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#### Your reference

#### Our reference

BD/SN/4367/20009  
UKM/46164546.3

13 November 2012

Dear Angus

*Unired  
BDA-D: never UK LLP (was)  
Without prejudice 29/11/2012*

#### OUR CLIENT: CRO PORTS KILLINGHOLME LIMITED ("CRO") ABLE HUMBER PORTS LTD/AMEP - PROTECTIVE PROVISIONS

1. I am writing in advance of the Issue Specific Hearing ("Hearing") on the DCO on 21 and 22 November. My instructions are to appear at that Hearing and, as necessary, make further representations on behalf of CRO as to the need for CRO to be given appropriate protection for its statutory harbour undertaking through protective provisions ("PPs").
  2. The purpose of this letter is to comment on Able's draft PPs, and to explain why certain amendments are not accepted, and/or others are sought by CRO. The intention is to seek an agreed set of PPs before the Hearing.
  3. Enclosed with this letter is a draft set of PPs in the form sought by CRO. I make some comments below - in addition to those made to the Panel in our submission of 26 October (enclosed) - which might assist in your client's consideration. CRO is content to withdraw its objection on the basis of the enclosed set of PPs. Able will need to confirm its acceptance of these provisions, or provide comments.
  4. CRO is very willing to discuss the drafting with you, and my instructions are to meet with you in advance of the Hearing to achieve this if you can do so. Otherwise we can do this by phone or email. However, I will need to hear from you in advance of the Hearing.
  5. If I do not hear from you in advance of the Hearing, we reserve the right to waive the without prejudice status of this letter to protect our client's position.
- Approval of tidal works - paragraphs 54 and 54A**
6. In light of your comments, we have reviewed your drafting of paragraph 54 that give CRO a right to be consulted on the tidal works, rather than a right of approval as we have previously sought.

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7. We have made some additional amendments to your revised provisions. As drafted, the requirement to consult is vague and does not ensure that adequate notice and information of proposed works will be given. In addition, Able should agree to have regard to any consultation response received from C.RO. The requirement for consultation for works within 1750 metres is because this is the distance eastwards from the berths at C.RO to the limit of the approaches that C.RO is authorised to dredge.
8. However, this revised approach is only acceptable to C.RO provided that the indemnity sought at paragraph 61D is included.
9. Please note that because the Part included reference to both the undertaker and harbour authority, I have amended this to refer to the undertaker only for consistency. If there is a need for a distinction, please confirm.

#### Navigation aids - paragraph 56

10. I note that you have included provision for the placing of navigational aids and signals on tidal works (paragraphs 55 and 57). However C.RO still requires the inclusion of the following:
- 10.1 the amendments to paragraph 56 to address the sector light at the entrance of North Killingholme Haven because we know that this light will have to be moved because a vessel alongside the quay at AMBP will block the sector light and represent a danger to navigation; and
- 10.2 paragraph 57A, which requires the provision, maintenance and operation of fog signalling apparatus during periods of restricted visibility. This apparatus is necessary to ensure the safety of vessels arriving to, and sailing from, C.RO.

#### Overlap of turning area and approaches - paragraphs 59A - 59C

11. C.RO has commented at various times on an apparent absence of any satisfactory justification for the overlap of the AMBP turning area and approaches with C.RO's own approaches. At the meeting on 11 October, Peter Stephenson said that he would review the need for this overlap.
12. As explained at the meeting, if the overlap is not required and is removed, it would address the need for an arrangement regarding shared dredging responsibilities, and uncertainty about how the interaction of vessel movements would be managed so as not to interfere with C.RO's
13. We have not heard from Able following the 11 October meeting. We assume that Able still considers it requires the turning area and approaches as set out in its application. In the absence of further information, C.RO would need to be satisfied regarding:
- 13.1 operating procedures for vessel movements;



- 13.2 the shared dredging arrangements. C.RO have requested that Able propose a solution in relation to these arrangements on multiple occasions; and
- 13.3 the workability of an overlap of marine licences. C.RO remains concerned as to whether such an arrangement is acceptable to the MMO, or workable. So far as we are aware, there is no precedent.
14. In the absence of this information, C.RO expects the protection set out in paragraphs 59 A, B, and C.
15. Paragraph 59A is required because it is not acceptable for AMEP vessels to block C.RO's approaches. Consultation on proposals is not of itself sufficient. Given the absence of justification for the overlap, this protection is required.
16. You will note that in paragraph 59B we have inserted a deemed approval provision, to address concerns your client might have about C.RO being able to prevent vessel movements. Approval is not to be unreasonably withheld. This should reasonably address any concerns of Able.
17. In respect of paragraph 59C, because of the absence of proposals for a shared dredge, C.RO assumes that this protection is accepted by Able. C.RO is the marine licence holder for dredging in this location, and therefore must control dredging activities in its approaches.

#### **Railway - paragraphs 60 and 61**

18. I note that your amendments to these paragraphs deal with the section of the railway running through the Order Land given that Able no longer seeks powers over the whole Killingholme Branch Line ("Railway"). However, if Able is granted powers to control the section of the Railway that runs through AMEP, it will be able to affect the functioning of the whole length of the Railway. For this reason, the provision must require Able not to prevent access to and use of the whole Railway by reason of activities within AMEP.

#### **Paragraphs 63 A and B / DCO Articles 13 and 14**

19. As explained, Rosper Road is the main access to C.RO. The additional wording sought in Articles 13 and 14 will protect C.RO. It is standard, straightforward wording with a precedent.
20. If such wording is not included in the DCO, C.RO must have protection. This is achieved by paragraphs 63A and 63B.
21. As you have not been able to confirm whether the revisions to Articles 13 and 14 are acceptable, C.RO must continue to seek both those revisions and the relevant PPs. If you can confirm that the revisions to Articles 13 and 14 are acceptable, C.RO can re-consider the need for protection through the PPs.

#### **Indemnity - paragraph 61D**



22. You have suggested the potential for other arrangements to address C.R.O's request for an indemnity, such as insurance. We have not yet received any proposals. In the absence of these, an indemnity is the only workable solution to the protection required.

23. In any event, it is entirely appropriate that C.R.O, as a statutory undertaker with existing operations and responsibilities, be afforded special protection by way of an indemnity. You will need to explain, by reference to proposals, any alternative approach. It is not acceptable to expect C.R.O to rely on seeking recompense through uncertain and expensive litigation. That is entirely unusual in PPs. An indemnity is required, as drafted. In the absence of an explanation, insurance is not likely to be adequate protection.

#### Liability - paragraph 61E

24. You indicated in your email of 12 October 2012 that, subject to instructions, C.R.O's proposed protective provision 54 (5 October 2012 version, now 61E), would be acceptable subject to instructions.

25. Please provide us with confirmation as to whether you now have instructions to agree this amendment.

#### Conclusion

26. In order to be able to withdraw its objection on marine matters, C.R.O requires:

26.1 confirmation of the need or otherwise of the overlap of the AMBP turning area and approaches and C.R.O's own approaches; and

26.2 subject to that response, the inclusion of the amendments set out in the enclosed draft PPs.

I look forward to your earliest response.

Yours sincerely



BENJAMIN DOVE-SEYMOUR  
Associate

DLA PIPER UK LLP

benjamin.dove-seymour@dlapiper.com



## **C.R.O PROTECTIVE PROVISIONS**

13 November 2012

### **PART 6**

#### **FOR THE PROTECTION OF C.R.O PORTS (KILLINGHOLME) LTD**

**52.** For the protection of C.R.O Ports (Killingholme) Ltd the following provisions shall, unless otherwise agreed in writing between the undertaker and C.R.O, have effect.

