examination.
- //



## **APPENDIX 2**

Plan showing statutory limits of C.RO Harbour



LATITUDE	LONGITUDE
53 40.000	00 14.000
53 40.050	00 13.970
53 40.100	00 13.930
53 40.150	00 13.770
53 40.200	00 13.650
53 40.250	00 13.570
53 40.300	00 13.490
53 40.350	00 13.370
53 40.400	00 13.250
53 40.450	00 13.050
53 40.500	00 12.900
53 40.550	00 12.700

[illegible]

3	7/10/95	MINOR ERRATA	MC	IND	T
2	30/9/95	UPDATED	MC	IND	T
1	22/3/95	PER INFORMATION	MC	IND	T
0	18/09/95	ORIGINAL FOR INFORMATION	MC	IND	T
REV	DATE	REVISION	BY	CHK	APP

**PERSONS**



### HUMBER SEA TERMINAL BERTHS 1-6 AND APPROACHES

REASONING TITLE:

DREDGING AREAS  
BERTHS 1-6  
AND APPROACHES

DATE	TIME
10/10/10	10:00

WATER 1:1000

BOOKING 46

9R24P8/D45 5

9R2488/045

7

## **APPENDIX 3**

Letter to Able UK Limited dated 21 June 2012



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**Your reference**

**Our reference**

BDS/BDS/84367/120009  
UKM/42887035.1

21 June 2012

**By Post and Email**

Dear Sirs

**OUR CLIENT: C.RO PORTS KILLINGHOLME LIMITED ("C.RO")**  
**YOUR CLIENT: ABLE UK LIMITED ("ABLE")**  
**ABLE MARINE ENERGY PARK ("AMEP")**

We are writing following the meeting on 15 June, in advance of you providing the additional information and draft documentation Able has agreed to provide C.RO.

1. This letter is intended to assist that exercise by setting out (including restating where relevant) C.RO's concerns about AMEP, and clarifying what additional information and/or protection C.RO will require. It addresses the question of the acquisition of part of Network Rail's railway (the "Railway"), sedimentation and accretion at C.RO's port, the potential for a shared dredge, and navigation in and around C.RO's port.
2. We should be grateful if you would confirm by return when Able will provide the information and documentation requested.

#### **Railway**

3. We attach your letter of 14 July 2011. At paragraph 3, it proposes that use of the railway (if privatised) is limited.
4. It should be noted that C.RO has previously identified the need for it to be provided with more information about Able's proposals for the Railway, including in a letter from us of 26 May 2011. It had been suggested by Able that heads of terms could be drawn up once C.RO (HST at that time) gave its agreement in principle. In our letter of 26 May 2011, we made C.RO's position clear. C.RO could not agree to any proposals in principle without additional detailed information about the proposed use of the Railway, and the ownership structure and governance arrangements for future use. This position was re-emphasised in our letter to you of 31 August 2011, and again in the meeting of 15 June.
5. As part of your comprehensive response, it would be helpful if you would explain why Able now considers that a joint venture approach would not work, or is not appropriate here. In your letter to us of 14 July 2011 you stated that Able would consider a joint venture proposal. It is still not clear how Able has concluded that privatisation of the Railway will benefit C.RO,

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and in particular how if the Railway remains in public ownership it will compromise C.RO's facilities. This is in circumstances where, as a result of privatisation, C.RO will still not have any interest or operational control of the Railway. Given that Able presumably proposes to regulate access by agreement, it is not clear why suitable contractual arrangements to cover, for example, C.RO- or AMEP- specific costs (i.e. those that did not directly relate to the Railway) could not be incorporated as part of a joint venture arrangement. Please set out Able's reasoning in detail. You will understand that it is material to C.RO's consideration of the proposed removal of the Railway from public ownership.

6. As regards any other arrangements that are to be proposed, Able has stated that it would ensure that C.RO enjoys the same rights to use the Railway - when privatised - as it does now. We have confirmed that C.RO has a connection agreement. In addition, its rights to use the Railway are those under the framework of the Railways Acts and subsidiary legislation. Able will need to explain how the advantages and protections of the regulated environment that currently exist would translate into any agreement, in particular in relation to the management of potential conflicts over access.
7. When you respond, we also request that you set out what discussions you have had with Network Rail, and the ORR as relevant, about level crossings within AMEP, together with any documentation and correspondence between you and those bodies.
8. In order for C.RO to be assured that there are indeed benefits to C.RO from the Railway being privatised, and that it would have the same rights in any privatised Railway as it has now, it needs to understand Able's proposals more fully. If C.RO would retain the same rights, it is assumed that Able's use of - including transporting components/other materials across - the Railway would not take priority over C.RO's trains. Without fully understanding Able's proposed use of the Railway, and the nature and frequency of any interference with potential use of the Railway (e.g. as a result of moving components across it), C.RO cannot assess whether contractual provisions would adequately protect it, or whether it would indeed enjoy the same rights.
9. To assist, Able's proposal will need to address the following:
  - 9.1 if it is no longer the case that Able would propose to restrict the number of trains using the Railway associated with C.RO, to set this out and make clear what, if any restrictions, might apply;
  - 9.2 how does Able propose to manage the interface between trains running to/from C.RO and the transport of components/machinery associated with wind turbine manufacture across the Railway? Would this involve measures such as reduced line speeds, or specified times for using level crossings? In addition, is it Able's intention to use specific crossing points;
  - 9.3 how does Able propose to accommodate the need to allow for increases in rail traffic to/from C.RO? Any agreement would need to have sufficient

flexibility, and C.RO would need to be satisfied that Able's own use of the Railway would not prevent C.RO being able to increase trains per day. The need for rail transport to and from a port can arise at any time in consequence of legislative or policy changes, and the market (including fuel prices);

- 9.4 provisions to ensure that C.RO retains its rights across existing level crossings, and easements for services beneath the level crossings, as well as ensuring that any future requirements for easements, etc. are provided on request and on a reasonable basis;
- 9.5 proposals to ensure the maintenance and good order of the Railway itself to the appropriate standard;
- 9.6 what does Able propose in order to regulate its own access/use of the Railway, for example if it wants to increase train movements above 2 per day? C.RO would need to be satisfied that Able would not act unilaterally, and in such a way that prejudiced its own train movements;
- 9.7 how will Able ensure that the Railway is managed safely? What is Able's safety case for the interface between a Railway in continual use by trains, and the continuous crossing of the railway (potentially not at defined level crossings) related to the movement of components, etc. for AMEP, which might pose a more complicated situation than the one in place today. C.RO needs to understand how Able would manage this situation more effectively than Network Rail;
- 9.8 clarification of any charging or other cost-recovery mechanisms that would require C.RO to pay for access;
- 9.9 how Able proposes to deal with the need for a connection agreement, and the measures it will put in place to ensure that connection to Network Rail's network; and
- 9.10 provisions for dealing with any potential disagreement or conflict that arises between Able and C.RO concerned with use of the Railway. This will not relate only to matters of principle to be settled by arbitration, but day-to-day management issues that may arise unexpectedly and need to be addressed quickly.

#### **Additional dredging at C.RO's harbour**

10. You have confirmed that measures to protect C.RO from the need to carry out additional dredging in its harbour as a result of AMEP can be secured by protective provisions. We look forward to receiving a draft. Please confirm when this will be provided.
11. C.RO does not agree that it should pay any amount to Able if it needs to dredge less as a result of AMEP. Able would not be put to any expense in such circumstances, and such a situation would be a consequential benefit of a project that has the potential to adversely impact C.RO's operations.



### Shared dredge

12. Able agreed to provide C.RO with confirmation of the types of ships that Able expects to serve AMEP. This has been received - thank you - and C.RO is considering this information. Please can Able also identify the expected frequency of these vessels arriving at/sailing from AMEP?
13. In light of this C.RO looks forward to receiving Able's detailed proposals for any shared dredging, including how any such dredging would be permitted, when and how it would happen, how it would be paid for, and how it would be managed, so that it did not interfere with vessels sailing to and from C.RO's jetties. In addition, where is it proposed that dredgings would be disposed, and what arrangements would apply to permitting and costs for doing so? When putting together these proposals, we ask that you also consider how any arrangements will be secured, including incorporating measures into any protective provisions.
14. We are aware that the harbour master Humber wants to be satisfied of how such arrangements will work. He will clearly need to be consulted once C.RO has had an opportunity to review what Able proposes.

### Navigational impacts

#### *Construction Traffic*

15. We are aware that during construction of AMEP traffic on the river is expected to increase from 3600 vessel movements to an estimated 5500 movements. The information indicates an approximately 600% increase in vessel movements in/in the vicinity of C.RO's harbour over this period. Able has proposed a marine manager as mitigation, and it is also understood that Able will rely on VTS Humber to control construction traffic interfaces. This may address AMEP movements via the harbour master but does not appear to include any liaison with C.RO.
16. C.RO insists that there is clarity over how priority rights will be organised. Priority should be given to scheduled sailings. The purpose of any management arrangements should be to fit construction vessel movements safely around fixed sailings. It would not be acceptable or appropriate for C.RO's fixed sailing schedule to be disrupted by construction vessels. C.RO requires that it is part of any arrangements and that no interference with its fixed sailings should be permitted without it first approving them, particularly in the vicinity of C.RO's port itself. This is appropriate and necessary given the proximity of AMEP to C.RO, and the potential interference with C.RO's approach channel.

