

Dear Sirs,

Interested party reference:

Please find attached C.RO Ports Killingholme Limited's submissions on the case for cross examination at the Marine Issue Specific Hearing and the Compulsory Acquisition Hearing.

Kind Regards,

Sarah Nolan
Solicitor (New Zealand qualified)

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FAO: Mike Harris
The Planning Inspectorate
Room 3/13
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Your reference

Our reference

BDDS/NW/84367/120009
UKM/43751480.2

27 July 2012

Dear Sirs

IPC REFERENCE NUMBER: TR030001
APPLICATION FOR DEVELOPMENT CONSENT BY ABLE HUMBER
PORTS LIMITED FOR THE PROPOSED MARINE ENERGY PARK
("APPLICATION")
OUR CLIENT: C.RO PORTS KILLINGHOLME LIMITED ("C.RO")
(REFERENCE [REDACTED])

We refer to the examination of the above Application.

1. We are writing in accordance with the Examining Authority's timetable for the Examination of the Application (Annex C to the Rule 8 Letter dated 31 May 2012) to make submissions on the case for allowing cross examination at the following hearings:
 - 1.1 the Issue Specific Hearing dealing with marine matters scheduled for 13 September 2012 ("Marine ISH"); and
 - 1.2 the Compulsory Acquisition Hearing (main development site) scheduled for 10 October 2012 ("CAH").
2. For the purposes of these submissions C.RO refers to:
 - 2.1 Section 94(7) of the Planning Act 2008, which provides that any oral questioning of a person making representations at a hearing should be undertaken by the Examining Authority except where the Examining Authority thinks that oral questioning by another person is necessary in order to ensure the adequate testing of any representations, or that a person has a fair chance to put their case;
 - 2.2 Paragraph 107 of the Department for Communities and Local Government's *Guidance for the examination of applications for development consent*, which states that the Examining Authority may allow cross-examination where it considers that this is necessary to ensure the adequate testing of representations; or where it considers that it is necessary to allow an interested party a fair chance to put the party's case;

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- 2.3 In relation to the CAH, paragraph 19 of the Department for Communities and Local Government's *Guidance related to procedures for compulsory acquisition* ("CAH Guidance") which states that promoters must be prepared to justify their proposals for compulsory acquisition to the satisfaction of the decision-maker and will need to be ready to defend such proposals throughout the examination of the application; and
- 2.4 Paragraph 28 of the CAH Guidance that pursuant to section 122(3) of the Planning Act 2008 the decision-maker will need to be persuaded by the applicant that there is compelling evidence that the public benefits of the compulsory acquisition outweigh any private loss. C.RO disputes that this evidence exists. Cross-examination at the CAH will be important to test any representations made by Able in this respect.

Marine ISH

3. C.RO is the statutory harbour authority for, and operator of, C.RO Ports Killingholme ("CPK"). The issues to which this hearing relate have significant implications for C.RO and its operations at CPK.
4. C.RO has raised a number of concerns in its written representations regarding the environmental information submitted, and representations made, by Able in relation to sedimentation and navigation issues, including in relation to how Able proposes to deal with dredging in the shared approach channel. C.RO is also seeking Protective Provisions. C.RO has also raised concerns about the adequacy of the Environmental Statement in relation to the river regime and navigation.
5. If Able does not agree to including the Protective Provisions sought by C.RO, and address matters to C.RO's satisfaction, C.RO submits that it would be appropriate to allow cross examination of Able at the ISH in order to ensure that Able's case as to why C.RO should not be protected, as a statutory harbour authority, is properly tested. It is also appropriate in order to enable C.RO to have a fair chance of putting its case as to why it should be properly protected, bearing in mind that to date Able has not addressed C.RO's concerns despite a commitment to do so.
6. Cross examination would also enable proper testing of Able's Environmental Statement, having regard to its deficiencies.

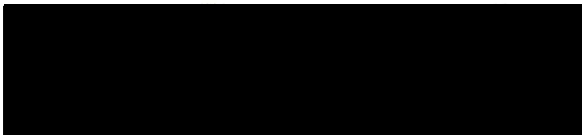
CAH

7. C.RO has made submissions as to why it considers that the Killingholme Branch Line ("Railway") should not be compulsorily acquired.
8. C.RO submits that cross examination must be allowed at the CAH in relation to the Railway in order that Able's case for acquisition of the Railway is properly tested, and Able is required to fully justify their proposals for compulsory acquisition to the satisfaction of the decision maker. Given the high level of the test for allowing compulsory acquisition under Section 122 of the Planning Act 2008 and the CAH Guidance - that the land is needed,

etc. for the development, and that there is a compelling case for the acquisition - C.RO submits that cross examination of Able at this hearing is appropriate and justified, and required.

9. This is particularly the case given the level of interference with private rights that any acquisition of the Railway would involve, the lack of any specific proposals for works to the Railway and for how the Railway would be operated to maintain use by others, uncertainty about its relationship to the Logistics Park, and the consequences to C.RO of allowing Able to acquire the Railway. Bearing all these considerations in mind, the provisions of the Human Rights Act 1998 are also of utmost relevance.

Yours faithfully



DLA PIPER UK LLP