**53.** In this part of this Schedule

'C.R.O' means C.R.O Ports (Killingholme) Ltd, or such other person for the time being, who is the statutory harbour authority for the harbour authorised by the North Killingholme Haven Harbour Empowerment Order 1994 and Humber Sea Terminal (Phase III) Harbour Revision Order 2006, located upriver of the authorised development

'CPK' means the harbour for which C.R.O is the statutory harbour authority including its approach channel and turning area;

'Killingholme Branch Line' means the branch railway line between Immingham and the vicinity of CPK, part of which runs through the Order Limits; and

'undertaker' includes where relevant the Harbour Authority.

**54. (1)-Before:**

- (a) submitting any plans and sections for any tidal work within 1750 metres of CPK to the Secretary of State for approval under article 23 of this Order (tidal works not to be constructed without approval of the Secretary of State);
  - (b) commencing any operation for the construction of a tidal work within 1750 metres of CPK where approval of the Secretary of State under article 23 is not required;
  - (c) submitting any works schedules to the Marine Management Organisation in accordance with Schedule 8;
  - (d) submitting any plans and sections for any tidal work or operation to the Conservancy Authority in accordance with Part 1 of Schedule 9;
  - (e) submitting any written scheme or proposed alteration in the design drawings to the relevant planning authority in accordance with Schedule 11; or
  - (f) commencing any operation for the maintenance of a tidal work within 1750 metres of CPK,
- the undertaker shall consult C.R.O in accordance with the procedure set out in paragraph 54(2) below.

(2) The consultation that the undertaker shall carry out with CPK under paragraph 54(1) is as follows:

- (a) not less than 42 days prior to carrying out any activity to which paragraph 54(1) applies the undertaker shall submit to C.R.O plans and sections of any tidal works or any written scheme or proposed alteration to the design drawings to which paragraph 54 applies and such further particulars as C.R.O may, within 14 days from the day on which plans and sections are submitted under this paragraph, reasonably require;

- (b) the undertaker shall allow C.RO a period of 28 days beginning with the date on which the information required under sub-paragraph (2)(a) has been submitted to C.RO for C.RO to respond for the purposes of consultation, or if later a further period of 28 days from when such further particulars as required by C.RO are submitted by the undertaker to C.RO; and

- (c) if C.RO has not responded to the consultation by 28 days from the relevant date in sub-paragraph (2)(b), the undertaker may serve upon C.RO written notice stating that the undertaker is about to carry on activity to which paragraph 54(1) applies.

(3) The undertaker shall have regard to any consultation response received from C.RO under paragraph 54(2) and shall forward a copy of that response as part of the material it submits to the Secretary of State or the Marine Management Organisation or the Conservancy Authority or any written scheme or proposed alteration to the design drawings that it submits to the relevant planning authority, to which paragraph 54 applies, together with a statement explaining how it has had regard to any consultation response received from C.RO under this paragraph.

**54A.** Any operations for the construction of any tidal work approved in accordance with this Order shall, once commenced, be carried out by the undertaker with all reasonable dispatch and to the reasonable satisfaction of C.RO so that the exercise of C.RO shall not suffer more interference than is reasonably practicable, and C.RO shall be entitled by its officer or other appointed person at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

**55.** The undertaker shall not in the exercise of the powers granted by this Order interfere with any marks, lights or other navigational aids in the river relating to CPK without the agreement of C.RO, and shall ensure that access to such aids remains available during and following construction of any tidal works.

**56.** The undertaker shall pay to C.RO the reasonable costs incurred by C.RO of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of a tidal work or the use of the authorised development, including but without limitation, paying the reasonable costs of C.RO incurred in raising the height of the IsoGWR.4 s sector light positioned in the entrance of North Killingholme Haven at CPK, in the event that activities related to the construction or operation of the authorised development obscure or obstruct the visibility of this sector light to vessels approaching CPK and in its approach channels.

**57.** The undertaker shall afford to C.RO such facilities as C.RO may reasonably require for the placing and maintenance on any tidal works of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

**57A.** The undertaker shall provide and maintain on any tidal works such fog signalling apparatus as may be reasonably required by C.RO and shall properly operate such apparatus during periods of restricted visibility for the purpose of warning vessels of the existence of the relevant works.

**58.** After the purpose of any temporary tidal work within 1750 metres of CPK or within its approach channel has been accomplished and after a reasonable period of notice in writing from C.RO requiring it do so, the undertaker shall with all reasonable dispatch, remove that work or any materials relating thereto which may have been placed below the level of high water by or on behalf of the undertaker and, on its failing so to do within a reasonable period after receiving such notice, C.RO may remove the same and charge the undertaker with the reasonable expense of doing so, which expense the undertaker shall repay to C.RO.

**59.** If any tidal work is abandoned or falls into decay and is in such a condition so as to interfere or cause reasonable apprehension that it may interfere with navigation in the river so that it may affect CPK or access to CPK in any way, C.RO may by notice in writing require the undertaker either to repair or to restore the specified work, or any part of it, or to remove the work and restore the site of that work to its condition prior to the construction of the specified work, to such an extent and to such limits as C.RO thinks proper acting reasonably.



### *Operating Procedures*

**59A.** (1) The undertaker shall not allow vessels associated with the construction of the authorised development to obstruct or remain in the approach channel when vessels are arriving at, and sailing from CPK.

(2) C.RO shall provide the undertaker with a schedule of movements to which paragraph 59A(1) applies.

**59B.** (1) Before commencing harbour operations the undertaker shall submit to C.RO for approval a written statement of proposed safe operating procedures for access to and egress from the harbour, including the management arrangements for vessel movements within the approach channel to CPK, and shall operate the harbour only in accordance with such procedure as approved, including any approved alteration made from time to time.

(2) C.RO's approval under paragraph 59B(1) must not be unreasonably withheld or delayed and if by the end of the period of 28 days beginning with the date on which the written statement has been supplied to C.RO, C.RO has not intimated its disapproval of the written statement and the grounds of its disapproval the undertaker may serve upon C.RO written notice requiring C.RO to intimate its approval or disapproval within a further period of 28 days beginning with the date upon which C.RO receives written notice from the undertaker. If by the expiry of the further period of 28 days C.RO has not intimated its approval or disapproval, C.RO shall be deemed to have approved the written statement as submitted.

### *Dredging*

**59C.** (1) The undertaker shall not dredge in the approach channel to CPK without prior approval.

(2) Any dredging that is carried out with C.RO's approval must be carried out in accordance with any conditions attached thereto.

(3) C.RO's approval under paragraph 59C(1) must not be unreasonably withheld or delayed and if by the end of the period of 28 days beginning with the date on which the dredging request has been supplied to C.RO, C.RO has not intimated its disapproval of the request and the grounds of its disapproval the undertaker may serve upon C.RO written notice requiring C.RO to intimate its approval or disapproval within a further period of 28 days beginning with the date upon which C.RO receives written notice from the undertaker. If by the expiry of the further period of 28 days C.RO has not intimated its approval or disapproval, C.RO shall be deemed to have approved the request as submitted.

### *Railway*

**60.** The undertaker shall not in the exercise of the powers conferred by this Order prevent C.RO's access to and use of the Killingholme Branch Line.

**61.** (1) The construction and operation of the authorised development must not cause unreasonable interference with or prevent the free, uninterrupted and safe use by C.RO of the Killingholme Branch Line or any traffic on the Killingholme Branch Line.

(2) If any such interference is caused or takes place in consequence of the construction or operation of the authorised development the undertaker shall pay to C.RO all reasonable expenses to which C.RO may be put and compensation for any loss which it may sustain by reason of any such interference or obstruction.

### *Rosper Road*

**61A.** The undertaker shall not in the exercise of the powers conferred by this Order prevent C.RO's access to and use of Rosper Road.

**61B.** (1) The construction and operation of the authorised development must not interfere with or obstruct the free, uninterrupted and safe use of Rosper Road or any traffic on Rosper Road,

unless an alternative access that is suitable and commodious is provided prior to and for the duration of any such interference.