#### *Operational Traffic*

17. At the meeting on 15 June, C.RO made clear its concerns about VLS (Very Large Ships) which will be required by the harbour master to transit the river passage on or at high water. Able suggested that such vessels would take priority, and would be managed by the harbour master. However, this takes

no account of how the slow manoeuvring of VLS in and around C.RO's approaches and downstream manoeuvring areas will impact on C.RO. It can be expected that VLS will at some stage conflict with normal scheduled arrivals/sailings associated with C.RO's operations. This is not acceptable to C.RO. VLS movements should not be allowed to interfere with C.RO's fixed sailings, and certainly not on a "first come, first served" basis.

18. C.RO expects to be part of any liaison/management arrangements given the identified and inevitable interference with vessel movements at C.RO.
19. Any arrangements relating to vessel movements for construction and/or operation should be secured by protective provisions. However, we await your proposals so that this may be considered further. It will, in our view, assist Able if you include relevant drafting for protective provisions with such proposals.
20. Able is also requested to clarify its proposals to mark the swinging area with lights, where they overlap C.RO's approach channel. What is the purpose of/need for this? If the installation of any such lighting is appropriate, C.RO will also require this to be regulated in protective provisions. Please include relevant provisions when you provide the draft protective provisions.

#### **Proposals and C.RO response**

21. Please confirm by when you will provide the information and documentation requested above.
22. C.RO will consider Able's proposals on receipt, and will inform Able of its views. It will consider what scope there is for further discussions and/or agreement. We assume that Able would like C.RO to withdraw at least some (if not all) of its objections to AMEP. C.RO will consider proposals that may enable that, without prejudice to its position if and until satisfactory arrangements are secured. In order for C.RO to do so, Able will need to provide it with the information and documentation requested, and on a timely basis.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'DLA Piper UK LLP', written over a horizontal line.

**DLA PIPER UK LLP**

cc: Joost Rubens, C.RO Ports Killingholme Limited



## **APPENDIX 4**

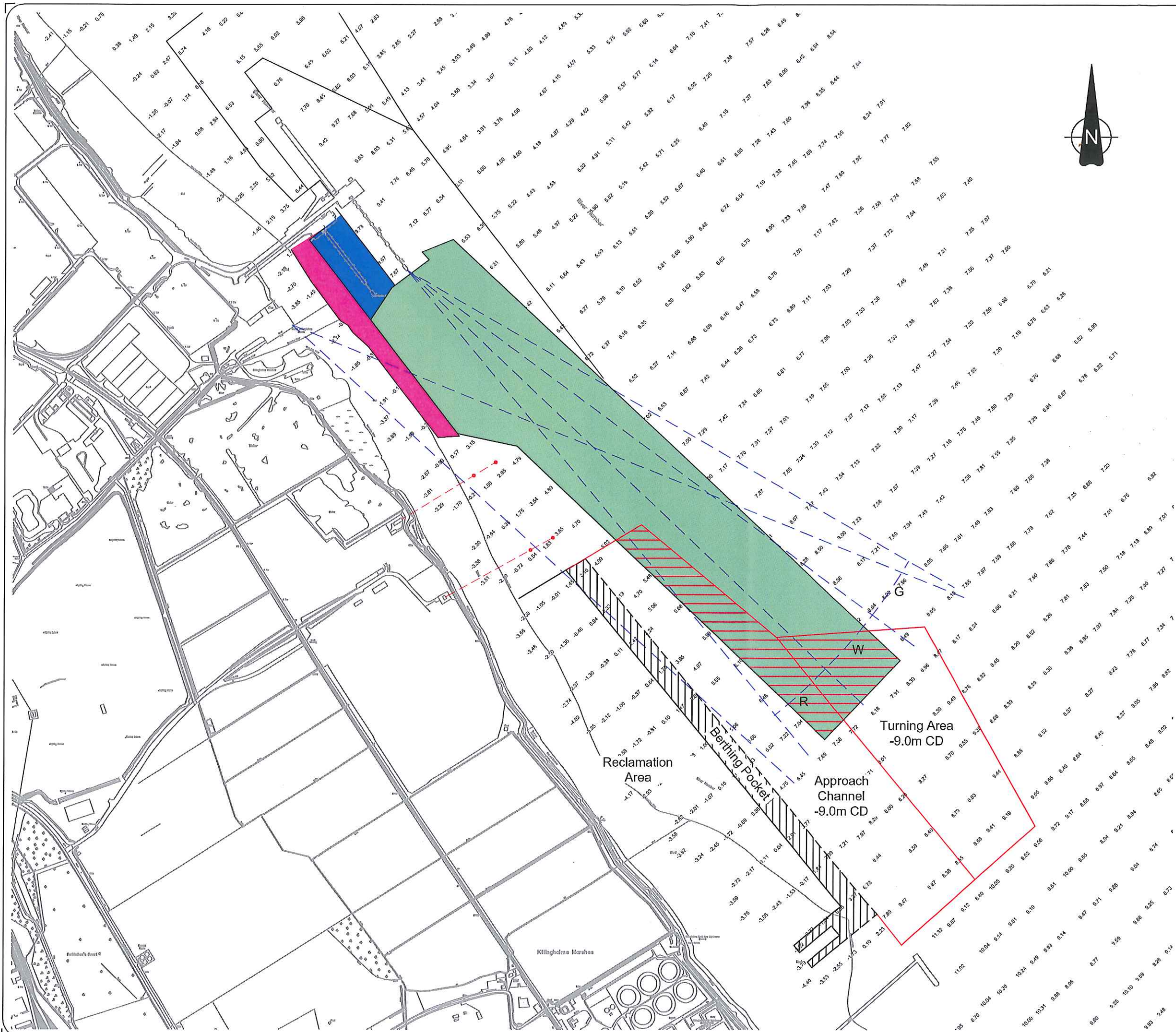
Coordinates of C.RO Approach Channel







#### C.Ro Ports Killingholme Berths 1 -2, 5-6 and Approaches Dredge Limits

1. 53 39.250N, 00 12.760W 53°39.2500'N 00°12.7600'W
2. 53 39.370N, 00 12.570W 53°39.3700'N 00°12.5700'W
3. 53 39.800N, 00 13.310W 53°39.8000'N 00°13.3100'W
4. 53 40.170N, 00 13.780W 53°40.1700'N 00°13.7800'W
11. 53 40.030N, 00 14.070W 53°40.0300'N 00°14.0700'W
12. 53 40.000N, 00 14.050W 53°40.0000'N 00°14.0500'W
13. 53 39.970N, 00 14.110W 53°39.9700'N 00°14.1100'W
14. 53 39.880N, 00 13.990W 53°39.8800'N 00°13.9900'W
15. 53 39.880N, 00 13.970W 53°39.8800'N 00°13.9700'W
16. 53 39.710N, 00 13.750W 53°39.7100'N 00°13.7500'W
17. 53 39.700N, 00 13.530W 53°39.7000'N 00°13.5300'W
18. 53 39.250N, 00 12.760W 53°39.2500'N 00°12.7600'W

**APPENDIX 5**

Plan showing location of C.RO Approach Channel



KEY					
 Marine Energy Park Proposed Approach Channel					
 Existing HST Approach Channel					
 HST Consented to dredge to -9.35m CD					
 HST Consented to dredge to -7.20m CD					
 HST Consented to dredge to -6.20m CD					
 Approach Channel Overlap 117,468m²					
C	21/05/12	Key Amendments	RK	PMS	PMS
B	15/11/11	Quay Amendments	JH	RC	RC
A	06/05/11	Preliminary Issue	RK	RC	RC
Rev	Date	Comments	Drw	Chk	App



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Project:	ABLE Humber Ports Ltd
Client:	ABLE UK Ltd
Title:	Approach Channel Dredging

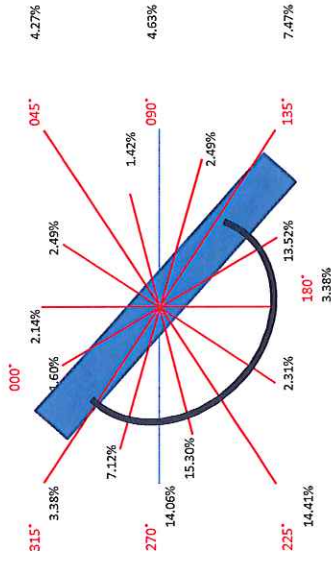
PRELIMINARY			
Scale:	Drawn	Checked	Approved
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Date	06/05/2011	06/05/2011	06/05/2011
Drawing No.	AME - 01160		Revision: C