(2) If any such interference is caused or takes places in consequence of the construction or operation of the authorised development the undertaker shall pay to C.RO all reasonable expenses to which C.RO may be put and compensation for any loss which it may sustain by reason of any such interference or obstruction.

#### *Recovery of expenses*

**61C.** C.RO may recover from the undertaker any reasonable expenses howsoever caused (including a proper portion of the overhead charges of C.RO) which C.RO incur—

(1) arising from the approval of plans and the inspection of the construction or carrying out of any tidal work;

(2) by reason of any act or omission of the undertaker, or of any person in their employ, or of their contractors or workmen whilst engaged upon any tidal work or the construction and operation of the authorised development;

(3) in dredging away any accumulation consequent upon the execution or maintenance of a tidal work;

(4) in obtaining and depositing in the river such material as is necessary in the reasonable opinion of C.RO to protect C.RO's operations from the effects of scouring of the river bed consequent upon the execution or maintenance of a tidal work;

(5) in altering any mooring in any way which in the reasonable opinion of C.RO may be rendered necessary by reason of the execution or maintenance of a tidal work;

(6) in carrying out reasonable surveys, inspections, tests and sampling within and of the river (including the bed and banks of the river) —

(a) to establish the marine conditions prevailing prior to the construction of a tidal work in such area of the river as C.RO have reasonable cause to believe may subsequently be affected by any siltation, scouring or other alteration which the undertaker is liable to remedy under this paragraph; and

(b) where C.RO have reasonable cause to believe that the construction of a tidal work is causing or has caused any siltation, scouring or other alteration as aforesaid;

(7) arising from the carrying out of construction of a tidal work or the failure of a tidal work or the undertaking by C.RO of works or measures to prevent or remedy danger or impediment to navigation or damage to any property arising from such carrying out of construction, exercise or failure;

and subject to the provisions set out above, the undertaker shall indemnify C.RO from and against all claims and demands arising out of such construction, or carrying out, failure or act or omission of the undertaker, or operation of the authorised development; but C.RO shall as soon as reasonably practicable give to the undertaker notice of any claim or demand which is one for which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the undertaker.

#### *Indemnity*

**61D.** (1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure resulting from any of the authorised development any damage is caused to any property of C.RO (including CPK) or C.RO suffers any loss (including as a result of delays or other interruptions to port operations at CPK or as the result of delays or interruptions to the operation of the Railway) the undertaker shall—

(a) bear and pay the cost reasonably incurred by C.RO in making good such damage; and



(b) indemnify C.RO against all claims, demands, proceedings, costs, damages and expenses which may be made against, or recovered from, or incurred by it by reason or in consequence of any such damage or exercise by the undertaker of its powers conferred by this Order.

(2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of C.RO, its officers, servants, contractors or agents.

(3) C.RO shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand with such assistance from C.RO as may be reasonably necessary.

#### *Liability*

61E. C.RO shall not be liable, in the absence of negligence or breach of any duty hereunder or otherwise, for any damage or injury howsoever caused to any of the authorised works (whether temporary or permanent) resulting from the dredging operations of C.RO or the carrying out by them in the execution of their statutory powers and duties of any operations in the river or works for the improvement or maintenance thereof.

62. With the exception of any duty owed by C.RO to the undertaker which is expressly provided for in this Part of this Schedule, nothing in this Order shall be construed as imposing upon C.RO either directly or indirectly, any duty or liability to which C.RO would not otherwise be subject and which is enforceable by proceedings before any court.

63. Unless otherwise agreed in writing, any dispute arising between the undertaker and C.RO under this Schedule shall be determined by arbitration as provided in article 59 (arbitration).

Document comparison by Workshare Professional on 13 November 2012  
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## C.RO PROTECTIVE PROVISIONS

13 November 2012

### PART 6

#### FOR THE PROTECTION OF C.RO PORTS (KILLINGHOLME) LTD

52. For the protection of C.RO Ports (Killingholme) Ltd (~~C.RO~~) the following provisions shall, unless otherwise agreed in writing between the undertaker and C.RO, have effect.

53. In this part of this Schedule, ~~CPK~~:

'C.RO' means C.RO Ports (Killingholme, ~~a~~) Ltd, or such other person for the time being, who is the statutory harbour authority for the harbour authorised by the North Killingholme Haven Harbour Empowerment Order 1994 and Humber Sea Terminal (Phase III) Harbour Revision Order 2006, located upriver of the authorised development;

'CPK' means the harbour for which C.RO is the statutory harbour authority including its approach channel and turning area;

'Killingholme Branch Line' means the branch railway line between Immingham and the vicinity of CPK, part of which runs through the Order Limits; and

'undertaker' includes where relevant the Harbour Authority.

54. (1) Before:

(a) submitting any plans and sections for any tidal work within ~~500~~1750 metres of CPK to the Secretary of State for approval under article 23 of this Order (tidal works not to be constructed without approval of the Secretary of State);

(b) commencing any operation for the construction of a tidal work within 1750 metres of CPK where approval of the Secretary of State under article 23 is not required;

(c) ~~(b)~~ submitting any works schedules to the Marine Management Organisation in accordance with Schedule 8;

(d) submitting any plans and sections for any tidal work or operation to the Conservancy Authority in accordance with Part 1 of Schedule 9;

(e) submitting any written scheme or proposed alteration in the design drawings to the relevant planning authority in accordance with Schedule 11; or

(f) commencing any operation for the maintenance of a tidal work within 1750 metres of CPK,

the undertaker shall consult C.RO in accordance with the procedure set out in paragraph 54(2) below.

(2) The consultation that the undertaker shall carry out with CPK under paragraph 54(1) is as follows:

(a) not less than 42 days prior to carrying out any activity to which paragraph 54(1) applies the undertaker shall submit to C.RO plans and sections of any tidal works or any written scheme or proposed alteration to the design drawings to which paragraph 54 applies and such further particulars as C.RO may, within 14 days from the day on which plans and sections are submitted under this paragraph, reasonably require;

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(b) the undertaker shall allow C.RO a period of 28 days beginning with the date on which the information required under sub-paragraph (2)(a) has been submitted to C.RO for C.RO to respond for the purposes of consultation, or if later a further period of 28 days from when such further particulars as required by C.RO are submitted by the undertaker to C.RO, and

(c) if C.RO has not responded to the consultation by 28 days from the relevant date in sub-paragraph (2)(b), the undertaker may serve upon C.RO written notice stating that the undertaker is about to carry on activity to which paragraph 54(1) applies.

(3) ~~the Harbour Authority shall consult C.RO~~The undertaker shall have regard to any consultation response received from C.RO under paragraph 54(2) and shall forward ~~any response received within 28 days of such consultation from C.RO~~ a copy of that response as part of the material it submits to the Secretary of State or the Marine Management Organisation ~~as appropriate~~ or the Conservancy Authority or any written scheme or proposed alteration to the design drawings that it submits to the relevant planning authority, to which paragraph 54 applies, together with a statement explaining how it has had regard to any consultation response received from C.RO under this paragraph.

54A. Any operations for the construction of any tidal work approved in accordance with this Order shall, once commenced, be carried out by the undertaker with all reasonable dispatch and to the reasonable satisfaction of C.RO so that the exercise of C.RO shall not suffer more interference than is reasonably practicable, and C.RO shall be entitled by its officer or other appointed person at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

55. The ~~Harbour Authority~~ undertaker shall not in the exercise of the powers granted by this Order interfere with any marks, lights or other navigational aids in the river relating to CPK without the agreement of C.RO, and shall ensure that access to such aids remains available during and following construction of any tidal works.

56. The undertaker shall pay to C.RO the reasonable costs incurred by C.RO of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of a tidal work or the use of the authorised development, including but without limitation, paying the reasonable costs of C.RO incurred in raising the height of the IsoGWR 4 s sector light positioned in the entrance of North Killingholme Haven at CPK, in the event that activities related to the construction or operation of the authorised development obscure or obstruct the visibility of this sector light to vessels approaching CPK and in its approach channels.