## **APPENDIX 6**

Wind direction and wind force report



Date	Wind Dir	Hi	Lo	Wind Spd	Hi	Lo	Wind Gust	Hi	Lo
23/01/2011	0	360	5	14	26	4	19	26	9
29/01/2011	0	360	5	5	14	0	8	14	2
10/06/2011	0	360	5	6	14	2	8	14	2
13/07/2011	0	360	5	13	27	4	18	27	7
22/07/2011	0	360	5	11	20	3	15	20	6
26/07/2011	0	360	5	10	17	3	13	17	3
05/11/2011	0	360	5	12	22	0	11	22	1
14/04/2012	0	360	5	12	30	2	16	30	4
15/05/2012	0	360	5	14	34	3	20	34	5
19/05/2012	0	360	5	14	22	5	19	22	8
20/05/2012	0	360	5	12	19	5	15	19	8
21/05/2012	0	360	5	12	19	5	16	19	9
12	0	5	11	22	3	15	22	5	2.14
22/01/2011	22	360	5	13	25	3	17	25	7
24/04/2011	22	360	5	9	21	1	12	21	2
25/04/2011	22	360	5	12	26	1	16	26	3
28/04/2011	22	360	5	16	23	6	21	23	7
28/06/2011	22	360	5	8	20	1	12	20	2
21/07/2011	22	360	5	14	23	5	18	23	9
28/07/2011	22	360	5	6	21	0	9	21	0
29/07/2011	22	360	5	11	21	3	15	21	7
18/03/2012	22	360	5	10	19	1	13	20	3
31/03/2012	22	360	5	13	30	3	18	30	7
12/04/2012	22	360	5	5	17	0	7	17	1
27/04/2012	22	360	5	13	26	2	18	26	5
02/05/2012	22	360	5	15	26	3	19	26	5
04/05/2012	22	360	5	13	30	2	17	30	3
14	22	360	5	11	23	2	15	24	4
28/02/2011	45	360	5	13	31	0	18	31	1
03/03/2011	45	360	5	8	17	0	12	17	3
05/03/2011	45	360	5	9	21	3	13	22	4
16/03/2011	45	360	26	8	17	2	9	17	3
19/04/2011	45	119	5	9	20	1	12	20	3
20/04/2011	45	360	5	8	16	2	11	16	3
22/04/2011	45	157	5	7	14	2	10	14	4
26/04/2011	45	360	5	16	25	8	21	25	11
27/04/2011	45	360	5	13	20	5	16	20	9
04/06/2011	45	360	5	12	23	2	16	23	3
05/06/2011	45	360	5	14	24	4	19	24	9
11/07/2011	45	360	5	7	16	0	9	16	2
12/07/2011	45	360	5	12	22	3	16	22	6
25/07/2011	45	360	5	7	16	0	10	16	3
27/07/2011	45	360	5	9	16	0	13	16	3
19/04/2012	45	360	5	13	21	4	16	21	6
24/04/2012	45	360	0	8	16	0	11	16	0
28/04/2012	45	360	31	18	36	5	23	36	8
29/04/2012	45	360	11	22	40	3	30	40	8
01/05/2012	45	360	5	16	35	3	22	35	5

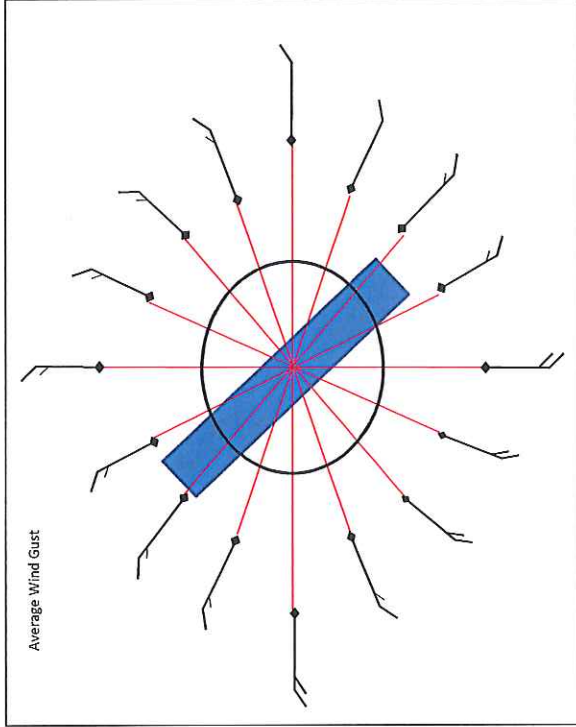
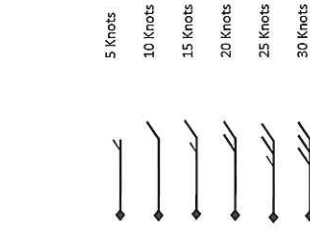


Berth Alignment 142° - 322°

80.95% Frequency

Direction	Wind Speed	Gusts	Hi
North	11	15	22
NNE	11	15	24
NE	11	15	22
ENE	12	16	22
East	9	12	17
ESE	8	12	19
SE	10	13	22
SSE	10	15	24
South	12	18	29
SSW	13	21	31
SW	12	19	29
WSW	11	17	26
West	12	18	28
WNW	11	16	25
NW	9	13	21
NNW	10	14	22

Date	Wind Dir	Hi	Lo	Wind Spd	Hi	Lo	Wind Gust	Hi	Lo
09/05/2012	45	360	5	14	25	4	19	25	7
05/05/2012	45	360	5	12	24	2	17	24	4
23/05/2012	45	360	5	7	16	1	10	16	3
27/05/2012	45	360	24	7	16	3	10	16	3
	24	45	342	8	11	22	2	15	22
									5
27/01/2011	68	121	27	11	23	2	16	23	6
21/04/2011	68	360	5	5	10	0	7	10	1
29/04/2011	68	360	5	13	23	3	18	23	7
07/11/2011	68	360	5	12	21	5	16	21	7
04/04/2012	68	121	27	26	46	8	36	46	16
18/05/2012	68	360	34	12	23	3	17	23	7
24/05/2012	68	360	5	8	11	0	8	11	0
26/05/2012	68	360	32	8	16	0	11	17	0
	8	68	300	18	12	22	3	16	22
									6
26/01/2011	90	360	5	13	26	3	19	26	7
28/01/2011	90	360	57	7	15	3	10	15	4
01/03/2011	90	360	5	5	15	0	8	15	1
02/03/2011	90	360	5	6	14	0	9	15	3
14/03/2011	90	360	5	5	12	0	7	12	2
30/04/2011	90	360	33	13	22	3	17	22	6
01/05/2011	90	360	43	15	27	3	21	27	6
02/05/2011	90	360	57	16	26	4	20	26	8
03/05/2011	90	360	57	12	21	4	15	21	6
03/06/2011	90	360	33	6	13	1	9	13	3
01/07/2011	90	360	5	7	14	0	10	14	3
03/08/2011	90	360	5	6	17	0	8	17	0
23/08/2011	90	360	5	8	15	2	10	15	3
31/08/2011	90	360	5	6	13	0	8	13	0
12/10/2011	90	360	5	6	16	0	9	16	0
30/01/2012	90	158	0	6	15	0	9	15	2
31/01/2012	90	112	90	12	22	8	16	22	11
01/02/2012	90	360	57	13	23	3	17	23	7
02/02/2012	90	360	62	7	17	0	11	17	1
23/03/2012	90	360	45	7	14	0	10	14	3
05/04/2012	90	106	39	11	23	4	12	23	9
06/04/2012	90	92	92	10	10	10	10	10	10
07/04/2012	90	92	92	10	10	10	10	10	10
08/04/2012	90	92	92	10	10	10	10	10	10
09/04/2012	90	92	92	10	10	10	10	10	10
23/04/2012	90	360	45	7	18	0	10	18	0
	26	90	292	40	9	17	3	12	17
									5
17/02/2011	112	360	73	6	14	1	10	14	2
20/02/2011	112	360	90	12	20	3	16	21	9
04/03/2011	112	360	49	5	10	0	7	10	3
15/09/2011	112	360	5	8	18	0	11	19	0
08/11/2011	112	360	82	11	23	4	15	23	8
14/11/2011	112	360	59	10	17	3	13	17	7
15/11/2011	112	360	78	10	19	3	13	19	5
08/02/2012	112	360	5	5	15	0	9	15	0
22/03/2012	112	360	76	7	15	0	10	16	1
24/03/2012	112	151	46	4	14	0	7	14	0
26/03/2012	112	360	107	4	13	0	6	13	0
25/04/2012	112	360	82	16	38	1	22	39	3
30/04/2012	112	360	44	11	23	1	15	23	3
25/05/2012	112	360	26	9	28	0	13	28	0
	14	112	345	59	8	19	1	12	19
									3
07/01/2011	135	360	5	9	23	0	13	23	1
11/02/2011	135	345	11	9	29	0	12	29	2
12/02/2011	135	360	103	11	32	0	16	32	1
15/02/2011	135	360	103	14	29	4	19	29	6



Percentage of Wind Force in each Sector (Gusts)

	Frequency	< 20Kts	20 - 25Kts	> 25 Kts
North	2.14	41.7	25.0	33.3
NNE	2.49	14.3	42.9	42.9
NE	4.27	44.0	40.0	16.0
ENE	1.42	37.5	50.0	12.5
East	4.63	69.2	19.2	11.5
ESE	2.49	64.3	21.4	14.3
SE	7.47	45.2	31.0	23.8
SSE	13.52	31.6	32.9	35.5
South	3.38	5.3	26.3	68.4
SSW	2.31	0.0	23.1	76.9
SW	14.41	9.9	27.2	63.0
WSW	15.3	25.6	31.4	43.0
West	14.06	19.0	21.5	59.5
WNNW	7.12	30.0	32.5	37.5
NW	3.38	47.4	31.6	21.1
NNW	1.6	44.4	33.3	22.2

14.95% Beam Wind Condition

80.95%  
49.96% - Beam Wind Condition

Date	Wind Dir	Hi	Lo	Wind Spd	Hi	Lo	Wind Gust	Hi	Lo
18/02/2011	135	360	90	13	30	2	19	30	3
19/02/2011	135	360	105	16	29	5	23	29	10
15/03/2011	135	360	60	13	24	1	15	24	4
24/08/2011	135	360	5	6	13	0	8	14	0
25/03/2011	135	360	5	6	17	0	9	17	0
26/03/2011	135	360	58	13	23	3	17	23	6
27/03/2011	135	262	90	7	21	1	11	21	2
28/03/2011	135	360	5	8	16	0	10	16	3
09/04/2011	135	360	87	7	17	0	10	17	2
10/04/2011	135	360	99	6	17	0	9	17	0
16/04/2011	135	360	84	7	13	0	10	13	0
23/04/2011	135	360	5	5	17	0	7	17	0
04/05/2011	135	360	5	9	23	0	13	23	1
07/05/2011	135	360	81	10	17	0	14	17	5
02/06/2011	135	360	5	7	16	0	10	16	2
02/07/2011	135	360	5	7	13	0	9	13	0
03/07/2011	135	360	9	8	13	0	11	13	3
04/07/2011	135	360	5	7	18	0	10	18	1
05/07/2011	135	360	102	9	24	0	13	24	0
01/08/2011	135	360	98	12	24	2	17	24	5
02/08/2011	135	360	85	9	19	0	13	19	2
06/08/2011	135	360	5	8	23	1	12	23	3
12/08/2011	135	192	30	9	19	2	12	20	3
18/08/2011	135	360	5	4	10	0	7	10	0
01/09/2011	135	360	59	12	23	2	15	23	4
16/09/2011	135	360	101	16	30	3	22	30	8
13/10/2011	135	173	69	8	17	3	12	18	4
24/10/2011	135	360	105	23	39	9	30	39	16
25/10/2011	135	360	110	13	28	3	18	28	4
11/11/2011	135	360	93	14	27	4	21	27	9
13/11/2011	135	360	71	11	20	3	15	20	5
21/11/2011	135	360	121	9	18	2	13	18	5
02/03/2012	135	360	99	7	19	0	10	20	0
25/03/2012	135	360	101	5	14	0	8	15	0
27/03/2012	135	360	5	5	14	0	7	14	2
18/04/2012	135	360	96	17	34	3	23	35	7
06/05/2012	135	360	5	6	16	0	9	16	0
28/05/2012	135	360	5	5	20	0	8	20	0
42	135	349	55	10	22	1	13	22	3
21/02/2011	158	199	109	10	17	3	14	17	5
06/03/2011	158	360	32	7	15	0	11	15	3
07/03/2011	158	351	81	9	19	0	14	19	4
23/03/2011	158	360	5	4	15	0	7	15	0
05/05/2011	158	207	96	12	27	3	17	28	4
31/07/2011	158	360	74	10	24	1	14	24	3
29/09/2011	158	261	113	9	24	0	13	24	1
08/08/2011	158	360	0	12	31	0	19	31	2
09/08/2011	158	360	5	10	22	1	14	22	0
10/08/2011	158	360	176	13	30	6	15	30	0
11/08/2011	158	360	5	12	25	3	18	25	6
12/08/2011	158	192	22	9	20	2	13	20	3
13/08/2011	158	360	142	9	19	0	14	19	3
14/08/2011	158	360	218	9	22	1	13	22	3
15/08/2011	158	360	13	9	25	0	13	25	0
16/08/2011	158	360	160	11	29	2	18	29	5
17/08/2011	158	360	5	8	17	0	12	17	3
18/08/2011	158	360	0	4	10	0	7	10	0
19/08/2011	158	360	197	9	20	2	13	20	3
20/08/2011	158	360	161	11	23	3	18	23	4
21/08/2011	158	360	5	9	27	2	15	27	3
22/08/2011	158	360	0	8	18	0	11	18	3
23/08/2011	158	360	0	8	15	2	10	15	3
24/08/2011	158	360	135	7	23	0	12	23	0
25/08/2011	158	360	84	8	29	0	15	29	0

7.47



Date	Wind Dir	Hi	Lo	Wind Spd	Hi	Lo	Wind	Gust	Hi	Lo
26/08/2011	158	360	0	5	19	0	0	9	19	0
27/08/2011	158	360	0	7	49	0	0	12	49	1
28/08/2011	158	360	217	16	36	3	3	23	36	6
29/08/2011	158	355	250	12	24	1	1	18	24	5
30/08/2011	158	360	221	8	17	2	2	12	17	4
31/08/2011	158	360	0	6	13	0	8	13	0	4
01/09/2011	158	360	59	11	23	2	2	15	23	4
02/09/2011	158	360	146	9	20	1	14	20	2	2
03/09/2011	158	360	150	10	24	2	16	24	4	4
04/09/2011	158	360	103	7	19	0	11	19	1	1
05/09/2011	158	360	169	14	31	2	22	31	5	5
06/09/2011	158	360	160	20	39	6	32	39	10	10
07/09/2011	158	360	184	17	36	3	26	36	9	9
08/09/2011	158	360	201	11	27	0	17	27	0	0
09/09/2011	158	360	158	8	22	0	12	22	1	1
10/09/2011	158	360	132	14	34	3	22	34	7	7
11/09/2011	158	360	157	15	34	3	25	34	7	7
12/09/2011	158	360	144	22	46	6	34	46	11	11
13/09/2011	158	360	186	18	41	5	27	41	10	10
14/09/2011	158	360	209	14	28	3	21	28	8	8
15/09/2011	158	360	5	8	18	0	11	19	0	0
16/09/2011	158	360	101	16	30	3	22	30	8	8
17/09/2011	158	360	174	12	27	3	19	27	5	5
18/09/2011	158	360	0	7	18	0	10	18	1	1
19/09/2011	158	360	182	12	26	3	17	26	6	6
20/09/2011	158	360	183	7	25	0	12	25	0	0
21/09/2011	158	360	190	14	35	3	22	35	6	6
22/09/2011	158	360	208	12	29	2	18	29	4	4
23/09/2011	158	360	173	10	19	2	16	19	5	5
24/09/2011	158	360	174	11	23	2	17	23	7	7
25/09/2011	158	360	153	13	27	2	20	27	5	5
26/09/2011	158	360	5	9	26	0	13	26	3	3
27/09/2011	158	360	146	9	19	2	13	19	4	4
28/09/2011	158	360	111	11	24	3	15	25	6	6
29/09/2011	158	261	113	9	25	0	13	25	1	1
14/10/2011	158	360	129	9	19	1	13	20	4	4
23/10/2011	158	360	123	14	32	4	22	32	7	7
27/10/2011	158	360	80	9	18	0	13	18	3	3
02/11/2011	158	360	111	13	29	3	19	29	8	8
03/11/2011	158	360	113	12	23	3	18	23	7	7
09/11/2011	158	360	127	10	18	3	14	19	7	7
10/11/2011	158	360	61	9	22	2	12	22	6	6
16/11/2011	158	360	102	7	20	0	10	20	3	3
19/11/2011	158	360	119	7	19	0	10	19	0	0
15/01/2012	158	360	130	7	14	0	9	14	3	3
16/01/2012	158	360	138	7	17	0	10	17	2	2
24/01/2012	158	360	115	7	17	0	11	17	2	2
07/02/2012	158	360	5	7	20	0	10	20	2	2
10/02/2012	158	360	138	8	17	2	12	17	4	4
26/04/2012	158	360	115	9	29	0	16	29	1	1
07/05/2012	158	360	106	10	24	2	15	24	4	4
	76	158	351	109	10	24	2	15	24	4
08/01/2011	180	360	146	16	30	4	24	32	6	6
10/01/2011	180	360	140	19	38	3	27	38	10	10
13/02/2011	180	360	134	17	39	3	24	39	8	8
22/02/2011	180	360	134	8	20	0	12	21	2	2
06/05/2011	180	360	101	11	23	1	16	23	2	2
09/05/2011	180	360	128	11	29	0	18	32	2	2
27/06/2011	180	360	90	11	30	1	17	31	3	3
07/07/2011	180	360	113	14	34	0	23	34	4	4
08/07/2011	180	360	139	12	28	2	19	29	5	5
04/08/2011	180	360	105	7	21	0	12	21	0	0
28/09/2011	180	360	111	11	24	3	15	25	6	6