57. The undertaker shall afford to C.RO such facilities as C.RO may reasonably require for the placing and maintenance on any tidal works of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

57A. The undertaker shall provide and maintain on any tidal works such fog signalling apparatus as may be reasonably required by C.RO and shall properly operate such apparatus during periods of restricted visibility for the purpose of warning vessels of the existence of the relevant works.

58. After the purpose of any temporary tidal work within ~~500~~ 1750 metres of CPK or within its ~~the~~ approach channel has been accomplished and after a reasonable period of notice in writing from C.RO requiring it do so, the undertaker shall with all reasonable dispatch, remove that work or any materials relating thereto which may have been placed below the level of high water by or on behalf of the undertaker and, on its failing so to do within a reasonable period after receiving such notice, C.RO may remove the same and charge the undertaker with the reasonable expense of doing so, which expense the undertaker shall repay to C.RO.

59. If any tidal work is abandoned or falls into decay and is in such a condition so as to interfere or cause reasonable apprehension that it may interfere with navigation in the river so that it may affect CPK or access to CPK in any way, C.RO may by notice in writing require the undertaker either to repair or to restore the specified work, or any part of it, or to remove the work and restore



the site of that work to its condition prior to the construction of the specified work, to such an extent and to such limits as C.RO thinks proper acting reasonably.

#### Operating Procedures

59A. (1) The undertaker shall not allow vessels associated with the construction of the authorised development to obstruct or remain in the approach channel when vessels are arriving at, and sailing from CPK.

(2) C.RO shall provide the undertaker with a schedule of movements to which paragraph 59A(1) applies.

59B. (1) Before commencing harbour operations the undertaker shall submit to C.RO for approval a written statement of proposed safe operating procedures for access to and egress from the harbour, including the management arrangements for vessel movements within the approach channel to CPK, and shall operate the harbour only in accordance with such procedure as approved, including any approved alteration made from time to time.

(2) C.RO's approval under paragraph 59B(1) must not be unreasonably withheld or delayed and if by the end of the period of 28 days beginning with the date on which the written statement has been supplied to C.RO, C.RO has not intimated its disapproval of the written statement and the grounds of its disapproval the undertaker may serve upon C.RO written notice requiring C.RO to intimate its approval or disapproval within a further period of 28 days beginning with the date upon which C.RO receives written notice from the undertaker. If by the expiry of the further period of 28 days C.RO has not intimated its approval or disapproval, C.RO shall be deemed to have approved the written statement as submitted.

#### Dredging

59C. (1) The undertaker shall not dredge in the approach channel to CPK without prior approval.

(2) Any dredging that is carried out with C.RO's approval must be carried out in accordance with any conditions attached thereto.

(3) C.RO's approval under paragraph 59C(1) must not be unreasonably withheld or delayed and if by the end of the period of 28 days beginning with the date on which the dredging request has been supplied to C.RO, C.RO has not intimated its disapproval of the request and the grounds of its disapproval the undertaker may serve upon C.RO written notice requiring C.RO to intimate its approval or disapproval within a further period of 28 days beginning with the date upon which C.RO receives written notice from the undertaker. If by the expiry of the further period of 28 days C.RO has not intimated its approval or disapproval, C.RO shall be deemed to have approved the request as submitted.

#### Railway

60. The undertaker shall not in the exercise of the powers conferred by this Order prevent C.RO's access to ~~the railway on the Order land in connection with the use of CPK~~ and use of the Killingholme Branch Line.

61. (1) The construction and operation of the authorised development must not cause unreasonable interference with or prevent the free, uninterrupted and safe use by C.RO of the ~~railway crossing the Order land in connection with the use of CPK~~ Killingholme Branch Line or any traffic on the Killingholme Branch Line.



(2) If any such interference is caused or takes place in consequence of the construction or operation of the authorised development the undertaker shall pay to C.RO all reasonable expenses to which C.RO may be put and compensation for any loss which it may sustain by reason of any such interference or obstruction.

#### Rosper Road

61A. The undertaker shall not in the exercise of the powers conferred by this Order prevent C.RO's access to and use of Rosper Road.

61B. (1) The construction and operation of the authorised development must not interfere with or obstruct the free, uninterrupted and safe use of Rosper Road or any traffic on Rosper Road, unless an alternative access that is suitable and commodious is provided prior to and for the duration of any such interference.

(2) If any such interference is caused or takes place in consequence of the construction or operation of the authorised development the undertaker shall pay to C.RO all reasonable expenses to which C.RO may be put and compensation for any loss which it may sustain by reason of any such interference or obstruction.

#### Recovery of expenses

61C. C.RO may recover from the undertaker any reasonable expenses howsoever caused (including a proper portion of the overhead charges of C.RO) which C.RO incur—

(1) arising from the approval of plans and the inspection of the construction or carrying out of any tidal work;

(2) by reason of any act or omission of the undertaker, or of any person in their employ, or of their contractors or workmen whilst engaged upon any tidal work or the construction and operation of the authorised development;

(3) in dredging away any accumulation consequent upon the execution or maintenance of a tidal work;

(4) in obtaining and depositing in the river such material as is necessary in the reasonable opinion of C.RO to protect C.RO's operations from the effects of scouring of the river bed consequent upon the execution or maintenance of a tidal work;

(5) in altering any mooring in any way which in the reasonable opinion of C.RO may be rendered necessary by reason of the execution or maintenance of a tidal work;

(6) in carrying out reasonable surveys, inspections, tests and sampling within and of the river (including the bed and banks of the river) —

(a) to establish the marine conditions prevailing prior to the construction of a tidal work in such area of the river as C.RO have reasonable cause to believe may subsequently be affected by any siltation, scouring or other alteration which the undertaker is liable to remedy under this paragraph; and

(b) where C.RO have reasonable cause to believe that the construction of a tidal work is causing or has caused any siltation, scouring or other alteration as aforesaid;

(7) arising from the carrying out of construction of a tidal work or the failure of a tidal work or the undertaking by C.RO of works or measures to prevent or remedy danger or impediment to navigation or damage to any property arising from such carrying out of construction, exercise or failure;

and subject to the provisions set out above, the undertaker shall indemnify C.RO from and against all claims and demands arising out of such construction, or carrying out, failure or act or omission of the undertaker, or operation of the authorised development; but C.RO shall as soon as reasonably practicable give to the undertaker notice of any claim or demand which is one for



which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the undertaker.

#### Indemnity

61D. (1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure resulting from any of the authorised development any damage is caused to any property of C.RO (including CPK) or C.RO suffers any loss (including as a result of delays or other interruptions to port operations at CPK or as the result of delays or interruptions to the operation of the Railway) the undertaker shall—

(a) bear and pay the cost reasonably incurred by C.RO in making good such damage; and

(b) indemnify C.RO against all claims, demands, proceedings, costs, damages and expenses which may be made against, or recovered from, or incurred by it

by reason or in consequence of any such damage or exercise by the undertaker of its powers conferred by this Order.

(2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of C.RO, its officers, servants, contractors or agents.

(3) C.RO shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand with such assistance from C.RO as may be reasonably necessary.

#### Liability

61E. C.RO shall not be liable, in the absence of negligence or breach of any duty hereunder or otherwise, for any damage or injury howsoever caused to any of the authorised works (whether temporary or permanent) resulting from the dredging operations of C.RO or the carrying out by them in the execution of their statutory powers and duties of any operations in the river or works for the improvement or maintenance thereof.

62. With the exception of any duty owed by C.RO to the undertaker which is expressly provided for in this Part of this Schedule, nothing in this Order shall be construed as imposing upon C.RO either directly or indirectly, any duty or liability to which C.RO would not otherwise be subject and which is enforceable by proceedings before any court.