30/09/2011	180	360	5	9	31	0	14	31	2
15/10/2011	180	360	138	7	16	2	11	16	2
22/10/2011	180	360	136	15	28	3	22	28	8
01/11/2011	180	360	140	9	27	1	14	28	3
04/11/2011	180	360	114	8	23	0	12	23	0
25/01/2012	180	360	153	14	32	0	20	33	1
04/02/2012	180	360	144	13	31	2	20	32	3
17/04/2012	180	360	144	16	38	2	25	40	7
19	180	360	122	12	29	1	18	29	4
									3.38
Date	Wind Dir	Hi	Lo	Wind Spd	Hi	Lo	Wind Gust	Hi	Lo
09/02/2011	202	360	125	15	30	3	22	30	6
23/02/2011	202	360	151	14	30	2	21	30	5
02/04/2011	202	360	5	13	35	0	21	35	0
08/05/2011	202	360	105	12	31	0	19	32	2
10/09/2011	202	360	132	14	33	3	22	34	7
25/09/2011	202	360	153	13	27	2	20	27	5
26/10/2011	202	360	138	11	25	3	18	25	4
29/10/2011	202	360	157	13	30	3	20	30	5
31/10/2011	202	360	136	15	35	4	24	35	7
12/11/2011	202	360	95	8	23	0	13	24	1
17/11/2011	202	360	142	10	24	2	17	24	5
18/11/2011	202	360	148	15	30	3	22	30	10
29/11/2011	202	360	148	19	40	5	29	41	9
13	202	360	126	13	30	2	21	31	5
									2.31
Date	Wind Dir	Hi	Lo	Wind Spd	Hi	Lo	Wind Gust	Hi	Lo
04/01/2011	225	360	167	17	30	5	25	31	10
05/01/2011	225	360	150	16	34	3	26	34	5
12/01/2011	225	360	142	12	29	2	17	29	4
13/01/2011	225	360	191	12	23	3	17	23	6
15/01/2011	225	360	159	22	40	6	32	40	11
16/01/2011	225	360	158	16	40	3	26	40	6
02/02/2011	225	360	158	18	37	4	27	39	10
03/02/2011	225	360	171	18	43	3	27	43	7
07/02/2011	225	360	159	22	50	4	32	50	10
10/02/2011	225	360	0	11	29	4	16	29	6
14/02/2011	225	360	142	13	25	3	19	25	4
16/02/2011	225	360	101	10	22	1	14	22	3
25/02/2011	225	360	166	14	30	3	21	30	5
08/03/2011	225	360	153	11	27	1	17	27	3
11/03/2011	225	360	160	15	30	4	22	30	9
12/03/2011	225	360	103	13	30	3	19	30	6
20/03/2011	225	360	178	11	21	3	16	21	6
29/03/2011	225	360	9	8	21	0	12	21	1
30/03/2011	225	281	145	10	27	0	15	27	0
01/04/2011	225	360	153	16	33	3	26	34	8
04/04/2011	225	360	167	14	32	3	21	32	6
05/04/2011	225	360	159	17	38	3	27	38	6
14/04/2011	225	360	5	7	17	0	10	17	2
10/05/2011	225	360	148	12	30	1	18	30	4
26/05/2011	225	360	5	10	29	1	16	29	3
07/06/2011	225	282	124	9	23	0	13	23	2
08/06/2011	225	288	179	11	32	3	16	32	7
15/06/2011	225	338	0	10	21	2	15	21	3
17/06/2011	225	360	122	12	33	3	18	33	6
22/06/2011	225	360	5	12	25	0	18	25	1
06/07/2011	225	360	139	10	47	1	17	47	3
16/07/2011	225	360	153	12	26	2	19	27	5
17/07/2011	225	360	179	12	29	4	20	29	7
07/08/2011	225	360	195	12	29	3	18	29	6
11/08/2011	225	360	5	12	24	3	18	25	5
16/08/2011	225	360	160	11	29	2	18	29	5
20/08/2011	225	360	161	11	23	3	18	23	4
21/08/2011	225	360	5	9	24	2	15	27	3
25/08/2011	225	360	84	7	28	0	13	29	0

Date	Wind Dir	Hi	Lo	Wind Spd	Hi	Lo	Wind Gust	Hi	Lo
03/09/2011	225	360	150	10	24	2	16	24	4
04/09/2011	225	360	103	8	19	0	11	19	1
11/09/2011	225	360	157	15	33	3	25	34	7
17/09/2011	225	360	174	13	27	3	19	27	5
24/09/2011	225	360	174	12	23	2	17	23	7
27/09/2011	225	360	146	9	19	2	13	19	4
01/10/2011	225	360	119	7	19	0	11	19	0
09/10/2011	225	360	176	14	38	2	21	38	5
16/10/2011	225	360	180	8	17	0	12	17	1
17/10/2011	225	360	163	16	40	3	25	41	8
21/10/2011	225	360	177	13	25	2	20	25	9
30/10/2011	225	360	186	10	25	1	15	25	3
23/11/2011	225	360	176	13	26	3	20	26	8
24/11/2011	225	360	158	16	34	3	25	38	10
28/11/2011	225	360	144	14	31	3	21	32	8
30/11/2011	225	360	148	16	43	5	25	43	8
02/12/2011	225	360	170	13	34	3	19	34	7
11/12/2011	225	360	160	15	29	1	22	30	6
12/12/2011	225	360	148	15	44	3	24	45	7
13/12/2011	225	360	169	18	39	5	30	39	7
14/12/2011	225	360	180	17	36	3	26	36	11
15/12/2011	225	360	13	10	22	0	15	22	1
19/12/2011	225	360	190	11	25	3	16	25	5
23/12/2011	225	360	174	15	29	3	22	29	8
01/01/2012	225	360	178	15	30	3	22	30	5
02/01/2012	225	360	177	14	29	2	21	30	9
10/01/2012	225	360	193	11	20	0	16	20	4
17/01/2012	225	360	178	10	20	0	15	21	3
18/01/2012	225	360	178	14	33	1	21	33	5
26/01/2012	225	360	152	15	36	3	22	36	6
11/02/2012	225	360	171	7	17	0	11	17	2
20/02/2012	225	360	194	15	31	4	22	31	8
22/02/2012	225	360	170	17	37	3	28	38	8
03/03/2012	225	360	111	12	27	2	17	27	5
09/03/2012	225	360	198	12	24	2	18	24	4
15/03/2012	225	360	161	6	19	0	9	19	2
16/03/2012	225	360	176	11	24	3	17	24	4
17/03/2012	225	360	5	8	23	0	13	23	2
10/04/2012	225	360	92	11	30	3	16	30	5
11/04/2012	225	360	5	6	17	0	11	17	0
08/05/2012	225	360	153	9	24	2	14	24	4
10/05/2012	225	360	103	16	35	0	26	36	2
81	225	357	137	12	29	2	19	29	5
03/01/2011	248	319	186	9	19	3	12	19	4
06/01/2011	248	360	5	9	20	2	12	20	3
09/01/2011	248	360	24	14	29	3	21	29	9
14/01/2011	248	360	175	13	30	3	20	30	5
17/01/2011	248	360	184	8	20	0	11	20	1
31/01/2011	248	360	189	10	22	2	15	22	5
01/02/2011	248	360	192	12	26	3	18	26	8
04/02/2011	248	360	171	28	54	8	39	54	17
05/02/2011	248	360	5	13	49	0	21	49	3
06/02/2011	248	360	5	16	39	1	25	40	2
08/02/2011	248	292	135	9	22	1	13	22	3
24/02/2011	248	360	177	10	20	2	14	20	4
17/03/2011	248	360	49	9	12	0	9	12	3
19/03/2011	248	360	159	7	18	0	11	18	1
21/03/2011	248	360	200	8	20	2	12	20	4
03/04/2011	248	360	183	9	32	1	15	32	3
06/04/2011	248	360	187	16	31	3	24	31	6
13/04/2011	248	360	186	11	22	3	15	22	6
15/04/2011	248	312	61	6	14	0	9	14	1
11/05/2011	248	360	180	9	20	0	14	20	2

13/05/2011	248 360 178	11 23	1	16 23 3
19/05/2011	248 360 148	9 20	1	14 20 3
26/05/2011	248 360 152	11 26	1	17 26 5
28/05/2011	248 360 194	15 30	3	23 30 9
29/05/2011	248 360 188	13 31	2	21 31 3
01/06/2011	248 360 142	9 21	1	15 22 3
12/06/2011	248 265 81	11 30	0	15 30 2
20/06/2011	248 360 5	8 19	0	12 20 0
21/06/2011	248 360 136	11 30	2	18 30 5
26/06/2011	248 360 107	10 21	0	14 22 3
10/07/2011	248 360 5	7 15	0	10 15 1
18/07/2011	248 360 209	13 30	3	19 30 5
19/07/2011	248 360 5	5 18	0	9 18 1
05/08/2011	248 360 5	9 19	2	14 19 4
13/08/2011	248 360 142	9 19	0	14 19 3
15/08/2011	248 360 13	9 23	0	13 25 0
22/08/2011	248 360 5	8 18	0	11 18 3
24/08/2011	248 360 139	7 23	0	12 23 0
02/09/2011	248 360 146	9 20	1	13 20 2
05/09/2011	248 360 169	14 31	2	22 31 5
06/09/2011	248 360 160	20 39	6	32 39 10
09/09/2011	248 360 162	8 21	0	12 22 1
12/09/2011	248 360 144	22 46	6	34 46 11
13/09/2011	248 360 186	18 41	5	27 41 10
18/09/2011	248 360 5	7 18	0	10 18 1
20/09/2011	248 360 183	7 25	0	12 25 0
21/09/2011	248 360 190	15 35	3	22 35 6
23/09/2011	248 360 173	10 19	2	16 19 5
26/09/2011	248 360 5	9 26	0	13 26 3
02/10/2011	248 360 193	10 21	2	15 21 6
05/10/2011	248 360 177	18 41	2	29 41 5
09/10/2011	248 360 157	13 36	1	19 36 5
10/10/2011	248 360 196	16 44	4	25 44 9
18/10/2011	248 360 195	15 69	3	24 69 7
20/11/2011	248 295 149	3 10	0	5 10 0
25/11/2011	248 360 170	14 44	2	23 44 4
26/11/2011	248 360 182	16 35	5	26 35 9
01/12/2011	248 360 160	13 43	2	20 43 3
06/12/2011	248 360 189	13 27	3	19 27 6
08/12/2011	248 360 159	19 43	4	29 44 9
10/12/2011	248 360 194	11 20	2	15 21 5
21/12/2011	248 360 197	8 23	0	12 23 2
24/12/2011	248 360 186	13 30	3	20 30 8
25/12/2011	248 360 182	15 29	4	23 30 7
26/12/2011	248 360 174	16 30	4	25 30 7
27/12/2011	248 360 173	12 30	3	18 30 6
28/12/2011	248 360 169	20 44	5	31 44 9
31/12/2011	248 360 185	12 24	1	18 24 5
11/01/2012	248 360 197	12 32	1	19 32 5
14/01/2012	248 360 157	6 12	0	8 12 0
27/01/2012	248 360 195	10 23	0	16 23 0
05/02/2012	248 275 170	7 24	0	10 24 3
09/02/2012	248 360 135	7 13	0	10 13 1
17/02/2012	248 360 196	10 25	0	15 25 3
21/02/2012	248 360 193	13 28	3	21 28 9
27/02/2012	248 360 204	12 23	3	17 23 7
29/02/2012	248 360 204	6 13	0	9 13 1
01/03/2012	248 360 5	5 14	0	8 14 0
14/03/2012	248 360 155	5 17	0	9 17 0
21/03/2012	248 360 111	6 14	0	10 14 1
28/03/2012	248 360 9	6 15	0	8 15 0
03/04/2012	248 360 5	6 23	0	10 23 1
21/04/2012	248 360 5	7 19	0	11 19 1
22/04/2012	248 360 5	7 19	0	11 19 0

13/05/2012	248	360	190	12	29	3	19	29	6
17/05/2012	248	360	5	6	16	0	9	16	0
	86	248	355	134	11	26	2	17	26
									4
									15.30
Date	Wind Dir	Hi	Lo	Wind Spd	Hi	Lo	Wind Gust	Hi	Lo
09/03/2011	270	321	184	17	36	5	27	36	12
10/03/2011	270	360	167	21	45	3	31	45	8
22/03/2011	270	360	5	7	19	0	10	19	0
31/03/2011	270	360	153	18	48	2	28	48	4
08/04/2011	270	360	5	9	17	0	12	17	2
16/04/2011	270	360	5	6	17	0	9	17	0
12/05/2011	270	360	200	14	32	3	21	32	7
15/05/2011	270	360	229	14	26	3	20	26	7
16/05/2011	270	360	226	20	36	6	27	36	13
17/05/2011	270	360	196	13	26	2	19	26	9
18/05/2011	270	360	184	13	29	3	21	29	5
09/06/2011	270	346	24	10	20	3	13	20	3
11/06/2011	270	360	5	9	21	1	12	21	4
13/06/2011	270	319	175	14	28	3	20	28	6
14/06/2011	270	344	28	9	20	2	13	20	3
16/06/2011	270	360	112	8	26	1	13	26	2
18/06/2011	270	331	144	9	20	0	13	20	0
23/06/2011	270	360	5	9	24	0	13	24	2
24/06/2011	270	360	190	9	22	2	14	22	3
25/06/2011	270	360	136	11	24	2	17	24	5
30/06/2011	270	360	5	8	20	1	12	20	5
09/07/2011	270	360	170	12	28	3	19	28	6
15/07/2011	270	360	167	10	23	1	14	23	5
20/07/2011	270	360	5	6	12	0	8	12	1
08/08/2011	270	360	5	11	31	0	18	31	2
10/08/2011	270	360	176	13	30	6	17	30	9
14/08/2011	270	360	218	9	21	1	13	22	3
17/08/2011	270	360	5	8	17	0	12	17	3
19/08/2011	270	360	197	9	19	2	13	20	3
27/08/2011	270	360	5	7	49	0	12	49	1
28/08/2011	270	360	217	16	36	3	23	36	6
30/08/2011	270	360	221	8	17	2	12	17	4
07/09/2011	270	360	184	17	34	3	26	36	9
08/09/2011	270	360	201	11	27	0	17	27	0
14/09/2011	270	360	209	14	28	3	21	28	8
19/09/2011	270	360	182	12	26	3	17	26	6
22/09/2011	270	360	208	12	29	2	18	29	4
04/10/2011	270	360	188	11	28	0	17	28	3
06/10/2011	270	360	195	18	49	6	28	49	11
11/10/2011	270	360	5	10	31	0	16	31	3
20/10/2011	270	360	194	9	19	3	12	19	5
28/10/2011	270	360	161	7	14	1	10	14	3
22/11/2011	270	311	123	6	14	0	9	14	0
27/11/2011	270	360	188	18	42	4	30	43	8
03/12/2011	270	360	181	18	34	7	28	34	11
04/12/2011	270	360	192	13	30	3	19	30	3
05/12/2011	270	360	200	15	30	4	22	30	5
07/12/2011	270	360	192	20	48	4	32	48	10
09/12/2011	270	360	207	14	37	2	22	37	8
22/12/2011	270	360	189	14	37	1	22	37	4
29/12/2011	270	360	209	19	40	7	28	40	12
03/01/2012	270	360	154	25	64	0	38	64	13
04/01/2012	270	360	200	22	51	6	32	51	12
06/01/2012	270	360	198	12	24	4	17	24	8
08/01/2012	270	360	220	11	22	3	16	22	7
09/01/2012	270	360	207	10	27	2	16	27	4
19/01/2012	270	360	181	14	36	0	22	36	4
20/01/2012	270	360	194	13	29	1	19	29	3
22/01/2012	270	360	198	19	45	4	28	46	9
23/01/2012	270	360	245	12	24	5	17	24	6

06/02/2012	270	360	230	5	13	0	8	13	0
13/02/2012	270	360	5	13	36	4	19	36	6
16/02/2012	270	360	210	12	26	4	17	26	8
23/02/2012	270	360	202	15	28	5	22	28	8
24/02/2012	270	360	211	13	32	2	20	32	5
25/02/2012	270	360	238	11	27	3	16	27	6
26/02/2012	270	360	188	8	17	0	11	17	2
28/02/2012	270	360	238	12	24	1	18	24	5
08/03/2012	270	360	194	12	26	3	17	26	4
10/03/2012	270	360	5	12	30	3	18	30	5
12/03/2012	270	360	142	5	14	0	8	14	2
19/03/2012	270	360	204	12	26	3	16	26	7
30/03/2012	270	360	5	8	21	0	11	21	0
02/04/2012	270	360	5	6	13	0	8	13	0
16/04/2012	270	360	9	7	23	0	11	23	1
20/04/2012	270	346	210	7	18	0	11	18	3
09/05/2012	270	360	5	7	15	1	10	16	3
11/05/2012	270	360	5	12	47	0	20	47	3
14/05/2012	270	360	197	13	28	3	20	28	7
79	270	357	145	12	28	2	18	28	5
14.06									
18/01/2011	292	360	255	10	19	3	14	19	5
21/01/2011	292	360	5	7	10	1	9	10	3
24/01/2011	292	360	5	11	23	3	15	23	5
25/01/2011	292	360	5	8	24	0	13	24	1
27/02/2011	292	360	5	14	24	3	19	25	4
13/03/2011	292	360	5	8	23	1	13	23	3
07/04/2011	292	360	5	11	23	0	17	27	3
11/04/2011	292	360	182	12	30	1	18	30	2
12/04/2011	292	360	233	14	27	3	20	27	8
17/04/2011	292	360	5	7	17	0	10	17	3
14/05/2011	292	360	5	14	30	3	21	30	6
27/05/2011	292	360	199	10	25	3	17	25	5
30/05/2011	292	360	189	6	18	0	9	18	1
31/05/2011	292	360	5	10	22	0	14	22	6
19/06/2011	292	360	236	9	23	3	14	23	4
29/06/2011	292	360	5	8	19	0	12	19	2
29/08/2011	292	355	250	11	24	1	18	24	5
07/10/2011	292	360	5	11	27	2	16	27	4
08/10/2011	292	343	140	8	19	0	13	19	1
19/10/2011	292	360	5	11	21	3	16	21	6
16/12/2011	292	360	9	8	20	0	12	20	0
18/12/2011	292	360	230	11	21	3	15	21	7
20/12/2011	292	360	219	12	26	3	17	26	5
30/12/2011	292	360	146	12	30	3	17	30	3
05/01/2012	292	360	5	24	62	8	35	62	11
07/01/2012	292	360	221	16	34	4	23	34	7
12/01/2012	292	360	5	15	40	3	23	40	5
13/01/2012	292	360	263	8	17	1	10	17	3
21/01/2012	292	360	219	21	44	6	32	44	11
03/02/2012	292	360	5	6	11	1	8	11	3
14/02/2012	292	360	5	13	35	6	19	35	8
18/02/2012	292	360	193	18	36	4	26	36	9
19/02/2012	292	360	5	11	23	3	16	23	6
07/03/2012	292	360	170	16	40	5	27	41	10
11/03/2012	292	360	231	8	17	0	11	17	4
13/03/2012	292	307	226	4	11	0	7	11	0
20/03/2012	292	324	209	10	26	3	16	26	5
29/03/2012	292	360	5	7	15	0	10	15	0
01/04/2012	292	360	5	8	19	0	11	19	0
16/05/2012	292	360	250	8	20	2	13	20	2
40	292	357	109	11	25	2	16	25	4
7.12									
02/01/2011	315	360	5	10	23	3	13	23	6