63. Unless otherwise agreed in writing, any dispute arising between the undertaker and C.RO under this Schedule shall be determined by arbitration as provided in article 59 (arbitration).

**C.RO Ports Killingholme Limited ("C.RO")**

**Able Marine Energy Park ("AMEP")**

**Comments on Able's draft Development Consent Order version 4, 9 October 2012**

| Provision | Amendment sought to version 4 by C.RO                                                                                                                                                                                                                                                                      | Explanation                                                                                                                                                                                                                                                                                                                                                                                                                |
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| Art 2     | Amend the definition of "Authorised Development" as follows:<br><br>"means the development and associated development described in Schedule 1 (authorised development) <del>and any other development authorised by this Order</del> , being development within the meaning of section 32 of the 2008 Act" | C.RO is concerned regarding the breadth of the other, unspecified, works that the DCO seeks to approve in the absence of any proper restriction on use. If a Requirement is included that is an adequate restriction on use of the whole authorised development (i.e. both the land side operations and the cargo to be handled) and on the physical development permitted, then this amendment may no longer be required. |
|           | Amend the definition of "Order limits" to: "land within which the authorised development may be carried out"                                                                                                                                                                                               | C.RO notes that Able has amended this definition to refer to the description of the [blue] line on the works plan. This should refer to "authorised development" as this is assumed to mean to what "development and work" is referring. There is no definition of "development". This amendment will ensure consistency with the various defined terms.                                                                   |
|           | Insert the following definition of "limits of deviation":<br><br><u>"means the limits of deviation for the scheduled works shown on the works plans"</u>                                                                                                                                                   | Articles 5 and 5A allows the undertaker to deviate vertically from the levels of the authorised development shown on the sections. Limits of deviation are shown on the works plan and referred to in Article 5A. It is therefore necessary and a standard approach to drafting to define them. There is no reason not to.                                                                                                 |
|           | Insert a definition of "sections".                                                                                                                                                                                                                                                                         | Articles 5 and 5A allows the undertaker to deviate vertically from the levels of the authorised development shown on the sections. Sections are provided and referred to in this Article and in other definitions. It is therefore necessary and a                                                                                                                                                                         |



| Provision     | Amendment sought to version 4 by C.RO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Explanation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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|               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | standard approach to drafting to define them.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Art 7</b>  | Amend Art 7(5)(a) as follows:<br><br>"(a) AB Ports, <u>C.RO Ports Killingholme Limited</u> and the harbour master".                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | As stated in its written representations and at the Issue Specific Hearing for marine matters, C.RO is concerned regarding the overlap between its approaches and the AMEP turning area and approach channel. C.RO should be included in this article so that it is given notice of an anticipated or actual conflict between C.RO (which is a statutory harbour authority) and the Able Harbour Authority's functions.                                                                                                                                                                                                                                                                  |
|               | Amend Art 7(11) as follows:<br><br>"(11) Subject to the requirements of any notice given under paragraph (4), the functions of the Harbour Authority and the dockmaster shall be exercised in accordance with Part 2 of Schedule 9 (for the protection of AB Ports) <u>and Part 6 (for the protection of C.RO Ports Killingholme Limited)</u> ".                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | It is necessary, and appropriate, that the functions of the Able Harbour Authority and dockmaster should also be exercised in accordance with C.RO's protective provisions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Art 10</b> | Amend Art 10(1) as follows:<br><br>"(1) <u>Subject to paragraph (3) below the</u> undertaker may from time to time within the area of jurisdiction provide and operate such harbour facilities, together with works ancillary to those facilities, as may be necessary or convenient for the construction of the authorised development or the operation of the undertaking, and for this purpose the undertaker may construct and maintain roads, <del>railway lines</del> , buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and | <p>The amendment to make Art 10(1) subject to Art 10(3) is sought for the avoidance of doubt regarding the application of the GPDO. C.RO notes the amendments made by Able to version 3 of the DCO to remove the scope of Part 11 of the GPDO.</p> <p>The deletion of "railway lines" relates to C.RO's general concerns regarding Able's proposals for the Railway. As stated in its written representations, at the Issue Specific Hearing for land access and transport and at the Compulsory Acquisition Hearing ("CAH"), C.RO is concerned that Able has not stated what works it proposed to carry out to the Killingholme Branch Line (the "Railway") apart from the possible</p> |

| Provision     | Amendment sought to version 4 by C.RO                                                                                                                                                                                                                                                                                                                                                                                 | Explanation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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|               | such other works and conveniences as may be necessary or expedient"                                                                                                                                                                                                                                                                                                                                                   | construction in the future of a passing loop. Able has proposed this as a separate work. There is no identified need for other railway lines. C.RO is concerned that Able should not be empowered by the DCO to carry out any works that may affect the Railway. In particular, Able has referred to the suggestion that future tenants may require their own sidings (see paragraph 25 of Able's commentary on version 3 of the DCO). That would have an impact on the capacity and operation of the Railway. This has not been assessed and should not, therefore, be empowered by the DCO under the principles of the Rochdale Envelope. |
|               | Amend Article 10(2)(c) as follows:<br><br>"(c) landscaping and other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works."                                                                                                                          | This provision is unnecessarily wide without any explanation of its purpose. It may authorise the construction of works that have not been specified or assessed. This should not be included under the principles of the Rochdale envelope.                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Art 13</b> | Insert the following sub-paragraph and re-number the remaining sub-paragraphs accordingly:<br><br><u>"(4) No works permitted by this Article shall allow the closure of or impeding access via any of the streets specified in Schedule 2 to or from any premises on such street, unless a suitable and commodious alternative is provided prior to and for the duration of any works permitted by this Article."</u> | Rosper Road is the main access to C.RO. C.RO needs its access to be maintained. It is not appropriate to expect C.RO - a statutory undertaker - to rely on the licencing authority. This provision will enable this.                                                                                                                                                                                                                                                                                                                                                                                                                        |



| Provision | Amendment sought to version 4 by C.RO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Explanation                                                                                                                                                                                                                                                                                                                                              |
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| Art 14    | Amend Article 14(1)(b) as follows:<br><br>"(b) subject to paragraph (2) <u>and (3)</u> , prevent all persons from passing along the street"                                                                                                                                                                                                                                                                                                                                                                                                                                                               | As for Article 13.<br><br>Article 14(2) provides that when a road is temporarily stopped up the undertaker shall provide reasonable access for vehicles "where reasonably practicable". This is not appropriate. As stated above, Rosper Road is the main access to C.RO and access should not be prevented or impeded. This provision will ensure this. |
|           | Amend Article 14(2) as follows:<br><br>"(2) The undertaker shall provide reasonable access for pedestrians, and <del>where reasonably practicable</del> vehicles, going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                          |
|           | Insert the following sub-paragraph and re-number the remaining sub-paragraphs accordingly:<br><br><u>"(3) No street shall be wholly or partly stopped up under this Article unless a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and thereafter maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and re-opening up of the street affected by the temporary stopping up."</u> |                                                                                                                                                                                                                                                                                                                                                          |
| Art 22    | Amend Art 22(1) as follows:<br><br>"(1) Unless its construction has commenced within five years of the coming into force of this Order, no tidal work shall be constructed, <del>reconstructed, extended, enlarged, replaced</del> or relaid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of state before that work is begun".                                                                                                                                                                 | In version 3 of the DCO Able deleted the words "extend or enlarge" from Article 9. This is a related amendment. It is appropriate to remove these words as Able would not be permitted to reconstruct, extend, enlarge or replace any works in any event.                                                                                                |