11/01/2011	315	360	5	16	38	3	23	38	8
19/01/2011	315	355	257	9	15	3	12	15	6
20/01/2011	315	360	5	7	14	0	9	14	3
26/02/2011	315	360	5	11	25	0	17	25	0
18/03/2011	315	360	0	9	17	0	11	17	0
06/06/2011	315	360	5	5	11	0	7	11	3
23/07/2011	315	360	5	12	23	4	16	23	8
24/07/2011	315	360	5	10	22	2	15	22	3
09/08/2011	315	360	5	9	22	1	14	22	4
26/08/2011	315	360	5	5	19	0	9	19	0
17/12/2011	315	360	229	11	21	3	15	21	7
29/01/2012	315	338	112	7	19	2	9	19	3
12/02/2012	315	360	251	7	12	3	10	12	4
15/02/2012	315	360	5	13	27	3	19	27	6
06/03/2012	315	360	5	9	30	0	14	30	1
13/04/2012	315	360	5	6	17	0	9	17	2
15/04/2012	315	360	5	14	31	2	20	31	6
12/05/2012	315	360	5	7	18	0	12	18	0
19	315	359	48	9	21	2	13	21	4
3.38									
Date	Wind Dir	Hi	Lo	Wind Spd	Hi	Lo	Wind Gust	Hi	Lo
01/01/2011	338	360	5	10	18	3	13	18	4
30/01/2011	338	360	5	4	11	0	6	11	1
14/07/2011	338	360	5	11	22	0	17	22	1
30/07/2011	338	360	5	6	12	0	10	12	2
06/11/2011	338	360	5	12	23	4	16	23	6
28/01/2012	338	360	0	7	16	3	10	16	4
04/03/2012	338	360	5	13	35	0	18	36	2
05/03/2012	338	360	5	19	36	5	26	36	9
22/05/2012	338	360	5	8	20	1	12	20	4
9	338	360	4	10	21	2	14	22	4
1.60									

## **APPENDIX 7**

Office of Rail Regulation: *Land Disposal by Network Rail: the regulatory arrangements*



**Land disposal by Network Rail:  
the regulatory arrangements**

**October 2010**

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# 1. Introduction

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- 1.1 The Office of Rail Regulation (ORR) regulates how Network Rail Infrastructure Limited (Network Rail) disposes of its land through condition 7 of its network licence. Our objective is to protect land that may be required for future development of the railway network and to prevent the disposal of that land against the public interest. Accordingly, Network Rail must seek our consent for any disposal not covered by a general consent.
- 1.2 In this document we set out:
- the general consent which allows Network Rail to dispose of land without prior notice in certain situations;
  - the criteria we will use in deciding whether we should intervene when notified of a proposed disposal; and
  - our policies relating to major air rights, compulsory purchase orders, and the potential for compensation after a blocked disposal.
- 1.3 For completeness we include as an annex the text of condition 7 of Network Rail's network licence.

## **2. General consent to the disposal of land by Network Rail**

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1. ORR directs that for the purposes of condition 7 of the network licence Network Rail may dispose of land by entering into any of the following transactions without giving prior notice:
  - (a) the grant of a lease, which incorporates the Station Access Conditions, of all or part of a station to a passenger train operator providing railway services under a franchise agreement with the appropriate franchising authority or under a concession agreement with a Passenger Transport Executive or Transport for London (or its successors). The lease must be capable of termination on or before the termination of the relevant franchise agreement or the concession agreement. For the purpose of this paragraph a franchise agreement or a concession agreement shall not be treated as being terminated if, when it comes to an end, it is replaced by an agreement between the passenger train operator and the appropriate franchising authority, or a Passenger Transport Executive or Transport for London (or its successors), on similar terms;
  - (b) the grant of a lease of part of a station of which Network Rail is the station operator to a train operating company for the purpose of providing services relating to railways;
  - (c) the grant of a lease:
    - (i) of all or part of a light maintenance depot (LMD) to any person for the purpose of providing services relating to railways; or
    - (ii) of land for the construction of an LMD provided that there are no plans to use the land for other railway purposes and the land is used only for such purposes as are permitted by the National Depot Access Conditions (December Standard) or such other depot access conditions as may be approved by ORR;
  - (d) the grant of a reversionary or concurrent lease pursuant to an obligation contained in any such lease referred to in paragraphs 1(a) and 1(c) provided that the grant of the reversionary or concurrent lease

does not interfere with or restrict the carrying on of railway services at the station or LMD;

- (e) the grant of a lease or a licence which contains a materially unfettered right permitting Network Rail to terminate the lease or licence if the land is required by Network Rail for the performance of its responsibilities as a provider of network services or for the purpose of the network business or for the purposes of railway and/or integrated transport related redevelopment;
- (f) the grant of a lease or licence of all or part of a building which will be used by the lessee as office accommodation;
- (g) the disposal of land which has no reasonably foreseeable use:
  - (i) for, or in connection with, services relating to railways; or
  - (ii) for any other public transport use, which would provide benefit for rail passengers, through better integration of public transport modes;
- (h) the renewal or extension of any lease where the renewal is required by operation of law;
- (i) the grant of a licence where the grant would not have a material adverse effect on the ability of Network Rail, any network operator, any beneficiary or a holder of a licence under the Act or the Railway (Licensing of Railway Undertakings) Regulations 2005 to use or develop the land for the purpose of providing services relating to railways;
- (j) the grant of sub-surface or air rights that do not infringe on the space which may be needed to facilitate the provision of services relating to railways (major developments are excluded from such grant);
- (k) the disposal of any land made solely for the purpose of boundary rectification of land in which Network Rail has an estate or interest;
- (l) the grant to a third party of a wayleave, easement or servitude where the grant would not have a material adverse effect on the ability of Network Rail, any network operator, any beneficiary or any holder of a

licence under the Act or the Railway (Licensing of Railway Undertakings) Regulations 2005 to use or develop the land for the purpose of providing services relating to railways;

- (m) the grant of a lease of a freight depot, freight terminal or freight sidings for the purposes of providing services relating to railways;
  - (n) the grant of a lease to a person providing network services for the purpose of providing services relating to railways;
  - (o) any disposal of land to the extent it comprises a network or railway facility (or part of a network or railway facility) which has been the subject of a decision on closure under section 43(9) of the Act (or the effect of the provisions set out in sections 22-35 of the Railways Act 2005 is that it is permitted to be closed or its use discontinued) and that decision (or effect of those provisions) does not explicitly require that the licence holder does not dispose of the land; or
  - (p) the dedication of land to a governmental or local authority, agency or department for the purposes of or in connection with a highway including approaches to level crossings, where such land does not form part of the operational rail network and where recent prior consultation with relevant train operators, passenger transport executives, Transport for London (or its successors) or Regional Transport Partnerships, as appropriate, has raised no issues.
2. ORR may after consulting the licence holder modify or revoke this general consent if it appears to ORR requisite or expedient to do so by reason of any change of circumstances having regard to the duties imposed on ORR by section 4 of the Act.

3. In this direction:

"the Act"	is the Railways Act 1993;
"lease"	includes a tenancy;
"prior notice"	means a notice to ORR under condition 7.2 of Network Rail's network licence;
"Station Access Conditions"	means the National Station Access Conditions 1996 (England and Wales) lodged with ORR on 30 January 1996, or the National Station Access Conditions 1996 (Scotland) lodged with ORR on 4 March 1996 as appropriate, and in both cases, modified from time to time with the approval of ORR;
"Depot Access Conditions"	means the National Depot Access Conditions (England and Wales) or the National Depot Access Conditions (Scotland) lodged with ORR, and in both cases modified from time to time with the approval of ORR;

and any other words and phrases in this direction shall have the same meaning as in the Act or network licence.

### **3. ORR's decision criteria**

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- 3.1 Where Network Rail has given notice to ORR and its stakeholders of any proposed land disposal, we will use the decision criteria in paragraph 3.5 below to decide whether to let the transaction proceed.
- 3.2 We will expect Network Rail to have consulted the following parties about the development of any land disposal proposals:
- (a) the Department for Transport (DfT) or successor franchising authority;
  - (b) in Scotland, Transport Scotland, the Regional Transport Partnerships and the Scottish Council for Development & Industry;
  - (c) in Wales, the Welsh Assembly Government;
  - (d) in Greater London, and in adjacent or surrounding areas that might impact upon strategic transport plans for Greater London and on London Underground Limited's duties as an infrastructure controller, Transport for London and London TravelWatch;
  - (e) the local planning authority, County Council and Passenger Transport Authority (PTA) or the associated Passenger Transport Executive (PTE) (where appropriate), for the area in which the site is located;
  - (f) train operating companies (passenger and freight);
  - (g) the Rail Freight Group and the Freight Transport Association;
  - (h) Passenger Focus ;
  - (i) Community Rail Partnerships and the Association of Community Rail Partnerships;
  - (j) key transport infrastructure providers such as port and airport authorities; and
  - (k) British Transport Police.



- 3.3 We may require Network Rail to provide further information within seven days, or such further time as allowed, if its proposals are so unclear that we cannot consider them. In the event that Network Rail cannot provide the required information, the notification will be rejected. No formal notice directing Network Rail not to proceed with the disposal will be necessary.
- 3.4 Once a notification is sufficient for us to consider we will conduct our own internal review.
- 3.5 We will have regard to the following criteria when considering a notification from Network Rail about a proposed disposal of land:
- (a) ORR's duties under section 4 of the Act, and in particular our duties to:
    - (i) promote improvements in railway service performance;
    - (ii) otherwise to protect the interests of users of railway services;
    - (iii) promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of that railway network, to the greatest extent that it considers economically practicable;
    - (iv) contribute to the development of an integrated system of transport of passengers and goods;
    - (v) contribute to the achievement of sustainable development; and
    - (vi) enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.
  - (b) Where ORR has considered Network Rail's notification and any supplementary information, including representations from third parties, and:
    - (i) there is evidence of a clear, feasible and funded plan or plans put forward by a passenger or freight train operator or funder for the site for future development of the railway network; or
    - (ii) the DfT (or successor franchising authority), Transport Scotland, the Welsh Assembly Government, PTA/PTE or other local transport authority provides evidence that the site is needed for

future development of the railway network or for the development of integrated transport facilities; or

- (iii) there is evidence which indicates that the proposed disposal would conflict with Network Rail's obligations under condition 1 of its network licence;

it is unlikely that ORR will consent to the disposal of land by Network Rail.

- (c) In reaching a decision ORR may have regard to relevant considerations including:

- (i) whether the site is identified or reserved for transport use in any local transport plan or local statutory plan, and whether funding has been identified;
- (ii) whether the site is likely to be required as a result of a regional transport strategy developed in accordance with national or regional planning guidance;
- (iii) whether the site features in the business or marketing plans of the local train operators, Network Rail, PTAs/PTEs, or freight operators or any other party involved in the provision of services relating to railways; and
- (iv) the financing of projects relevant to the site.

- (d) Where:

- (i) Network Rail provides evidence that it has received no objections in respect of any proposed disposal within the six months preceding its notification to ORR; or
- (ii) the only objection(s) are from individuals, a local or national pressure group without support from a train operator or funder and ORR concludes from Network Rail's submission and its further statements and evidence that there are no major issues at stake;

it is likely that ORR will allow Network Rail to dispose of the land.

- 3.6 With regard to paragraph 1(g) of the general consent to the disposal of land by Network Rail, ORR will need to be satisfied with any changes to Network Rail's internal screening process for identifying possible use for, or in connection with, services relating to railways, including the extent to which that process allows other parties to register an interest in rail-related development for particular sites.

## 4. Application of policy

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### Introduction

- 4.1 In this section we set out our policies relating to major air rights, compulsory purchase orders, and the potential for compensation in the event that we block a disposal<sup>1</sup>.

### Major air rights disposals

- 4.2 From time to time Network Rail may wish to dispose of airspace rights above land that it owns. The general consent in chapter 2 allows Network Rail to dispose of land by *“the grant of sub-surface or air rights that do not infringe on the space which may be needed to facilitate the provision of services relating to railways”*. The intention behind this provision was that it would be used only for minor disposals which would not interfere with the running of the railway. Disposals of this type could include, for example, transactions for advertising space, the laying of telecommunications wires and pipes, and bridges over the railway that are considered as routine in nature.
- 4.3 We do not expect disposals for major airspace construction to fall within this provision since the necessary deck/raft/building etc supports could subsequently impose physical constraints on the ability to expand railway facilities beneath and around the development and therefore impinge on the operation of the railway. Further, significant construction work above the operational railway creates a degree of additional risk of disruption, with potentially severe economic consequences for Network Rail and train operators.
- 4.4 We expect that Network Rail should consider a “major development” to include the situation where it would need to grant an interest in its land to provide support for a structure that could not be regarded as being of a routine nature. We also expect Network Rail to notify us its proposals for air rights disposals that would, for example, facilitate the construction of new tunnels or any constructions above stations. Before notification, we would

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<sup>1</sup> These policies are not new but we restate them here for completeness and for ease of reference. They were last published in our document describing the regulatory arrangements in June 2006, available at [www.rail-reg.gov.uk/upload/pdf/292d.pdf](http://www.rail-reg.gov.uk/upload/pdf/292d.pdf)

expect Network Rail to consult the industry fully on issues of potential railway expansion and operational risk.

- 4.5 In considering the grant of a specific consent for such cases, we will wish to see that Network Rail has, where appropriate, addressed the wider industry risks, including the position regarding economic loss for train operators, arising from construction work above the operational railway.

### **Network Rail's handling of compulsory purchase orders**

- 4.6 There may be occasions when Network Rail is required to sell its land through the execution of a compulsory purchase order (CPO).
- 4.7 Under licence condition 7.3(b), Network Rail is allowed to dispose of land without notifying us when the land is required by or under any enactment. However, there may be circumstances where a CPO would require Network Rail to dispose of land which would normally be referred to us for specific consent under condition 7.
- 4.8 We expect Network Rail to operate appropriate procedures for dealing with proposed CPOs. These shall include notification to us and its relevant customers and funders of its receipt, and if appropriate, appeal against it, where the disposal of land would not be covered by the general consent of condition 7.

### **The award of compensation**

- 4.9 Licence condition 7.4(b) states that Network Rail is *"entitled to be compensated appropriately for the loss of value (if any) as a result of ORR issuing a direction"* (not to proceed with a disposal).
- 4.10 However, Network Rail should be able to anticipate potential rail use and should not propose to dispose of land needed for the railway. It follows that it is unlikely that there will be circumstances where Network Rail can demonstrate a loss of value arising from our refusal to consent to the disposal of land, and therefore it is unlikely that compensation would be appropriate.

## ***Annex A: text of condition 7 of Network Rail's network licence***

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The text of condition 7 of Network Rail's network licence is repeated below. The numbering used in the licence has been retained.

### **Condition 7: Land disposal**

- 7.1 The licence holder shall not dispose of any land otherwise than in accordance with the following paragraphs of this condition 7.
- 7.2 Save as provided in condition 7.3, the licence holder shall give to ORR not less than 3 months' prior written notice of its intention to dispose of any land. Having given such notice, the licence holder shall supply such further information as ORR may require relating to such land or the circumstances of such intended disposal or where such a disposal to a specific person is in contemplation the known relevant intentions of the person proposing to acquire such land. The licence holder shall supply the required information within seven days of the requirement being made, or such further time as allowed by ORR.
- 7.3 Notwithstanding conditions 7.1 and 7.2, the licence holder may dispose of any land:
- (a) where:
    - (i) ORR has issued directions for the purposes of this condition containing a general consent (whether or not subject to conditions) to:
      - (aa) transactions of a specified description; and/or
      - (bb) the disposal of land specified in the directions as excluded land; and
- which specifies the intervals at which the general consent can be reviewed; and

- (ii) the disposal of the land in question is effected pursuant to a transaction of a description specified in any directions given under condition 7.3(a)(i) or the land in question is specified in those directions as excluded land and the disposal is in accordance with any conditions to which the general consent under condition 7.3(a)(i) is subject; or
  - (b) where the disposal in question is required by or under any enactment and for these purposes a disposal shall be treated as being under an enactment if:
    - (i) the licence holder agrees to the terms of a disposal which would otherwise be required under an enactment; or
    - (ii) the disposal would have been under an enactment had the acquiring party taken all the steps which were open for it to take providing that the acquiring party has acted with reasonable expedition and diligence.
- 7.4 Notwithstanding condition 7.1, the licence holder may dispose of any land specified in a notice given under condition 7.2 in circumstances where:
- (a) ORR confirms in writing that it consents to such disposal (which consent may be made subject to the acceptance by the licence holder of such conditions relating to railway use, network business or the carrying out of licensed activities as ORR may specify and the licence holder shall ensure that any such disposal shall be subject to those conditions); or
  - (b) ORR has not, within the notice period referred to in condition 7.2, issued a direction for the purpose of this condition 7 requiring the licence holder not to proceed with such disposal and notifying the licence holder that it is entitled to be compensated appropriately for the loss of value (if any) as a result of ORR issuing a direction under this condition 7.4(b).

7.5 In this condition:

“disposal”	includes any sale, assignment, gift, lease, licence, the grant of any right of possession, loan, security, mortgage, charge or the grant of any other encumbrance or knowingly permitting any encumbrance to subsist (other than an encumbrance subsisting on the date when the land was acquired by the licence holder or on 15 November 2001) or any other disposition to a third party, and “dispose” shall be construed accordingly;
“excluded land”	means any land which is specified as such in directions issued under condition 7.3;
“land”	includes buildings and other structures, land covered by water, and any estate, interest, easements, servitudes or rights in or over land.