| Provision     | Amendment sought to version 4 by C.RO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Explanation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <b>Art 29</b> | <p>Amend Article 29 by inserting the following sub-paragraph:</p> <p><u>"(6) Nothing in this Order shall permit the compulsory acquisition of interests in railway, track bed and associated structures from Network Rail Infrastructure Limited, being the parcels numbered 02008, 03013, 03014, 03015, 04004, 04014, 04024, 04025, 05023, 05024, 05025, 05026, 05027, 05028, 07001 in the land plans."</u></p>                                                                                                                                                      | <p>As stated in its written representations and at the CAH C.RO objects to the compulsory acquisition of any of the Railway.</p> <p>This amendment removes the Railway from the scope of this Article (by amendment of the Book of Reference and land plans or otherwise).</p> <p>Able agree to remove the part of the Railway that passes through C.RO and C.GEN. The compulsory acquisition of the remainder of the Railway is not agreed.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Art 30</b> | <p>Amend Article 30, by inserting the following sub-paragraph and renumbering the remaining sub-paragraphs accordingly:</p> <p><u>"(6) Nothing in this Article shall</u></p> <p><u>(a) apply to any easement or other right in which C.RO Ports Killingholme Limited or C.GEN Killingholme Limited has an interest in, or has the benefit of; or</u></p> <p><u>(b) override any agreement between Network Rail and either C.RO Ports Killingholme Limited or C.GEN Killingholme Limited relating to the rights to connect to and use Network Rail's railway."</u></p> | <p>C.RO has easements in/over Network Rail's land and subsisting agreements with Network Rail regarding the connection to and use of the Railway.</p> <p>These easements are not included in the Book of Reference.</p> <p>Able agree to remove the part of the Railway that passes through C.RO and C.GEN. C.RO believes that whilst this concession may not affect its easements, it leaves unresolved the impact on C.RO's connection agreement of their proposed acquisition of that section of the Railway that passes through AMEP. As a result, it remains the case that acquisition of the Railway by AMEP will, without appropriate restrictions on Able and protection for C.RO, prevent the terms of its connection from being effective. This is because neither C.RO nor Network Rail would (in the absence of protection) be able to ensure that trains could travel along the Railway to/from C.RO via the length of Railway through AMEP.</p> |
| <b>Art 34</b> | <p>Amend by inserting the following sub-paragraph and re-numbering the remaining sub-paragraphs accordingly:</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <p>As above.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |



| Provision         | Amendment sought to version 4 by C.RO                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Explanation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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|                   | <u>"(6) This article does not apply to any easement in relation to crossing the Killingholme Branch Line or other right to access and use the Killingholme Branch Line in which C.RO Ports Killingholme Limited or C.GEN Killingholme Limited has an interest in, or has the benefit of."</u>                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Art 47</b>     | Delete                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p>In relation to Art 47(1), C.RO's concerns regarding the lack of detail provided by Able regarding the Railway, and in particular how it proposes to use it, are relevant. In the absence of a need to use the Railway (and that need being reflected in specified Works in Schedule 1), Able should not be empowered to use the Railway or undertake ancillary works.</p> <p>Likewise in the absence of a need to use the Railway there is no need for Art 47(2), which authorises Able to enter into agreements relating to the Railway. Able would be authorised to enter into such agreements regardless of the existence of this provision.</p> |
| <b>Schedule 1</b> | <p>Amend paragraph 4 as follows:</p> <p>"....(b) <u>Work No. 4</u> the provision of onshore facilities for the manufacture, assembly and storage of components and parts for offshore marine energy and related items;</p> <p>(c) <u>Work No. 5</u> improvement works to Rosper Road, Eastfield Road, the A160 and the A180;</p> <p>(d) <u>Work No. 6 - works to the Killingholme Branch Line</u></p> <p>(e) <u>Work No. 7 [to include all proposed crossings] - construction of level crossings"</u></p> | <p>The onshore facilities, road improvement works, works to the Railway and the construction of level crossings must be specified as Works and included in the Works Plans.</p> <p>Able appears to not want to specify the location, type and number of level crossings. Submissions have already been made on this point.</p> <p>Able is not empowered to acquire the Railway, as currently drafted this Schedule makes no provision to carry out work to alter or construct new level crossings.</p>                                                                                                                                                 |

| Provision                                                         | Amendment sought to version 4 by C.RO                                                                                                                                                                                                                                                                                                                                                                                                                               | Explanation                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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|                                                                   | and renumber the following sub-paragraphs accordingly.                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Schedule 8</b>                                                 | Amend Paragraph 10(2)(c) as follows:<br><br>"(c) maintaining access to neighbouring developments <u>including C.RO Ports Killingholme Limited</u> ; and"                                                                                                                                                                                                                                                                                                            | C.RO recognises the inclusion of the reference to neighbouring developments but considers that given the overlap in the approaches, C.RO must be referred to specifically in this provision of the Deemed Marine Licence. C.RO's concerns regarding the overlap in jurisdiction also remain.                                                                                                                                                                                    |
| <b>Schedule 9 Part 6</b><br><br><b>For the Protection of C.RO</b> | Amend Paragraph 54 as follows:<br><br>"54. (1) Before—<br><br>(a) submitting any plans and sections for any tidal work within <u>500-1750</u> metres of CPK to the Secretary of State for approval under Article 22 of this Order (tidal works not to be constructed without approval of the Secretary of State);<br><br>(b) <u>commencing any operation for the construction of a tidal work within 500 metres of CPK where approval of the Secretary of State</u> | C.RO requires a right of approval of tidal works, rather than a right to be consulted as proposed by Able in version 4. C.RO is a statutory harbour authority and as, stated above, there is an overlap in the approach channels. It is entirely appropriate that any such works would require C.RO's approval. Sub-paragraph (1)(6) provides that any such approval will not be unreasonably withheld or delayed.<br><br>The distance of 1750 covers the full length of C.RO's |



| Provision | Amendment sought to version 4 by C.RO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Explanation               |
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|           | <p><u>under Article 22 is not required;</u></p> <p><u>(c) submitting any works schedules to the Marine Management Organisation in accordance with Schedule 8;</u></p> <p><u>(d) submitting any written scheme or proposed alteration in the design drawings to the relevant planning authority in accordance with Schedule 11; or</u></p> <p><u>(e) commencing any operation for the maintenance of a tidal work within 1750 metres of CPK.</u></p> <p><u>the Harbour Authority shall submit to <del>consult</del> C.RO plans and sections of the tidal work or operation and such further particulars as C.RO may, and shall forward any response received within 28 days from the day on which plans and sections are submitted under this sub-paragraph, reasonably require of such consultation from C.RO to the Secretary of State or the Marine Management Organisation as appropriate.</u></p> <p><u>(2) No application for the Secretary of State's approval under Article 22 shall be made in respect of a tidal work until plans and sections in respect of that tidal work submitted under sub-paragraph (1) have been approved by C.RO.</u></p> <p><u>(3) No works schedule referred to in sub-paragraph (1)(c) shall be submitted to the Marine Management Organisation for agreement until the work schedule has been approved by C.RO;</u></p> <p><u>(4) No written scheme or proposed alteration referred to in sub-paragraph (1)(d) shall be submitted to the relevant planning authority for approval until the scheme or alteration has been approved by C.RO.</u></p> <p><u>(5) Any tidal work not requiring the Secretary of State's approval under Article 22 shall not be constructed, and no tidal work shall be</u></p> | <p>approach channels.</p> |

| Provision | Amendment sought to version 4 by C.RO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Explanation |
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|           | <p><u>maintained, except in accordance with such plans as may be approved in writing by C.RO or determined under paragraph 43.</u></p> <p><u>(6) Any approval of C.RO required under this paragraph shall not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as C.RO may make for the protection of the use of its undertaking, its operational land, the river or any structure for the purposes of performing its functions.</u></p> <p><u>(7) Requirements made under sub-paragraph (4) may include conditions as to—</u></p> <p><u>(a) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the tidal work; and</u></p> <p><u>(b) the expiry of the approval if the Able Harbour Authority does not commence construction of the tidal work approved within a prescribed period.</u></p> <p><u>(8) Subject to sub-paragraphs (8) and (9), any such approval shall be deemed to have been refused if it is neither given nor refused within 42 days of the specified day.</u></p> <p><u>(9) In this paragraph “the specified day” means, in relation to any tidal work—</u></p> <p><u>(a) the day on which plans of that work are submitted to C.RO under sub-paragraph (1); or</u></p> <p><u>(b) the day on which the Able Harbour Authority provides C.RO with all such particulars of the work as have been reasonably requested by C.RO under that sub-paragraph;</u></p> |             |



| Provision | Amendment sought to version 4 by C.RO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Explanation                                                                                                                                                                                                                   |
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|           | <p><u>whichever is the later.</u></p> <p><u>54B. Any operations for the construction of any tidal work approved in accordance with this Order shall, once commenced, be carried out by the Able Harbour Authority with all reasonable dispatch and to the reasonable satisfaction of C.RO so that the exercise of C.RO shall not suffer more interference than is reasonably practicable, and C.RO shall be entitled by its officer or other appointed person at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.</u></p>                                                                                                                                                                       |                                                                                                                                                                                                                               |
|           | <p>Amend paragraph 56 as follows:</p> <p><u>"56. The undertaker shall pay to C.RO the reasonable costs incurred by C.RO of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of a tidal work or the use of the authorised development, including but without limitation, paying the reasonable costs of C.RO incurred in raising the height of the IsoGWR.4 s sector light positioned at the entrance of North Killingholme Haven at CPK, in the event that activities related to the construction or operation of the authorised development obscure or obstruct the visibility of this sector light to vessels approaching CPK and in its approach channels."</u></p> | C.RO has a particular concern in relation to this sector light and considers that a specific reference should be made. A vessel alongside the quay at AMEP will block this sector light and represent a danger to navigation. |
|           | <p>Insert a new paragraph after paragraph 56 (56A):</p> <p><u>"56A. The undertaker shall provide and maintain on any tidal works such fog signalling apparatus as may be reasonably required by C.RO and shall properly operate such apparatus during periods of restricted</u></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Fog signalling apparatus is necessary to ensure the safety of vessels arriving to and sailing from CPK.                                                                                                                       |

| Provision | Amendment sought to version 4 by C.RO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Explanation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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|           | <p><u>visibility for the purpose of warning vessels of the existence of the relevant works"</u></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|           | <p>Inserting the following paragraphs after paragraph 59:</p> <p style="text-align: center;"><i>"Operating Procedures</i></p> <p><u>59A. (1) The undertaker shall not allow vessels associated with the construction of the authorised development to obstruct or remain in the approach channel when vessels are arriving at, and sailing from CPK.</u></p> <p><u>(2) C.RO shall provide the undertaker with a schedule of movements to which paragraph 60(1) applies.</u></p> <p><u>59B. (1) Before commencing harbour operations the Harbour Authority shall submit to C.RO for approval a written statement of proposed safe operating procedures for access to and egress from the harbour, including the management arrangements for vessel movements within the approach channel to CPK, and shall operate the harbour only in accordance with such procedure as approved, including any approved alteration made from time to time.</u></p> <p><u>(2) C.RO's approval under paragraph 61(1) must not be unreasonably withheld or delayed and if by the end of the period of 28 days beginning with the date on which the written statement has been supplied to C.RO, C.RO has not intimated its disapproval of the written statement and the grounds of its disapproval the undertaker may serve upon C.RO written notice requiring C.RO to intimate its approval or disapproval within a further period of 28 days beginning with the date upon which C.RO receives written notice from the undertaker. If by the expiry of the further period of 28 days C.RO has not intimated its approval or disapproval, C.RO shall be deemed to have approved the written</u></p> | <p>Able has designed its scheme in such a way that its approach channel and turning area overlap with C.RO's existing approach channel. C.RO has made representations as to whether this overlap is necessary. If the overlap is to be retained protective provisions dealing with Operating Procedures and Dredging in C.RO's approach channel are appropriate to protect C.RO, and to ensure that C.RO's functions and operations are not detrimentally affected. The Protective Provisions proposed by Able in version 3 of the DCO do not address the area of overlap.</p> <p>In relation to <i>Operating Procedures</i>, these protections are necessary to ensure that C.RO's access to and egress from its statutory harbour are protected and that its vessels are not obstructed. C.RO must have the right to approve the proposed operating procedures, including the management arrangements. Paragraph 61(2) of the amendment sought by C.RO, which is based on a protective provision for the benefit of Network Rail in the Felixstowe Branch Line and Ipswich Yard Improvement Order 2008 ensures that C.RO's approval is not unreasonably withheld or delayed.</p> <p>In relation to <i>Dredging</i>, C.RO has a licence to dredge in its approaches, including the area of overlap. C.RO is not satisfied as to how the dredging arrangements for the overlap will be managed. In the absence of any agreement between C.RO and Able these protective provisions are required to ensure that the dredging requirements for CPK are met, and that Able is not permitted to carry out any dredging in the area of overlap without C.RO's approval (which again must not be</p> |



| Provision | Amendment sought to version 4 by C.RO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Explanation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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|           | <p><u>statement as submitted.</u></p> <p style="text-align: center;"><i>Dredging</i></p> <p><u>59C. (1) The undertaker shall not dredge in the approach channel to CPK without prior approval.</u></p> <p><u>(2) Any dredging that is carried out with C.RO's approval must be carried out in accordance with any conditions attached thereto.</u></p> <p><u>(3) C.RO's approval under paragraph 62(1) must not be unreasonably withheld or delayed and if by the end of the period of 28 days beginning with the date on which the dredging request has been supplied to C.RO, C.RO has not intimated its disapproval of the request and the grounds of its disapproval the undertaker may serve upon C.RO written notice requiring C.RO to intimate its approval or disapproval within a further period of 28 days beginning with the date upon which C.RO receives written notice from the undertaker. If by the expiry of the further period of 28 days C.RO has not intimated its approval or disapproval, C.RO shall be deemed to have approved the request as submitted."</u></p> | unreasonably withheld or delayed).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|           | <p>Amend the <i>Railway</i> section as follows:</p> <p>"60. The undertaker shall not in the exercise of the powers conferred by this Order prevent C.RO's access to and use of the Killingholme Branch Line <del>railway on the Order land in connection with the use of CPK</del>.</p> <p>61. (1)The construction and operation of the authorised development must not cause <del>unreasonable</del> interference with or prevent the <del>free uninterrupted and safe use by C.RO of the railway crossing the Order land in connection with the use of CPK</del> <u>Killingholme Branch Line or any traffic on the Killingholme Branch Line.</u></p>                                                                                                                                                                                                                                                                                                                                                                                                                                   | <p>Paragraph 60 and 61(1) have been amended so that C.RO's access to, and use of, the entire Killingholme Branch Line is protected. Activities undertaken by Able could have implications for C.RO's access to, or use of, the Railway beyond the section of the railway crossing the Order land.</p> <p>It is not appropriate to apply a test of reasonableness to interference in the absence of proper details of how the interaction of the construction and operation of AMEP with the Railway will be managed.</p> |

| Provision | Amendment sought to version 4 by C.RO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Explanation                                                                                                                                                                                                                                                                                                                                           |
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|           | <p><u>(2) If any such interference is caused or takes place in consequence of the construction or operation of the authorised development the undertaker shall pay to C.RO all reasonable expenses to which C.RO may be put and compensation for any loss which it may sustain by reason of any such interference or obstruction. "</u></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                       |
|           | <p>Insert the following paragraphs after paragraph 63:</p> <p style="text-align: center;"><i>"Rosper Road</i></p> <p><b>63A.</b> The undertaker shall not in the exercise of the powers conferred by this Order prevent C.RO's access to and use of Rosper Road</p> <p><b>63B.</b> (1) The construction and operation of the authorised development must not interfere with or obstruct the free, uninterrupted and safe use of Rosper Road or any traffic on Rosper Road, unless an alternative access that is suitable and commodious is provided prior to and for the duration of any such interference.</p> <p>(2) If any such interference is caused or takes place in consequence of the construction or operation of the authorised development the undertaker shall pay to C.RO all reasonable expenses to which C.RO may be put and compensation for any loss which it may sustain by reason of any such interference or obstruction.</p> <p style="text-align: center;"><i>Recovery of expenses</i></p> <p><b>63C.</b> <u>C.RO may recover from the undertaker any reasonable expenses howsoever caused (including a proper portion of the overhead charges of C.RO) which C.RO incur—</u></p> <p><u>(1) arising from the approval of plans and the inspection of the construction or carrying out of any tidal work;</u></p> | <p>As set out above, Rosper Road is the main access to C.RO. C.RO needs its access to be maintained. This specific protection is sought for this reason and is appropriate and reasonable.</p> <p>Paragraph 63C is required to ensure that C.RO is not put to any additional cost in respect of sedimentation and scour as a consequence of AMEP.</p> |



| Provision | Amendment sought to version 4 by C.RO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Explanation |
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|           | <p><u>(2) by reason of any act or omission of the undertaker, or of any person in their employ, or of their contractors or workmen whilst engaged upon any tidal work or the construction and operation of the authorised development;</u></p> <p><u>(3) in dredging away any accumulation consequent upon the execution or maintenance of a tidal work;</u></p> <p><u>(4) in obtaining and depositing in the river such material as is necessary in the reasonable opinion of C.RO to protect C.RO's operations from the effects of scouring of the river bed consequent upon the execution or maintenance of a tidal work;</u></p> <p><u>(5) in altering any mooring in any way which in the reasonable opinion of C.RO may be rendered necessary by reason of the execution or maintenance of a tidal work;</u></p> <p><u>(6) in carrying out reasonable surveys, inspections, tests and sampling within and of the river (including the bed and banks of the river) —</u></p> <p><u>(a) to establish the marine conditions prevailing prior to the construction of a tidal work in such area of the river as C.RO have reasonable cause to believe may subsequently be affected by any siltation, scouring or other alteration which the undertaker is liable to remedy under this article; and</u></p> <p><u>(b) where C.RO have reasonable cause to believe that the construction of a tidal work is causing or has caused any siltation, scouring or other alteration as aforesaid;</u></p> <p><u>(7) arising from the carrying out of construction of a tidal work or the failure of a tidal work or the undertaking by C.RO of works or measures to prevent or remedy danger or impediment to navigation or damage to any property arising from such carrying out of construction, exercise or</u></p> |             |

| Provision | Amendment sought to version 4 by C.RO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Explanation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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|           | <p><u>failure;</u></p> <p><u>and subject to the provisions set out above, the undertaker shall indemnify C.RO from and against all claims and demands arising out of such construction, or carrying out, failure or act or omission of the undertaker, or operation of the authorised development; but C.RO shall as soon as reasonably practicable give to the undertaker notice of any claim or demand which is one for which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the undertaker. "</u></p> <p style="text-align: center;"><i><u>"Indemnity"</u></i></p> <p><u>63D.(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure resulting from any of the authorised development any damage is caused to any property of C.RO (including CPK) or C.RO suffers any loss (including as a result of delays or other interruptions to port operations at CPK or as the result of delays or interruptions to the operation of the Railway) the undertaker shall—</u></p> <p><u>(a) bear and pay the cost reasonably incurred by C.RO in making good such damage; and</u></p> <p><u>(b) indemnify C.RO against all claims, demands, proceedings, costs, damages and expenses which may be made against, or recovered from, or incurred by it</u></p> <p><u>by reason or in consequence of any such damage or exercise by the undertaker of its powers conferred by this Order.</u></p> <p><u>(2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that</u></p> | <p>Paragraph 63D provides C.RO with an indemnity. It is not accepted that C.RO must rely on bringing (successful) court proceedings for any loss caused by AMEP. C.RO is a statutory undertaker with existing operations and responsibilities, and is as a result afforded special protection. It is entirely normal to indemnify statutory undertakers and there is no precedent for not doing so, particularly when protective provisions are being provided. The Protective Provisions for the benefit of C.RO include obligations to undertake tasks, or to desist from doing so, to avoid adversely affecting C.RO's operations. An indemnity is required to ensure that those obligations are met and that C.RO has a mechanism for redress if they are not met, or any other activities undertaken by Able in the course of carrying out the authorised development cause loss or damage to C.RO.</p> |

| Provision          | Amendment sought to version 4 by C.RO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Explanation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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|                    | <p><u>it is attributable to the act, neglect or default of C.RO, its officers, servants, contractors or agents.</u></p> <p><u>(3) C.RO shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand with such assistance from C.RO as may be reasonably necessary."</u></p> <p><i><u>"Liability</u></i></p> <p><u>63E. C.RO shall not be liable, in the absence of negligence or breach of any duty hereunder or otherwise, for any damage or injury howsoever caused to any of the authorised works (whether temporary or permanent) resulting from the dredging operations of C.RO or the carrying out by them in the execution of their statutory powers and duties of any operations in the river or works for the improvement or maintenance thereof. "</u></p> | <p>Paragraph 63E excludes C.RO from being liable should it cause any damage to the authorised works whilst carrying out its authorised dredging operations or statutory functions. This is appropriate protection for a statutory undertaker.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Schedule 11</b> | <p>Amend Requirement 3A as follows:</p> <p><i><u>"Cargo-Restriction of operations</u></i></p> <p><b>3A.</b> (1) The cargo for which the authorised development is authorised to handle the embarkation and disembarkation shall be restricted to items associated with marine energy infrastructure and any cargo that is incidental or ancillary to such items.</p> <p><u>(2) The Authorised Development shall be operated only as a facility for the manufacture, assembly, storage and transport of components and parts for marine energy infrastructure and any incidental or ancillary items.</u></p>                                                                                                                                                                                                                                                                                                                                                                                                                        | <p>Able's proposed restriction only applies to the cargoes that are handled across the quay. This is not appropriate. The lack of assessment of alternative uses of AMEP applies equally to the Authorised Development/rest of the site as it does to the quay wall. For example, if the onshore area were to be used for logistics or storage, the impacts would be different to those assessed, including on the local road network and potentially the Railway. The restriction should apply to both cargo and on-shore operations.</p> <p>Requirement 3A(2) purports to avoid the need to amend the DCO in future. This is not acceptable to C.RO in principle and is also ineffective. A Requirement cannot operate in this way</p> |



| Provision | Amendment sought to version 4 by C.RO                                                                                                                                                                                                                                                                   | Explanation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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|           | <p><del>(2) If further categories of cargo are authorised by means of planning permission or an order under section 14 of the Harbours Act 1964 or section 1 of the Transport and Works Act 1992, then the implementation of such authorisations shall not constitute a breach of this order"</del></p> | <p>and there is no precedent for providing in a DCO that the amendment of the DCO can be achieved by other means. There are specific procedures in the Planning Act 2008 and the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 for amending a DCO.</p> <p>C.RO does not agree with Able's explanation (which accompanied version 3) that there is a precedent in the Associated British Ports (Hull) Harbour Revision Order 2006. Paragraph 2(4) of Schedule 1 to that Order deems subsequent provisions to be conditions imposed on a planning permission. As a result, they are enforceable by the local planning authority. It does not provide a mechanism for amending them (in fact no provision in the Order achieves that), nor does it provide that any future permission that might allow a breach of any of the specified conditions would not constitute such a breach. This Requirement should be deleted.</p> |
|           | Amend Requirement 4 by inserting references to the sections referred to in Articles 5 and 5A.                                                                                                                                                                                                           | See explanation in relation to Article 5A above.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |