

From: Dove-Seymour, Benjamin
Sent: 03 August 2012 17:55
To: ablemarineenergypark@infrastructure.gsi.gov.uk
Cc: XXXX
Subject: FW: AMEP - C.GEN Killingholme Ltd - Comments on WRs and responses to comments on RRs

Dear Sirs

Interested Party Reference: XXXX

Please find attached, on behalf of C.GEN Killingholme Limited:

1. WR3: Comments on the Written Representations and Response to Comments on the Relevant Representations;
2. Appendices 1, 2 and 3 of WR3;

Regards

Benjamin Dove-Seymour
Associate

DLA Piper UK LLP

T XXXX
F XXXX
M XXX
[XXXX](#)

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FAO: Head of Regeneration and Planning
North Lincolnshire Council
Pittwood House
Ashby Road
Scunthorpe
North Lincolnshire
DN16 1AB

Your reference

Our reference

BDDS/NW/328740/1
UKM/39140650.1

30 November 2011

By Email and Post

Dear Sirs

**OUR CLIENT: C.GEN KILLINGHOLME LIMITED ("C.GEN")
ABLE - PROPOSED APPLICATIONS FOR DEVELOPMENT CONSENT -
ABLE HUMBER PORT/ABLE MARINE ENERGY PARK (THE
"APPLICATION")**

1. We act for C.GEN in respect of the above matter. We understand that Able intends to submit the Application imminently.
2. We have, over several months, written to both Able and the Infrastructure Planning Commission ("IPC") to raise concerns on behalf of C.GEN about the adequacy of pre-application consultation carried out by Able. As advised by paragraph 90 of the Secretary of State's guidance on pre-application consultation (the "Guidance") we are writing to you to inform you of these concerns and kindly request that you have particular regard to them for the purposes of the Adequacy of Consultation Report that you will submit to the IPC in connection with the Application.
3. Please find enclosed with this letter the following correspondence:
 - 3.1 letter from DLA Piper to Able, 11 July 2011;
 - 3.2 letter from DLA Piper to the IPC, 26 July 2011;
 - 3.3 letter from DLA Piper to Bircham Dyson Bell (solicitors to Able), 31 August 2011;
 - 3.4 letter from DLA Piper to Bircham Dyson Bell, 30 September 2011.
4. You will note that among C.GEN's concerns is that it has not been consulted by Able about its proposed project. It appears that Able is about to submit the Application. If that is the case, Able will not have carried out adequate pre-application consultation as required by the Planning Act 2008 and the Guidance.
5. The detail as to C.GEN's concerns is set out fully in the enclosed correspondence. These concerns remain and it is for this reason that we are

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instructed to write to you to bring them to your attention. These matters are of particular relevance to the Council's Adequacy of Consultation Report.

6. We should be grateful if you would kindly confirm receipt of this letter.
7. Should you have any queries regarding this matter please contact Benjamin Dove-Seymour (tel: [REDACTED] email: [REDACTED]
[REDACTED])

Yours faithfully

DLA PIPER

DLA PIPER UK LLP

Enc.

cc. Wim Heyselberghs, C.GEN
Iris Dholander, C.GEN
Mike Harris, IPC

P M Stephenson Esq.
Able Humber Ports LTD
c/o Able House
Billingham Reach Industrial Estate
Billingham
Teesside
TS23 1 PX

Your reference

Our reference

HJLB/HJLB/84367/120009
UKM/37064227.1

11 July 2011

By Post and Fax : [REDACTED]

Dear Sir

**OUR CLIENT: C.GEN NORTH KILLINGHOLME LIMITED ("C.GEN")
ABLE HUMBER PORT AND MARINE ENERGY PARK**

As you may be aware, we are instructed by C.GEN in relation to its proposed application for a development consent order to the Infrastructure Planning Commission ("IPC") in order to obtain consent to construct and operate a 570 MWe IGCC/CCGT electricity generating station at North Killingholme ("Project"). This will be constructed on land on or adjacent to the Humber Sea Terminal.

We refer our letter dated 26 May 2011 and now write on behalf of C.GEN in relation to Able Humber Port Limited's ("Able") proposed application to the IPC to obtain consent to construct a Marine Energy Park (the nature of which is uncertain) and potentially other, as yet, undefined development, on land adjacent to the Humber Sea Terminal at North Killingholme. C.GEN note that the application is due to be submitted to the IPC at the end of July 2011. Able's proposals may very well have significant effects upon C.GEN's Project. C.GEN has a number of concerns which, in C.GEN's view, must be properly and fully addressed by Able prior to its submission of an application to the IPC.

1. C.GEN has rights to land and premises on and in the immediate vicinity of the Humber Sea Terminal and its Project is to be located on or adjacent to this land. In view of this, C.GEN does not consider that the requirements for pre-application consultation for an IPC application have been met in respect of Able's proposals. To date, C.GEN has not been contacted or approached by Able in relation to its proposals. Whilst Able has had some limited contact with our client Humber Sea Terminal Limited ("HST"), this is certainly not sufficient to discharge Able's statutory obligation to consult C.GEN.
2. The absence of consultation by Able raises a question as to whether Able can properly assess the environmental impact of its proposals without having an understanding of C.GEN's Project. C.GEN will carry out its own consultation, including consultation with Able, at the appropriate time.
- 2.1 In view of Able's failure to consult, C.GEN considers that the consultation carried out by Able in respect of its project(s) has not been sufficient to discharge the requirements under Chapter 2 of Part 5 of the Planning Act 2008, in particular, section 42. In addition, the requirements of the

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Government's guidance, which has statutory force - have not been met. It is also questionable whether Able could, in any case, meet those requirements in the absence of sufficient certainty as to the nature of its project if the application is imminent. As such, because of the effect of Section 55(3)(e) of the Planning Act 2008, C,GEN submits that the IPC should not accept any application made by Able until adequate consultation has been undertaken.

- 2.2 Once C.GEN is consulted and provided with sufficient information to enable it properly to understand Able's proposals, it will require time to consider any information and to respond. It is also required that Able properly considers C.GEN's response. Any imminent application at this stage would be premature without this.
- 2.3 Able must provide sufficient information to clarify the nature of its proposed project(s) and how it will sit within the context of any other proposed Able developments in the area. C.GEN also requests an explanation of the powers that Able proposed to use to make its IPC application. C.GEN considers that it could not properly comment on any information in the absence of sufficient clarity about what Able's project comprises.

C.GEN requests that it is properly consulted by Able by 18 July 2011 at the latest. C.GEN also requests confirmation from Able that it will delay the submission of its application to the IPC until proper consultation with C.GEN has taken place. The consultation must include a period of time for C.GEN to consider and respond in full to the information provided by Able. If Able is not willing to meet these requests C.GEN will write to the IPC to inform it of C.GEN's concerns. It would not be acceptable to C.GEN, were Able to make an application, for it to have only at that stage an opportunity to consider and comment upon Able's proposals. Furthermore, there appears a real possibility that Able may have to amend any proposals in light of C.GEN's concerns. At the very least, that possibility should not be ignored.

This letter is sent to you, and copied to Mr Angus Walker of Messrs. Bircham Dyson Bell, who we understand acts for you in relation to these matters. If you would like to discuss this, we should be grateful if you or Mr Walker would contact our Mr Howard Bassford on [REDACTED]

Yours faithfully

DLA PIPER UK LLP

cc: A Walker Esq. - Bircham Dyson Bell

For the attention of Mark Harris
The Infrastructure Planning Commission
Temple Quay House
Temple Quay
Bristol BS1 6PN

Your reference

Our reference

RKE/BDS/328740/1
UKM/37042741.3

26 July 2011

Dear Sirs

OUR CLIENT: C.GEN NORTH KILLINGHOLME LIMITED ("C.GEN")
MATTER: ABLE HUMBER PORT LIMITED AND MARINE ENERGY PARK

We are instructed by C.GEN in relation to the above matter. As you will be aware, C.GEN proposes to submit an application for a development consent order to the Infrastructure Planning Commission ("IPC") in order to obtain consent to construct and operate a 570 MWe IGCC/CCGT electricity generating station, and associated development, at North Killingholme in Lincolnshire (the "Project"). This will be constructed on land on or adjacent to Humber Sea Terminal.

We write on behalf of C.GEN in relation to Able Humber Port Limited's ("Able") proposed application to the IPC to obtain consent to construct a Marine Energy Park (the nature of which is uncertain) and potentially other, as yet, undefined development, on land adjacent to the Humber Sea Terminal at North Killingholme. Able's proposals are likely to have significant effects upon C.GEN's Project. C.GEN has a number of concerns which, in C.GEN's view, must be properly and fully addressed by Able prior to its submission of an application to the IPC. Most significantly, C.GEN is concerned about a lack of consultation by Able with C.GEN to date.

Given the significance of these concerns and the lack of consultation to date, we are instructed to raise with you the matters set out in the following paragraphs.

1. Lack of Consultation

- 1.1 In a number of respects, C.GEN does not consider that the requirements for pre-application consultation for an IPC application have been met in respect of Able's proposals. C.GEN is aware that Able aims to make an application to the IPC on 31 July 2011. However, C.GEN has not, so far, been contacted or approached by Able in relation to its proposals.
- 1.2 This represents a significant failure by Able to meet the consultation requirements for an IPC application. C.GEN has rights to land and premises on and in the immediate vicinity of the Humber Sea Terminal and its Project is to be located on or adjacent to this land. As such, C.GEN is a prospective neighbour of Able's and should be consulted by Able separately from any consultation that Able carries out with HST. This is a clear requirement of

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the provisions of the Planning Act 2008 and the Communities and Local Government "Guidance on pre-application consultation".

- 1.3 Moreover, such a lack of consultation raises a question as to whether Able can properly assess the environmental impact of its own proposals without having an understanding of C.GEN's Project. C.GEN will carry out its own consultation, of course, including consultation with Able, at the appropriate time.
- 1.4 In view of Able's failure to consult, C.GEN considers that the consultation carried out by Able in respect of its project(s) has not been sufficient to discharge the requirements under Chapter 2 of Part 5 of the Planning Act 2008, in particular, section 42. In addition, the requirements of the Government's guidance, which has statutory force - have not been met. It is also questionable whether Able could, in any case, meet those requirements in the absence of sufficient certainty as to the nature of its project if the application is imminent. As such, because of the effect of Section 55(3)(e) of the Planning Act 2008, C.GEN submits that the IPC should not accept any application made by Able until adequate consultation has been undertaken.
- 1.5 At the point when C.GEN is consulted, it will also require time to consider any information and to respond. It is also required that Able properly considers C.GEN's response. Any imminent application at this stage would certainly be premature without this. Further, to be able properly to respond to a consultation C.GEN requires, as a minimum, further information in relation to the issues highlighted below.

2. Specific Issues and Additional Information Required

Nature of Proposals

- 2.1 C.GEN has received no information in relation to Able's proposals, including the way in which those proposals will relate to Able's other existing and proposed developments in the area and to C.GEN's Project. Able must provide sufficient information to clarify the nature of its proposed project(s) and how it will sit within the context of any other proposed Able developments in the area. C.GEN requests an explanation of the powers that Able proposes to use to make its IPC application. For instance:
 - 2.1.1 it does not seem likely to C.GEN that the port and/or marine energy park alone will fall within the thresholds in s24(3) of the Planning Act 2008; and
 - 2.1.2 as Able no-longer propose a biomass generating station at either site, the provisions of s15 Planning Act 2008 do not seem to apply.
- 2.2 C.GEN considers that it could not properly comment on any information in the absence of sufficient clarity about what Able's project comprises. C.GEN cannot, it submits, be alone in this respect.

Rail

- 2.3 C.GEN is aware that Able have proposals relating to the existing Network Rail ("NR") railway line that passes through the Humber Sea Terminal. This railway line passes from NR's railway network at Immingham, through the proposed site of the Able Humber Port, between the land holdings of HST at North Killingholme, and then through Able's prospective logistics park at North Killingholme.
- 2.4 HST has a rail head at its port, but as yet Able does not have a railhead, albeit that one is shown on plans relating to its proposed logistics park. Able has indicated to HST its intention to provide two sidings as part of its broader proposals, which are understood to include the siding in the proposed logistics park (mentioned above), and one within the Marine Energy Park.
- 2.5 C.GEN is concerned as to Able's intentions regarding the railway line. It is essential that C.GEN better understands Able's proposals for the railway line. This is because C.GEN's Project may require the use of the NR railway to transport fuel to the proposed CCGT/IGCC electricity generating station. In this context, C.GEN needs to be fully informed of any proposed changes to the railway, particularly if any powers of compulsory acquisition over the railway are proposed.

Marine

- 2.6 C.GEN's Project may make use of the Humber Sea Terminal port as a means to deliver feedstock to its proposed thermal generating station. C.GEN is concerned that there is a lack of coherent and adequately detailed information in respect of the likely effects of Able's projects on the operation and efficiency of the Humber Sea Terminal. This is an essential consideration for C.GEN, aside from the obvious concerns that any such impacts would raise for HST itself. HST has raised these concerns with Able directly. A copy of the letter and Able's response is enclosed. Given that Able's letter was only received on 14 July 2011 neither HST nor C.GEN have had sufficient time to consider and comment to Able upon the information contained within it. C.GEN has not had a direct response to its own letter in any case. Any application made by Able on 31 July cannot, therefore, take account of C.GEN's (or HST's) concerns - which require C.GEN and HST to consider voluminous, detailed and technical information, a process which is ongoing - about Able's proposals.

3. Conclusion

- 3.1 Having regard to the importance of consultation in the IPC process, C.GEN considers that it cannot be considered that there has been adequate and sufficient consultation for an application made on 31 July 2011. C.GEN wrote directly to Able on 11 July 2011 (copy letter enclosed) but has received no response. In any event, such consultation is clearly a statutory requirement. It would not be acceptable to C.GEN, were Able to make an application, for it to have only at that stage an opportunity to consider and comment upon Able's proposals. It should not be assumed that the

information provided to HST is sufficient for C.GEN's purposes. Furthermore, there appears a real possibility that Able may have to amend any proposals in light of C.GEN's concerns. At the very least that possibility should not be ignored. An application at this stage would - unless it were not accepted - simply assume that Able did not need to take account of, or respond to, C.GEN's comments. Such an outcome is clearly contrary to the Planning Act 2008, and the Guidance.

- 3.2 We are instructed to make clear that C.GEN and HST are separate companies. They have different concerns about proposals for development that result from their own distinct current and future operational requirements. As a result, the consultation requirements of the Planning Act and the Guidance cannot be deemed to have been satisfied by consulting HST alone. We should be grateful if the Commission would also note that HST and C.GEN are separate entities.

Please do not hesitate to contact either Howard Bassford or Benjamin Dove-Seymour of this firm should you have any queries. We should be grateful if you would kindly acknowledge receipt of this letter.

Yours faithfully

DLA PIPER UK LLP

FAO Angus Walker
Bircham Dyson Bell
50 Broadway
London SW1H 0BL

Your reference

ADW/Y059258

Our reference

BDS/BDS/328740/1
UKM/37877826.1

31 August 2011

By Post and Email

Dear Sirs

**OUR CLIENT: C.GEN KILLINGHOLME LIMITED ("C.GEN")
ABLE MARINE ENERGY PARK AND ABLE LOGISTICS PARK**

We refer to our letter on behalf of C.GEN to Mr Stephenson of Able Humber Ports Ltd ("Able") of 11 July 2011.

1. C.GEN has not, to date, received a response to that letter, although C.GEN is aware that you wrote to Humber Sea Terminal ("HST") on 14 July 2011.
2. We ask you and your client to note that C.GEN and HST are separate companies, which would be clear from a search at Companies House. They have different concerns about proposals for development that result from their own distinct current and future operational requirements. As a result, the consultation requirements of the Planning Act 2008 (the "Act") and the related guidance cannot be deemed to have been satisfied in respect of C.GEN by consulting HST alone.
3. With that in mind, you will note that we raised a number of points on behalf of C.GEN in our letter of 11 July 2011 to which your client has not responded. C.GEN is aware that Able intends to submit an application to the IPC in relation to its proposals by 31 August 2011. In doing so, it will make an application without having adequately consulted C.GEN. That would be a significant failure by Able to meet the consultation requirements for an IPC application, as set out in the Act and the statutory guidance which accompanies it.
4. As stated above, it is not sufficient to discharge those requirements by supplying information to HST, notwithstanding that DLA Piper acts for both parties. It is for this reason that we have recently written to you or your client separately on behalf of either C.GEN or HST.
5. C.GEN has rights to land and premises on and in the immediate vicinity of HST's land and its own project is to be located on or adjacent to this land. A search of the Land Registry would reveal this, followed by appropriate consultation. Able should also recall that C.GEN made representations to the local planning authority in relation to Able's application for the Logistics Park. Given this, it is surprising that Able has not contacted C.GEN at any point, and also failed to respond to our letter of 11 July.

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6. In any event, C.GEN has reviewed Able's preliminary environmental report ("PEIR"). This raises a number of concerns for C.GEN, although it is understood that the information in the PEIR has been superseded as a result of changes to the proposals arising from consultation on the PEIR. These changes have not been communicated to C.GEN either as part of any consultation exercise. C.GEN requests a note and explanation of changes to Able's proposals since publication of the PEIR.
7. C.GEN maintains the concerns we raised on its behalf in our letter of 11 July and requests a response. Should Able make an application to the IPC on 31 August, or in any event without having consulted C.GEN and given it adequate time to respond to any information provided to it, C.GEN is most likely to be in the position of making representations about Able's project to the IPC, should the IPC accept Able's application.
8. Those representations will necessarily relate to the failure by your client to consult with C.GEN, as well as comments that arise from the documents that are submitted with that application. In particular, Able has failed to consult specifically about its proposed changes to the ownership of the railway and, therefore, the availability of a rail link to C.GEN's land.
9. It is, of course, open to your client to address C.GEN's concerns prior to making any application to the IPC, having regard to the requirement to submit the consultation report required under section 37(3)(c).

We request and look forward to a response to our earlier letter without delay.

Yours faithfully

DLA PIPER UK LLP

cc: W Heyselberghs - C.GEN
I D'Hollander - C.GEN

FAO Angus Walker
Bircham Dyson Bell
50 Broadway
London SW1H 0BL

Your reference

ADW/Y059258

Our reference

BDS/BDS/328740/1
UKM/38168360.1

30 September 2011

By Post and Email

Dear Sirs

**OUR CLIENT: C.GEN KILLINGHOLME LIMITED ("C.GEN")
ABLE MARINE ENERGY PARK AND ABLE LOGISTICS PARK**

Thank you for your letter of 15 September, which replies to our letter of 11 July. We also refer to our letter of 31 August 2011.

You have explained that C.GEN was not, in Able's view, entitled to be consulted, or if it was, as a landowner, its identity was not discovered after diligent inquiry. You have asked us to let you know whether in our view C.GEN falls within any of the prescribed categories in s42(a) of the Planning Act 2008 ("PA 2008"). To the extent that we do consider this is the case, you note that this view would differ not only from you and your client, but also the Infrastructure Planning Commission. We respond to these points below.

C.GEN has also asked us to raise some observations about Able's Preliminary Environmental Report ("PEIR").

C.GEN's interests in land

1. We attach for your information a plan taken from Able's Preliminary Environmental Report ("PEIR") on which we have marked land in which C.GEN has the freehold title under title number HS302181. You will note that this is - but for the minor road between them - adjacent to Able's land.
2. We also enclose for ease of reference an office copy of the register for title number HS302181. The registered proprietor is listed as Albeon UK Limited (company registration number 06422434) of the Quadrangle, 180 Wardour Street, London W1F 8LB. Albeon UK Limited was registered as the freehold owner on 15 October 2008.
3. We also enclose a print out from the Companies House register. As shown, on 16 September 2010 Companies House registered a change of name for Albeon UK Limited to C.GEN Killingholme Limited. The company retained its company registration number (06422434) and registered address.
4. Able began its consultation exercise about the PEIR in January 2011. The information about C.GEN's interests in land and identity was available on the relevant public registers.

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5. In any event, your client was fully aware of C.GEN's existence and its proposals before publication of its Preliminary Environmental Report.

Duty to consult under s 42 PA 2008

6. We agree that C.GEN does not fall within Categories 1 or 2 of s44 PA 2008. However, we consider that C.GEN falls within Category 3 of s44 PA 2008 because it might be entitled to make a relevant claim as a result of the proposed order having been implemented.
7. The principal reason for this is because, so far as we understand, Able proposes to acquire Network Rail's railway that runs adjacent to the northern boundary of C.GEN's land. C.GEN is currently considering a number of options for the transport of fuel to its proposed electricity generating station. That includes the possible use of the existing railway for that purpose. Were the railway to be acquired by Able, C.GEN would have a claim under section 10 of the Compulsory Purchase Act 1965.
8. S44(4) is clear in that it includes a proviso that a person is within Category 3 "if the applicant thinks [if the order is implemented fully] that the person would or might be entitled ... to make a relevant claim". It may be that Able did not consider that C.GEN would fall within Category 3 as a result of its proposals for the railway. However, C.GEN maintains that Able was, at the time it published its PEIR, aware of C.GEN's proposals, could have made (to the extent it needed to) inquiries and that it should, properly, have included C.GEN within the scope of Category 3.
9. Certainly, Able was aware of C.GEN and its proposals generally, even if those proposals were at an early stage - you refer specifically to being aware of these in July 2010. It is not clear what additional diligent inquiries your client would have to have made. In any case, the information you would have required about C.GEN's interests in land was available at the Land Registry and Companies House.
10. It is assumed that Able would have endeavoured to be certain whether its adjacent neighbour did indeed fall within any of the categories of person that it is expressly required to consult under s42 PA 2008.

Duty to consult the local community under s47 PA 2008 and guidance

11. Even if Able did not consider that C.GEN was within Category 3 of s44 PA 2008, Able should nevertheless have consulted with C.GEN having regard to the wider duty to consult those within the vicinity of the land under s47 PA 2008.
12. For the purposes of s 47 PA 2008 and best-practice in consultation generally, we refer to CLG's guidance *Planning Act 2008 Guidance on pre-application consultation* (the "Guidance"). Paragraph 53 of the Guidance explains the need for a promoter to strike a balance between consulting "those who are significantly affected by proposals (i.e. those identified in section 42 of the Act") and consulting a wider group who will not be directly affected by

proposals but who will have a reasonable fear that they might be, *or will have strong feelings about a project* [emphasis added]". The Guidance goes on to state that this second category of people may include "... people who are likely to be affected by wider impacts of the development ...".

13. In addition, the Guidance deals specifically with statutory and other non-statutory bodies with technical information. It states, at paragraph 66, "for each sector there are a range of bodies in addition to those specified as statutory consultees that may also possess important information, and who may therefore be able to make an important contribution. Promoters are therefore encouraged to consult widely on proposals".
14. Paragraph 68 emphasises the need to engage early with bodies with technical information to help ensure that complex issues can be identified and addressed and also that any mitigation measures are built in to proposals at an early stage.
15. The Guidance emphasises the need for wide consultation. C.GEN does not consider that Able has approached its consultation in such a manner. To the extent that C.GEN does not fall within s42 PA 2008, it is clear that Able should have nonetheless consulted it under s47 PA 2008 and in accordance with the Guidance.
16. On this basis, it is difficult to see how your client can assert that C.GEN was not entitled to be consulted. That is entirely the opposite approach to that required by the PA 2008 and the Guidance. We are not aware of any other project where adjacent neighbours would not be consulted, particularly where the requirements and encouragement for comprehensive consultation are so explicit.

Ongoing consultation

17. We note your comments about the demarcation between Humber Sea Terminal Limited and C.GEN. We refer to our comments above about C.GEN's interests in land and information at Companies House. The two companies are clearly separate. It is a matter for Able to ensure that it consults with all relevant bodies; it is up to your client to confirm (and report in its consultation report) that any discussions satisfy the requirements to consult with identified interests.
18. We should be grateful if Able would add C.GEN to its list of consultees but refer you again to our comments above about s42 PA 2008. We note, however, that we raised the lack of consultation a considerable time ago. C.GEN is disappointed that Able has not proposed to engage directly, earlier. We should be grateful if you would confirm what consultation C.GEN can now anticipate with Able.

Comments on Able's PEIR

19. Notwithstanding the lack of consultation to date, C.GEN has reviewed the PEIR and has a number of observations which are based on the documents

that can be consulted online. These are made to assist you but are without prejudice to additional comments that may arise upon consultation and the provision of additional or updated information, either before or as part of any application to the IPC.

20. C.GEN also understands that as a result of the PEIR consultation Able carried out, details of the project have changed. The comments below may not reflect those changes. It would, therefore, be helpful if you would confirm what details of the PEIR and other information available online have changed. Please confirm that Able will provide this.
21. Regarding drainage and flood risk, C.GEN notes that the project lies within the drainage system of Killingholme Marshes. Considering the current difficulties encountered with drainage from C.GEN's land it is vital for C.GEN that it is properly consulted on drainage matters given the impact that Able's proposals may have on C.GEN's land.
22. C.GEN is currently considering different solutions for fuel stock imports to its Site,. In this respect, the impact of Able's proposals on navigation in the Humber are of major importance to C.GEN. In the PEIR - page 14-2 - an assessment methodology is explained. This methodology is based on the current number of vessels on the Humber with the additional vessel traffic result from Able's project then superimposed. C.GEN does not consider that Able's assessment of the impacts of its project properly take account of the range of likely future scenarios.
23. One of the options that C.GEN is considering for the import of fuel stock involves the use of barges or ships for deliveries through Humber Sea Terminal. C.GEN is, therefore, concerned about the impacts of Able's proposals on vessel movements. This scenario is not considered in Able's methodology.
24. Further, page 14-14 item 14.6.1 states: "dredging will be required to allow vessels of up to 10 m draught to reach the proposed quay". However further in the report (14.6.10) it is mentioned that Able has made simulations with fully loaded Panamax ships which have a draft of up to 14.5 m. It is important to understand fully what Able's plans are for vessel movements and dredging to enable C.GEN to assess the consequences for its development, as well as to be able to understand what Able's actual proposals are for the purposes of C.GEN assessing its own proposals.
25. Furthermore, dredging may have impacts on the cooling water arrangements that C.GEN is currently considering.
26. C.GEN is also considering the possibility of using the existing railway for fuel import. Page 15-18 of the PEIR mentions "In other words, Network rail has agreed that no significant rail traffic impacts will arise from the proposed use, which they agree may be up to 500 trains per year, with a maximum of 2 per day." It is important for C.GEN to know that this represents a realistic use of the railway by Able and that there will be arrangements in place to limit Able's use of the railway such that additional rail traffic from Able's

developments at North Killingholme will not be possible. For your information, the import of fuels via the railway would require +/- 3 trains per day.

27. In the committed development flows on page 15-25 of the PEIR, C.GEN's flows are not included. Page 15-29 does not include C.GEN's project. We would assume that Able would want to take account of C.GEN's proposals. Whilst C.GEN would accept that full consideration of its proposals may not have been possible at the time of the PEIR, clearly the situation has now changed - and continues to change.
28. We also have concerns about the approach to assessing traffic and transportation impacts. The traffic generated by our project is not considered, however the roads mentioned at page 15-6 are the roads that will also be used by C.GEN. The fact that the Site is an industrial site and the fact that C.GEN is planning a significant development on that Site should have induced Able to consider C.GEN's possible traffic flows or, in any event, consult with C.GEN in order to find out what traffic impacts our project might have on the local road network.

We look forward to a your response.

Yours faithfully

DLA PIPER UK LLP

cc: W Heyselberghs - C.GEN
I D'Hollander - C.GEN

The Planning Act 2008

Section 55 Acceptance of Applications

(Appendix 2 of [advice note six: Preparation and submission of application documents](#))

- (1) The following provisions of this section apply where the Commission receives an application that purports to be an application for an order granting development consent.
- (2) The Commission must, by the end of the period of 28 days beginning with the day after the day on which it receives the application, decide whether or not to accept the application.
- (3) The Commission may accept the application only if the Commission concludes -
 - (a) that it is an application for an order granting development consent,
 - (b) that it complies with section 37(3) (form and contents of application) and with any standards set under section 37(5),
 - (c) that development consent is required for any of the development to which the application relates,
 - (d) that the application gives reasons for each respect in which any applicable guidance given under section 37(4) has not been followed in relation to it, and
 - (e) that the applicant has, in relation to a proposed application that has become the application, complied with Chapter 2 of Part 5 (pre-application procedure).
- (4) The Commission, when deciding whether it may reach the conclusion in subsection (3)(e), must have regard to -
 - (a) the consultation report received under section 37(3)(c),
 - (b) any adequacy of consultation representation received by it from a local authority consultee, and
 - (c) the extent to which the applicant has had regard to any guidance issued under section 50.
- (5) In subsection (4) -

“local authority consultee” means -

 - (a) a local authority consulted under section 42(b) about a proposed application that has become the application, or
 - (b) the Greater London Authority if consulted under section 42(c) about that proposed application;

“adequacy of consultation representation” means a representation about whether the applicant complied, in relation to that proposed application, with the applicant’s duties under sections 42, 47 and 48.
- (6) If the Commission accepts the application, it must notify the applicant of the acceptance.
- (7) If the Commission is of the view that it cannot accept the application, it must -
 - (a) notify that view to the applicant, and
 - (b) notify the applicant of its reasons for that view.
- (8) If in response the applicant modifies (or further modifies) the application, subsections (2) to (7) then apply in relation to the application as modified.

DISCLAIMER - This is for information only and is not a formal application document. It is a non-statutory checklist for the IPC Secretariat and Commissioner to complete. Completion or self assessment by the applicant does not hold weight at the acceptance stage.

NB: See CLG Application Form Guidance for guidance on how the application form should be completed and what should be included with it.

Section 55 Acceptance of Applications

Able Marine Energy Park (TR030001) - Section 55 Application Checklist

Section 55(2) Acceptance of Applications			
Within 28 days (starting day after receipt) the Commission must decide whether or not to accept the application.	Date received	28 day due date	Date of decision
	19 December 2011	16 January 2012	12 January 2012
This document refers to the final portion of each documents reference number. For example the Application Form is given reference TR030001/APP/0b and therefore is referenced in this checklist as Doc 0b .			
Section 55(3) – the Commission may <u>only</u> accept an application if it concludes that:-		Secretariat Comments	Commissioner Note
1. it is an application for an order granting development consent (s55(3)(a))			
1.1 does the application state on the face of it that it is an application for a development consent order (DCO) under the 2008 Act, or equivalent words?	Yes – The Application Form (Doc 0b Section 4) states that: “The application is for a quay that will be capable of handling more than 5m tonnes of cargo per annum, and is therefore a nationally significant infrastructure project by virtue of s.14 and s.24 of the Planning Act 2008. Evidence to support this is provided by the project engineers, Hochtief, as document TR030001/APP/23c”		Agreed.
Commissioner summary - s55(3)(a)		The application as submitted states that it is an application for an NSIP as defined under PA2008 and produces evidence to support this.	
2. it complies with section 37(3) (form and contents of application) and with any standards set under section 37(5) (s55(3)(b))¹			
2.1 does the application specify the development to which it relates (i.e. which category or categories in sections 14-30 does the application scheme fall)?	Yes – The Application Form (Doc 0b Section 4) refers to s.14 and s.24 of the Planning Act 2008 (PA2008).		Agreed.
2.2 is it made in the prescribed form as set out in Schedule 2 of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (“the APFP Regulations”)? and includes: a brief statement which explains why it falls within the remit of the Commission? a brief statement that clearly identifies the location of the application site, or the route if it is a linear scheme?	Yes - The Application Form (Doc 0b) is completed, signed and dated. The Application form (Doc 0b Section 4) gives details of why it falls within the remit of the Commission (see box 1.1 above for details of this text). The Application form (Doc 0b Section 6) clearly identifies the location of the application site.		Agreed.

¹ Although the IPC has now decided not to set such standards.

2.3 is it accompanied by the consultation report?	Yes – The application is accompanied by a Consultation Report (Doc8a) and relevant appendices.	Agreed.
2.4 is it accompanied by the documents and information set out in APFP Regulation 5(2) and listed below?:	Yes – Details on the documents and information set out in APFP Regulation 5(2) and listed below forms the application submitted. Details on the consistency of those documents is set out in this checklist.	Agreed.
(a) where applicable, the environmental statement required under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (“the EIA Regulations”) and any scoping or screening opinions or directions;	<p>Yes – an Environmental Statement (Doc 14a) (ES) was submitted with the application and includes those mandatory elements identified in Schedule 4 of the ‘EIA Regulations’. The ES is accompanied by a Non-Technical Summary (Doc 14b). The Scoping Opinion is not included within the ES however it is provided as a separate report (Doc 14b).</p> <p>At this stage the Commission has not considered the quality of the assessment, the type and relevance of baseline data, the methodology, the assessment or the proposed mitigation.</p>	<p>Agreed.</p> <p>We have noted representations made by Messrs DLA Piper representing C.GEN and Humber Sea Terminal/C.Ro on 10 January 2012 that the requirements of paragraph 4 of Schedule 4 of the EIA Regulations may not be met.</p> <p>We consider that it is for the applicant to decide at which point to conclude the environmental impact assessment and to compile the environmental information in the ES for submission with the application. On the basis of the ES as submitted we have no reason to conclude that the ES does not provide the information required in accordance with Schedule 4 EIA Regulations in order to be an ES. We do not consider therefore that there has been any procedural breach in relation to the requirement under APFP (5) (2) (a).</p> <p>We note also that the ES contains information about potential cumulative impacts arising in relation to the proposed application by C Gen for an IGCC power station adjoining the application site.</p>
(b) the draft proposed order;	Yes – Draft Development Consent Order (Doc 9)	Agreed.
(c) an explanatory memorandum explaining the purpose and effect of provisions in the draft order, including in particular any divergences from the model provisions (SI 2009 2265);	Yes – Draft Explanatory Memorandum (Doc 10)	Agreed.

(d) where applicable, the book of reference (where the application involves any compulsory acquisition);	Yes – Book of Reference (Doc 13c)	Agreed.
(e) a copy of any flood risk assessment;	Yes – a Flood Risk Assessment (Doc 18) was submitted with the application. This document confirms that two assessments were conducted, one for the south bank and one for the north bank. These are noted to be included within the Environmental Statement (Doc 14a) at Annex 13.1 and Annex 36.1 respectively.	Agreed.
(f) a statement whether the proposal engages one or more of the matters set out in section 79(1) of the Environmental Protection Act 1990 (statutory nuisances) and if so how the applicant proposes to mitigate or limit them;	Yes – a Statutory Nuisance Assessment (Doc 19) was submitted with the application. This states that the “statement addresses Section 79(1) Environmental Protection Act 1990 (Statutory nuisance and inspections therefore). Whilst it is not expected that the construction or operation of AMEP would engage that section, the draft development consent order (DCO) that accompanies the application contains a provision at Article 51 that would provide a defence to proceedings for statutory nuisance should they be initiated against Able or its successors as undertakers under the terms of the DCO.”	Agreed.
(g) any report identifying any European site to which regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994 ² applies, or any Ramsar site, which may be affected by the proposed development, together with sufficient information that will enable the Commission to make an appropriate assessment of the implications for the site if required by regulation 48(1)	<p>Yes – a Habitat Regulations Assessment Report (Doc 15) was submitted with the application.</p> <p>The report identifies the following European sites: Humber SAC, Humber SPA and Humber Estuary Ramsar Site. The applicant has concluded that no alternative solutions exist and that adverse impacts remain.</p> <p>On the evidence available it would be unreasonable to conclude at this stage that an appropriate assessment could not be carried out on the basis of the information submitted. Therefore, the report is considered adequate for acceptance purposes.</p>	<p>RSPB has made representations (5 December 2011) warning that in their view on the basis of the information presented to them during pre application consultation the application when submitted may potentially contain inadequate information to meet statutory requirements.</p> <p>We note that RSPB have not yet seen a copy of the report supplied with the application. We have also noted the position stated by Natural England (letter 5 January 2012) that as they have not seen the final documents submitted with the application they are unable to comment on the adequacy of information provided to support an appropriate assessment.</p> <p>We have considered these points. We have decided on balance that it would be unreasonable to conclude that the information submitted with the application is insufficient for a robust and efficient examination which would enable an appropriate assessment to</p>

² Now Regulation 61 of the [Conservation of Habitats and Species Regulations 2010 SI2010/490](#).

		be carried out. Thus agreed that the requirements of this Regulation have been met.
(h) a statement of reasons and a funding statement (where the application involves any compulsory acquisition);	Yes – a Statement of Reasons (Doc 13a) and a Funding Statement (Doc 13b) accompany the application.	Agreed.
(i) a land plan identifying:- (i) the land required for, or affected by, the proposed development; (ii) where applicable, any land over which it is proposed to exercise powers of compulsory acquisition or any rights to use land; (iii) any land in relation to which it is proposed to extinguish easements, servitudes and other private rights; and (iv) any special category land and replacement land	Yes - a land plan - Land Plans (Doc TR030001/APP/11 consisting of a key plan and 14 sheets) was submitted, identifying: (i) all of the land required for, or affected by, the proposed development; (ii) the land over which is proposed to exercise powers of compulsory acquisition or any rights to use land; (iii) the land (identified in blue hatching) over which easements, servitudes and other private rights are proposed to be extinguished; (iv) N/A as no special category land and replacement land included in the plans.	Noted.
(j) a works plan showing, in relation to existing features:- (i) the proposed location or (for a linear scheme) the proposed route and alignment of the development and works; and (ii) the limits within which the development and works may be carried out and any limits of deviation provided for in the draft order;	Yes – a works plan - Works Plans (Doc TR030001/APP/12 consisting of a key plan and 14 sheets) was submitted, showing: (i) the proposed location of the works (the Draft Development Consent Order Doc 9 identifies 1 NSIP work and 1 Associated Development work), identified by a blue line; (ii) the limits within which the development and works may be carried out., including the limits of deviation, identified by a pink line.	Noted.
(k) where applicable, a plan identifying any new or altered means of access, stopping up of streets or roads or any diversions, extinguishments or creation of rights of way or public rights of navigation;	Yes – a Rights of Way Plans (Doc TR030001/APP/21 consisting of a key plan and 11 sheets) was submitted identifying existing footpaths, including those to be extinguished, new rights of way to be provided and highway access points.	Noted.
(l) where applicable, a plan with accompanying information identifying:- (i) any statutory/non-statutory sites/ features of nature conservation e.g. sites of geological/ landscape importance; (ii) habitats of protected species, important habitats or other diversity features; and (iii) water bodies in a river basin management plan, together with an assessment of any effects on such sites, features, habitats or bodies likely to be caused by the proposed development;	Yes – an Ecological Designation Plan (Doc TR030001/APP/16 consisting of a key plan and 14 sheets) was submitted including: (i) <i>Statutory /non-statutory sites of nature conservation:</i> - Special Areas of Conservation; - Special Protection Areas; - Ramsar sites; - Sites of Special Scientific Interest; - Sites of Importance for Nature Conservation; - Local Wildlife Sites; - Tree Preservation Orders; - Historic Hedgerows. Figure 11.1 of Chapter 11 (Terrestrial Ecology and Birds) of the Environmental Statement (Doc 14a) shows the locations of the	We have noted RSPB's representations (letter 5 December 2011) about the minimum level of information regarding protected species habitats, important habitats or other diversity features which should be provided to ensure compliance with this Regulation. APFP Regulation 5 (2) (l) does not prescribe a minimum level of detail. We note that a plan and assessment of effects has been provided as required and consider that there is no

	<p>statutory designated sites within a 10km radius of the development. Note – this Figure is also labelled as Figure 5.2 ‘Extent and Location of European Designated Sites in relation to the Development Site Boundary’. Figure 11.2 of Chapter 11 (Terrestrial Ecology and Birds) shows the locations of the non-statutory designated sites within a 2km radius of the development. Non-statutory designated sites are listed in Table 11.4.</p> <p>Figure 20.1 of Chapter 20 (Landscape and Visual) of the Environmental Statement (Doc 14a) shows National Landscape Character Areas and Landscape Features within a 30km radius of the development site including:</p> <ul style="list-style-type: none"> - Spurn Heritage Coast; - Lincolnshire Wolds AONB, and; - Registered Parks and Gardens. <p><i>ii) habitats of protected species and important habitats and other diversity features:</i></p> <p>The Ecological Designation Plan (Doc TR030001/APP/16) shows the following features where appropriate:</p> <ul style="list-style-type: none"> - Great Crested Newt Habitat; - Watervole Habitat. <p>A Protected Species Survey Report is contained within Annex 35.3 of the Environmental Statement (Doc 14a).</p> <p><i>(iii) Water bodies in a river basin management plan (RBMP):</i></p> <p>The Ecological Designation Plan (Doc TR030001/APP/16) shows the following features where appropriate:</p> <ul style="list-style-type: none"> - Water bodies in the RBMP; - Coastal and Grazing Floodplain Marsh; - Mudflats. <p>Information is contained within Chapter 9 (Water and Sediment Quality) and Annex 9.4 of the Environmental Statement (Doc 14a) on the Humber River Basin Management Plan. Figure 9.1 shows surface water bodies assessed under the Water Framework Directive.</p>	<p>procedural breach in relation to this Regulation.</p> <p>We note also that Natural England has now confirmed its view (letter 5 January 2012) that the compensation land proposed is capable of delivering the requisite compensation.</p> <p>Agreed that the requirements of this Regulation have been met.</p>
<p>(m) where applicable, a plan with accompanying information identifying any statutory/non-statutory sites or features of the historic environment, (e.g. scheduled monuments, World Heritage sites, listed buildings, archaeological sites and registered battlefields) together with an assessment of any effects on such sites, features or structures likely to be caused by the proposed development;</p>	<p>Yes – a Heritage Designation Plan (Doc TR030001/APP/17 consisting of a key plan and 27 sheets) was submitted identifying areas of land within 10km of the proposed AMEP DCO boundary.</p> <p>The Heritage Designation Plans Gazetteer lists the following features:</p> <ul style="list-style-type: none"> - Listed Buildings (Grade I, II* and II); - Scheduled Monuments; 	<p>Noted.</p>

	<p>- Conservation Areas (Sunk Island, Thornton Curtis and Barrow upon Humber).</p> <p>Chapter 18 (Historic Environment) in the Environmental Statement (Doc 14a) includes:</p> <ul style="list-style-type: none"> - The desk-based assessment for marine heritage assets at Annex 18.1. Figure 18.1 shows the location of recorded heritage assets within the study area including the marine environment; - The desk-based assessment for the terrestrial heritage assets of the proposed development is included in Annex 18.2. Figure 18.2 shows the location of Designated Heritage Assets; - The setting of heritage assets are shown on Figure 18.2. Table 18.1 identifies a Registered Park and Garden within 10km (Brocklesby Park shown on Figure 18.2). Annex 18.4 is the Assessment of Setting Effects on the Significance of Heritage Assets. <p>All heritage assets within and adjacent to the AMEP site are summarised in Table 18.4</p>	
(n) where applicable, a plan with any accompanying information identifying any Crown land;	Yes – a Crown Land Plan (Doc TR030001/APP/20 consisting of a key plan and 10 sheets) was submitted.	Noted.
(o) any other plans, drawings and sections necessary to describe the development consent proposal showing details of design, external appearance, and the preferred layout of buildings/structures, drainage, surface water management, means of vehicular and pedestrian access, any car parking and landscaping;	<p>Yes – additional plans, drawings and sections were submitted, including:</p> <ul style="list-style-type: none"> - Planning Application Drawings (Doc TR030001/APP/23a); - Design Drawings (Doc TR030001/APP/23b). 	Noted.
<p>(p) any of the documents prescribed by Regulation 6 of the APFP Regulations.</p> <p>NB:- These are documents which are relevant to specific types of project (generating stations, highway related development, railways, harbour facilities, pipelines, hazardous waste facilities, dam or reservoirs). Confirm in each case the type of project and the relevant documents which must be included with the application in each case.</p>	<p>Yes – Regulation 6(3) of the APFP Regulations applies in this instance.</p> <p>The Application Form (Doc 0b) confirms that a statement under Reg 6(3)(a) is “not applicable”. A statement complying with Reg 6(3)(b) is provided setting out why the making of the order is desirable in the interests of facilitating the efficient and economic transport of goods or passengers by sea or in the interest of the recreational use of sea-going ships is submitted with the application; this is the Regulation 6 Statement (Doc 22)</p>	Agreed.
(q) any other documents considered necessary to support the application; and	No – Box 23 of the Application Form (Doc 0b) confirms that no further information has been provided in support of the application beyond that explicitly required.	Noted.
(r) if requested by the Commission, three paper copies of the application form and other supporting documents and plans.	Yes – three copies of the application and supporting documents and plans were supplied with the submission on 19/12/11	Noted.

<p>2.5 Are the plans, drawings or sections submitted AO size or smaller, drawn to an identified scale (not smaller than 1:2500) and, in the case of plans, show the direction of north? APFP Regulation 5(3)</p> <p>NB:- It is not intended that information provided in other documents, such as any Environmental Statement submitted, should be duplicated. It is possible therefore to cross refer to the location of relevant information – see CLG Guidance on application forms paragraphs 33 – 38.</p>	Yes	Noted.
<p>2.6 Where a plan comprises three or more separate sheets has a key plan been provided showing the relationship between the different sheets? APFP Regulation 5 (4)</p>	<p>Yes – key plans have been provided for the following plans:</p> <ul style="list-style-type: none">- Land Plans (Doc 11);- Works Plans (Doc 12);- Ecological Designation Plans (Doc 16);- Heritage Designation Plans (Doc17);- Crown Land Plans (Doc 20);- Rights of Way Plans (Doc 21).	Noted.
Commissioner summary - s55(3)(b)	<p>Some minor inconsistencies have been noted in plans submitted, but none which indicate non-compliance or would prejudice a robust and efficient examination of the application.</p> <p>We have considered the specific concerns noted, and concluded that the application complies with the requirements of s.37(3).</p>	
3. s55(3)(c) That development consent is required for any of the development to which the application relates		
<p>NB:- Development consent is required for development to the extent that the development is or forms part of a nationally significant infrastructure project (NSIP) (s31). NSIP is defined generally in s14 with the detailed thresholds for each of the specified categories being set out in ss15-30.</p>		
<p>3.1 Is the development an NSIP? Or does it form part of an NSIP?</p>	<p>At acceptance stage it is only necessary to consider whether or not any part of the development requires development consent.</p> <p>The works described in Schedule 1 to the Draft Development Consent Order (Doc 9) comprise the construction of “a quay of solid construction”. Section 4 of the Application Form (Doc 0b) states that it “will be capable of handling more than 5m tonnes of cargo per annum”. Nationally Significant Infrastructure Project Justification (Doc 23c) provides justification that the proposed development is capable of handling the relevant quantity of material outlined in s.24 of PA2008.</p> <p>The proposed development therefore appears on the basis of the information submitted to meet the definition of an NSIP contained in s.14 and s.24 of the PA2008.</p> <p>The construction of a quay/harbour facility is development by the</p>	<p>Agreed.</p> <p>We have noted representations made by Messrs Osborne Clarke on behalf of Associated British Ports and DLA Piper on behalf of C.GEN to the effect that the proposed development does not constitute an NSIP.</p> <p>We note that the applicant has submitted evidence to support the applicant’s view that the proposed development is capable of meeting the test in s.24(3)(c).</p> <p>We have no reason to disagree with this evidence and therefore conclude</p>

	definition contained in s.32 of the PA2008. The proposed development therefore requires development consent (s.31 of the PA2008).	that the proposed development is an NSIP requiring examination under PA2008.
Commissioner summary - s55(3)(c)	We have concluded that the proposed development is an NSIP which requires development consent and examination under PA2008 and that the requirement under s.55(3)(c) is met.	
4. s55(3)(d) That the application gives reasons for each respect in which any IPC guidance (under s37(4)) has not been followed		
NB:- The relevant guidance under s37(4) is paragraphs 25-27 which deal with the applicant’s Consultation Report in IPC Statutory Guidance Note 1		
4.1 Are the responses to the applicant’s consultation under s.42, s.47 and s.48 listed and put into categories according to status eg statutory consultees?	Yes – The Consultation Report (Doc 8a) outlines the responses to consultation in a number of appendices which are presented as various categories. Part 1 lists informal consultation; part 2 lists responses under s.42; part 3 lists responses under s47; part 4 lists responses from bodies other than statutory consultees or responses from community events. As the three strands of consultation were conducted in parallel, it is not always possible to establish whether a submission is made in response to s.47 or s.48 consultation. Para 6.2 of Doc 8a comments on this.	Agreed.
4.2 Are the responses within those categories arranged to show whether they have led to changes or not?	Yes – As referenced above, appendices/parts 2, 3 and 4 provide details of s.42, s.47 and s.48 consultation. Each of these provides a summary of the comments made and where this has led to changes or reasons if no change has been made. Part 2c (s.42 consultation responses) states that “in Annex 2.4 of the ES there is a table giving full details of how each response was addressed”. However, Annex 2.4 does not appear within the submitted documents. Despite this, it is considered that the detail within the parts referenced above is sufficient to show where consultation responses have led to changes to the proposals.	Agreed.
4.3 Have reasons been given where no changes have been made?	Yes - The tables referenced provide appropriate details where no changes have been made.	Agreed.
4.4 Has the applicant identified any responses received after its deadlines?	Para 2.8 of the Consultation Report (Doc 8a) states that “responses received after the deadline provided were taken into consideration”, though no further detail is given. Late responses are not specifically identified in the tables in the appendices. However, para 4.5 refers In addition, para 4.5 (Doc 8a) notes that “following the commencement of the consultation some additional section 42 landowner consultees were identified...[and] the end date of their	Agreed.

	consultation was adjusted to ensure that they had at least 28 days to respond.” Reference is also made to a late response from Hull City Council which is identified as such in table 2c.	
Commissioner summary - s55(3)(d)	We have concluded that the application gives reasons for all substantive points in which IPC Guidance has not been followed, and note that the reference to Annex 2.4 is a typographical error and should read Annex 2.2. We have concluded that the application thus complies with s.55(3)(d).	
5. s55(3)(e) That the applicant in relation to the application made has complied with Chapter 2 of Part 5 (pre-application procedure)		
5.1 Did the applicant before carrying out the s.42 consultation either (a) request the Commission to adopt a screening opinion in respect of the development to which the application relates, or (b) notify the Commission in writing that it proposed to provide an environmental statement in respect of that development? EIA Regulation 6	Yes – letter dated 13 th September 2010 from Able UK to the IPC gave notice under Regulation 6(1)(b) of the Infrastructure Planning (Environment Impact Assessment) Regulations 2009 of the intention to provide an environmental statement in respect of the proposed Able Marine Energy Park. This was before the commencement of s.42 consultation.	Noted.
NB: - The Commission must have regard to the Consultation Report, and any adequacy of consultation representations received.		
5.2 Have any adequacy of consultation representations been received from “A” and “B” authorities?	Yes – Responses have been received from the following ‘B’ and ‘A’ authorities: ‘B’ – North Lincolnshire Council (03/01/12) & East Riding of Yorkshire Council (23/12/11) ‘A’ – North Yorkshire County Council, Hull City Council, City of York Council, Selby District Council, Bassetlaw District Council, West Lindsey District Council, Doncaster Metropolitan Borough Council, Scarborough Borough Council, Nottinghamshire County Council. Complaints were also received from third parties about the adequacy of consultation. These were received before the application was submitted (see paragraph 90 of DCLG pre application guidance)	Agreed. Third party representations have been considered by us as noted below. We note the representations received from Messrs DLA Piper acting for C.GEN and Humber Sea Terminal/C.Ro on 10 January 2012, thus after the application was submitted.
5.3 If so, do they confirm whether the applicant has complied with the duties under s42, s47 and s48?	Those authorities noted above confirm that the applicant has complied with the duties under s.42, s.47 and s.48.	Agreed.
s42: Duty to Consult		
5.4 Did the applicant consult the following about the proposed application –		
a) person prescribed (statutory consultees set out in Schedule 1 of the APFP Regulations)	Yes – the Consultation Report (Doc 8a) Part 2 provides details of those persons Able consulted in accordance with s.42. It is noted that correspondence received from DLA Piper on behalf of Humber Sea Terminal (HST) states that HST were not consulted	We have noted the correspondence between the applicant and Messrs DLA Piper representing HST as to the basis on which and extent to which HST has been consulted. We consider

	adequately as a statutory undertaker. The Consultation Report does not make clear whether the applicant considered if HST should be consulted as a relevant statutory undertaker because the application would be likely to affect their functions. It is noted however at para 7.12 that HST were nonetheless consulted (albeit “as a matter of courtesy”) although the tables within Appendix 2 of that report do not explicitly indicate whether or not HST were consulted as a statutory consultee. It is noted that a response was made by HST to the consultation as set out in Annex 2.2.	that it is for the applicant to decide, for example, whether an application is likely to affect the functions of a statutory undertaker and therefore whether a person is a person prescribed in Schedule 1. There is nothing in any event to demonstrate that the applicant has failed in substance to consult HST although has not indicated in what capacity.
<p>b) each local authority within s43. NB:- Definition of “local authority” in s43(3). NB:- Check those listed in consultation report are correct in relation to land shown on the land plans</p> <p>c) the “B” authority where the application land is in the authority’s area.</p> <p>d) the “A” authority where any part of the boundary of A’s area is also a part of the boundary of B’s area</p>	<p>b) Yes – Consultation Report (Doc 8a) Part 2b (table 2b2) confirms those local authorities consulted.</p> <p>c) The ‘B’ authorities are noted as North Lincolnshire Council and East Riding of Yorkshire Council – both were consulted.</p> <p>d) The ‘A’ authorities are noted as:</p> <ul style="list-style-type: none"> - Bassetlaw District Council; - City of York Council; - Doncaster Metropolitan Borough Council; - Kingston Upon Hull City Council; - North East Lincolnshire Council; - North Yorkshire County Council; - Nottingham County Council; - Ryedale District Council; - Scarborough Borough Council; - Selby District Council; - West Lindsey District Council. <p>In addition, the applicant consulted more widely than those local authorities considered necessary by the IPC by consulting the Broads Authority.</p>	Agreed.
e) Greater London Authority (if in Greater London area)	N/A	Agreed.
f) each person in one or more of s44 categories		
<p>Category 1 – owner, lessee, tenant or occupier of land.</p> <p>Category 2 – person interested in the land or has power to sell</p>	Yes – The Consultation Report (Doc 8a) Para 4.6 confirms Part 2b (table 2b3) lists those persons identified as falling under each of the	<p>Agreed.</p> <p>We have noted the concerns raised by</p>

<p>and convey the land or to release the land.</p> <p>Category 3 – person entitled to make a relevant claim.</p> <p>NB:- There is no requirement to check the accuracy of the list(s) or whether the applicant has made diligent inquiry</p>	<p>categories in s.44 of the PA2008. Additional persons are listed in the Book of reference (Doc 13c). Whilst there are some discrepancies between the two lists, para. 4.6 of the Consultation Report confirms that this is because the applicant undertook “an exercise of refreshing the land ownership details in the Book of Reference immediately before making its application.”</p> <p>It is noted that C.GEN Killingholme Ltd (C.GEN) has not been consulted as a category 3 person. It is noted that HST has been consulted informally but not as a category 3 person.</p>	<p>Messrs DLA Piper on behalf of HST and C.GEN to the effect that the applicant has not recognised their clients’ interests in adjacent land on the basis of which they would or might be entitled to make a relevant claim. We have also exercised our right under Regulation 5(5) of the APFP regulations to see all the consultation responses.</p> <p>We note that the consultation report states that diligent enquiry was undertaken by the applicant to ascertain interests in land. We consider that the applicant’s non-statutory consultation with HST could reasonably be treated as consultation carried out substantially in accordance with s42 even though it was not made explicit.</p> <p>On the basis of the information provided in the consultation report it is not possible to exclude entirely the likelihood of a potential breach of s42. as C.GEN were not consulted as a s42(d) person. In the case of HST any breach would be a technical breach because it is reasonable to conclude that HST were nonetheless consulted although it was not explicit that this was in the capacity of a s42 (d) person. We note, however, that it is for the applicant to exercise judgment in assessing the interests of other parties, and the likely impacts on them and that for the purpose of judging whether the applicant has complied with s42 it would be reasonable to rely on the applicant’s view.</p> <p>On the basis of the Consultation Report, the consultation responses and correspondence arising from them and notwithstanding the applicant’s approach in not consulting HST and C.GEN under s.42 as category 3</p>
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		persons we have concluded therefore that the applicant has in substance complied with s.42.
s45: Timetable for s42 Consultation		
5.5 Did the applicant notify s42 consultees of the deadline for receipt of consultation responses?	Yes - The cover letter issued to s.42 consultees (reproduced in Consultation Report Doc 8a at Appendix 2 part 2a) specifies the deadline for responses (19/3/11) at the penultimate paragraph.	Agreed.
5.6 Was the deadline notified by the applicant 28 days or more starting with the day after receipt of the consultation documents?	<p>Yes - Paras 2.4 and 4.5 of the Consultation Report (Doc 8a) state that s.42 consultation ran from 31/01/11 to 20/03/1 (48 days).</p> <p>Appendix 2 part 2a of Doc 8a reproduces the letter issued to consultees. The penultimate paragraph specifies a deadline of Saturday 19 March 2011 for consultation responses. The sample covering letter provided appears to be dated 12 December in error. Irrespective of this, if a start date for s.42 consultation of 31/01/11 is used as the start point then the 28 day minimum would have been exceeded.</p> <p>Para. 2.5 of Doc 8a further confirms that s.44 landowners identified after the 31/01/11 start date were given individual deadlines to ensure that at least 28 days were given.</p>	Agreed.
s46: Duty to notify Commission of proposed application		
5.7 Did the applicant supply information to notify Commission of proposed application?	Yes – Letter from Richard Cram (Able UK) dated 31/01/11 received at the IPC offices on 01/02/11. Subsequent email from Angus Walker (BDB) confirming Able’s intention that this letter be treated as notice under s.46 received on 02/02/11	Noted.
5.8 Was the information supplied to the Commission at the same as it was sent to the s42 consultees?	Yes - Para 4.8 of Doc 8a confirms all the materials sent to s.42 consultees: a covering letter; a description of the project; a CD of the Preliminary Environmental Information Report; a copy of the statement of community consultation; a copy of the s.48 notice. All of these documents were included in Able’s submission to the IPC dated 31/01/11.	Agreed.
5.9 Was this done on or before commencing consultation under s42?	Yes - Letter dated 31/01/11, formal consultation began on this date.	Noted.
s47: Duty to consult local community		
5.10 Did the applicant prepare a statement of community consultation on how it intended to consult people living in the vicinity of the land (“the SOCC”)?	Yes – Section 5 of the Consultation Report (Doc 8a) confirms that a SOCC was prepared detailing how it was intended to consult people living in the vicinity of the land.	Agreed.

5.11 Were all “B” authorities consulted about the content of the SOCC?	Yes - Para 5.1 of Doc 8a confirms that “Able consulted the relevant local planning authorities North Lincolnshire Council and East Riding of Yorkshire Council”.	Agreed.
5.12 Was the deadline for receipt of responses 28 days beginning with the day after the day “B” authorities received the consultation documents?	Uncertain - It is unclear from Doc 8a how much time was given for responses to consultation on the SOCC. It is noted that both authorities consulted have provided a response. See below for further details of draft SOCC consultation responses.	Both ‘B’ authorities responded and no complaint has been made. There is no reason to assume that they were not given the prescribed period of time.
5.13 Has the applicant had regard to any responses received when preparing the SOCC? NB: - Check consultation report and adequacy of consultation representation.	Yes - Para 5.3 of Doc 8a confirms that responses received were taken into account during the preparation of the SOCC. Figure 3a1 reproduces the response of East Riding of Yorkshire Council (dated 22/12/10) and Figure 3a2 that of North Lincolnshire Council (dated 22/10/10). Figure 3a3 reproduces the SOCC. A review of the Council’s responses suggests that Able did accept and incorporate some of the points raised and did therefore have regard to the views expressed.	Agreed.
5.14 Has the SOCC been published in a newspaper circulating in the vicinity of the land?	Yes - Para. 5.5 of Doc 8a confirms that the SOCC was published in the Hull Daily Mail, the Grimsby Telegraph and Scunthorpe Telegraph on 21/01/11 and in the Holderness Gazette on 20/01/11 and 27/01/11. Newspaper Notices (Doc 8b) also reproduces the published SOCC and confirms publication dates.	Agreed.
5.15 Has the applicant carried out the consultation in accordance with the SOCC?	Yes – There is nothing to suggest that s.47 consultation was not carried out in accordance with the published SOCC. Part 3b of Doc 8a provides details of the responses to the various methods adopted for s.47 consultation. The details provided would appear to further indicate that consultation was conducted in accordance with the SOCC.	Agreed. Confirmed by both B authorities and responding A authorities. We have considered representations which have been made by Messrs DLA Piper acting for C.GEN about consultation on the preliminary environmental information. We have no reason to conclude that the applicant has not carried out consultation on the preliminary environmental information in accordance with the SOCC and consider that there has been no procedural breach in this regard.
<i>Does the SOCC set out whether the development is EIA development? EIA Regulation 10</i>	Yes - the second paragraph of the published SOCC (Doc 3a3) under the heading ‘Planning Process’.	Agreed.
<i>Does the SOCC set out how the applicant intends to publicise and consult on the preliminary environmental information?</i>	Yes - under the heading ‘Documents for Inspection’ in the published SOCC (Doc 3a3), Able specify that the Preliminary Environmental Information will be available for inspection with the other consultation	Agreed.

	documents.	
s48: duty to publicise the proposed application		
5.16 Did the applicant publish a notice: (APFP Regulation 4(2))		
(a) for at least two successive weeks in one or more local newspapers circulating in the vicinity in which the proposed development would be situated;	Yes – the document Newspaper Notices (Doc 8b) provides copies of the notices placed under section 47 and 48 of the PA2008. This confirms that s.48 notices were published on 27/1/11 and 3/2/11 in the following local newspapers: - the Hull Daily Mail; - the Grimsby Telegraph; - the Scunthorpe Telegraph; - the Holderness Gazette.	Agreed.
(b) once in a national newspaper;	Yes - Newspaper Notices (Doc 8b section g) confirms that a copy of the notice was published in The Times on 27/1/11.	Agreed.
(c) once in the London Gazette and, if land in Scotland is affected, the Edinburgh Gazette; and	Yes - Newspaper Notices (Doc 8b section f) confirms that a copy of the notice was published in the London Gazette on 27/1/11.	Agreed.
(d) where the proposed application relates to offshore development –		
(i) once in Lloyds List; and (ii) once in an appropriate fishing trade journal.	Yes - Newspaper Notices (Doc 8b sections h & m) confirms that a copy of the notice was published in the Lloyd's List and the Fishing Times on 27/1/11 and 28/1/11 respectively.	Noted that appropriate notices have been placed in these publications.
5.17 Did the notice include: (APFP Regulation 4(3))		
(a) the name and address of the applicant;	Yes – Consultation Report (Doc 8a Appendix 4) reproduces the notice: "Able UK Ltd, Able House, Billingham Reach Industrial Estate, Billingham, TS23 1PX"	Agreed.
(b) a statement that the applicant intends to make an application for development consent to the Commission;	Yes – Consultation Report (Doc 8a Appendix 4) reproduces the notice: "Able UK Ltd...intends to apply to the Infrastructure Planning Commission ("IPC") under section 37 of the Planning Act 2008 ("the Act") for the above mentioned DCO ("the proposed application").	Agreed.
(c) a statement as to whether the application is EIA development;	Yes – Consultation Report (Doc 8a Appendix 4) reproduces the notice: "The proposed project is "EIA development" for the purposes of the Infrastructure Planning (Environmental Impact Assessment)	Agreed.

	Regulations 2009".	
(d) a summary of the main proposals, specifying the location or route of the proposed development;	<p>Yes – Consultation Report (Doc 8a Appendix 4) reproduces the notice:</p> <p>"The centre of the Marine Energy Park site is at grid reference TA170183, and the centre of the compensatory habitat is at grid referenced TA220208.</p> <p>The proposed application would seek a DCO authorising, amongst other things:</p> <ul style="list-style-type: none"> - the construction and operation of a 1320m quay and associated dredging and land reclamation; - the provision of onshore facilities for the manufacture, assembly and storage of wind turbines and related items; - the diversion or stopping up of a footpath that runs along the south shore of the Humber; - any necessary upgrade works to surrounding roads (Rosper Road, Eastfield Road, the A160 and the A180; - the conversion of a railway into a private siding; - the diversion of a sludge main and a drainage ditch; - the re-siting of apparatus; - the interference with rights of navigation; - the creation of a harbour authority; - deemed consent under section 34 of the Coast Protection Act 1949; - a deemed licence under Part 2 of the Food and Environmental Protection Act 1985; - the modification of public and local legislation; - the creation of a compensatory environmental habitat on the north bank of the Humber; and - the compulsory acquisition of land and rights in land and powers of temporary occupation of land to allow Able to carry out and operate the above development. 	Agreed.
(e) a statement that the documents, plans and maps showing the nature and location of the proposed development are available for inspection free of charge at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice;	<p>Yes – Consultation Report (Doc 8a Appendix 4) reproduces the notice:</p> <p>"The documents, plans and maps showing the nature and location of the proposed development, including information so far compiled about environmental impacts ("preliminary environmental information"), are available for inspection..."</p>	Agreed.

(f) the latest date on which those documents, plans and maps will be available for inspection (being a date not earlier than the deadline in sub-paragraph (i));	Yes – Consultation Report (Doc 8a Appendix 4) reproduces the notice: "...from Monday 31 st January 2011 until Saturday 19 th March 2011"	Agreed.
(g) whether a charge will be made for copies of any of the documents, plans or maps and the amount of any charge;	Yes – Consultation Report (Doc 8a Appendix 4) reproduces the notice: "Copies of the documents, plans and maps can be provided on request...and may be subject to a reasonable charge up to a maximum of £950 for a printed copy and £15 for an electronic copy on CD".	Agreed.
(h) details of how to respond to the publicity; and	Yes – Consultation Report (Doc 8a Appendix 4) reproduces the notice: "Any representation on the proposals should be made in writing to the Marine Energy Park Consultation Team, Able House, Billingham Reach Industrial Estate, Billingham, TS23 1PX, or by email to info@amep.co.uk."	Agreed.
(i) a deadline for receipt of those responses by the applicant, being not less than 28 days following the date when the notice is last published.	Yes – Consultation Report (Doc 8a Appendix 4) reproduces the notice: "The deadline for receipt of responses by Able is Saturday 19 th March 2011."	Agreed.
5.18 Has a copy of the s48 notice been sent to the EIA consultation bodies and to any person notified to the applicant in accordance with EIA Regulation 9(1)(c)? (EIA Regulation 11)	Yes – the Consultation Report (Doc 8a Appendix 2) includes details of the s.42 consultation material issued to consultees; this contained a copy of the notes published under s.48. Part 2b contains tables indicating the recipients of this.	Agreed.
s49: Duty to take account of responses to consultation and publicity		
5.19 Has the applicant had regard to any relevant responses to the s42, s47 and s48 consultation? NB:- Check the Consultation Report for responses and whether they have led to changes to the application or not	Yes - All three strands of statutory consultation ran in parallel. The primary consultation documents were the Preliminary Environmental Information Report and a bespoke consultation document. Tables 2c, 3b1, 3b2, 3b3 and 4b of the Consultation Report (Doc 8a) provide summaries of all individual responses and the changes made or reasons for not accepting proposed changes. There are numerous examples of changes being made as a result of consultation responses. At the point of consultation the scheme was already relatively well defined following informal consultation. This is reflected in the types of responses which led to changes (e.g. siting of buildings to avoid interference with adjacent infrastructure, commitment to undertake various assessment, commitment to include public footpath through the compensation site). In addition to formal consultation, Doc 8a provides details of informal consultation, both prior to and following the close of the formal s.42/47/48 consultation.	Agreed. We have noted the representations made by Messrs Winckworth Sherwood on behalf of the Harbour Master Humber in correspondence up to 17 October 2011 that the Harbour Master Humber did not consider that there had been adequate consultation with him as to aspects of the development which might affect his duties and responsibilities. We have considered these concerns. On the basis of the Consultation Report, the consultation responses

	<p>Informal consultation led to the removal of the proposed biomass plant and helipad, a reduction of the proposed dredging depth and a reduction in the length of the quay from 1630 metres to 1320 metres. Para 3.10 states that these were made 'in light of the responses received'. Part 1C further confirms additional assessments were undertaken as a result of informal consultation. These are detailed in the Environmental Statement Annexes (Doc 2.2) where changes to the application are listed against responses and reasons are given where no changes were made.</p> <p>Able also engaged with consultees after the statutory consultation period on various unresolved issues (see chapter 7 of Doc 8a and meetings detailed in Appendix 5). Where a consultee's views were incompatible with the proposals details have been given for the reasons of how the matter has been determined.</p>	<p>and the correspondence arising we have concluded that there is nothing to indicate that the applicant has disregarded the duty under s49. We consider that the interests of the Harbour Master Humber or any other parties would not be prejudiced by the acceptance of the application for examination....</p> <p>We have noted the representations made by Messrs DLA Piper acting for C.GEN and Humber Sea Terminal/C.Ro on 10 January 2012 to the effect that there have been material and significant changes to the project since consultation was carried out on the PEIR. As noted above we do not think that this indicates any procedural breach. We note also that Messrs DLA Piper notified specific impacts to the applicant on 30 September and that Annex 2.2 shows that similar issues have been identified and responded to by the applicant .</p> <p>We consider that it would be unreasonable to conclude that the applicant has not met their duty to take account of responses.</p>
Guidance about pre-application procedure		
<p>5.20 To what extent has the applicant had regard to CLG Guidance, The Planning Act 2008: Guidance on pre-application consultation and IPC Guidance Note 1 on Pre-application Consultation?</p> <p>NB:- The Commission must have regard to the extent to which the applicant has had regard to guidance issued under s.50</p>	<p>The application documents do not explicitly state the extent to which guidance issued under s.50 of the Planning Act 2008 has been followed.</p> <p>It is considered that advice set out in CLG Guidance on pre-application consultation and IPC Guidance Note 1 on Pre-application Consultation has been followed.</p> <p>It is noted that prior to the submission of the application the IPC received correspondence from a number of parties. This correspondence raised concerns about the pre-application consultation carried out by the applicant. In some instances this correspondence ranged over a number of months. The IPC provided s.51 advice to these parties advising that consideration should be given as to whether it would be appropriate to make a “complaint to the relevant local authority...the IPC, or both” about the adequacy of the consultation, as per para 90 of CLG guidance.</p>	<p>We have considered the representations made by these four parties about compliance with guidance, alongside the reports received from both ‘B’ and a significant number of ‘A’ authorities.</p> <p>There has been significant informal consultation before and beyond the statutory period, and although we note the continuing concerns about the level of detail we have decided that it would be unreasonable to conclude that the information provided for the consultation was inadequate or that the applicant has failed to engage with</p>

	<p>The following parties made such complaints and the IPC confirmed in reply that the complaint, and previous correspondence received during the pre-application period, would be made available to the Commissioner at the point of submission. The key points made are noted here for completeness (all references are to CLG guidance).</p> <p><i>Winckworth Sherwood for the Harbour Master, Humber</i> - substantive comments made in correspondence dated 3/10/11. This made a complaint that the pre-application consultation had failed on the following points - no iterative process of consultation as set out in paragraphs 73 and 74, insufficient information was provided as per paragraph 81 and there was a lack of feedback to the comments of consultees by the promoter (paragraph 98). A further complaint was made that insufficient time was allowed for comments to be made on information although this is noted to have been outside of the formal s.42 period.</p> <p><i>DLA Piper for Humber Sea Terminal</i> - IPC cc'd into a letter to North Lincolnshire Council dated 30/11/11. This letter raised concerns about the extent and adequacy of consultation, specifically that inadequate information was provided for the purposes of meaningful consultation and inadequate time provided to respond.</p> <p><i>DLA Piper for C.GEN</i> - IPC cc'd into a letter to North Lincolnshire Council dated 30/11/11. This stated that the applicant had failed to consult their client. A letter dated 26/07/11 from DLA Piper to the IPC also stated that "Guidance cannot be deemed to have been satisfied by consulting HST alone." This stems from concerns that C.GEN has not been consulted independently of HST.</p> <p><i>Osborne Clarke for Associated British Ports</i> – comments made in a letter date 21/11/11. The complaints raised include concerns about the sufficiency, nature and manner of the pre-submission consultation and insufficient level of detail. It is stated that the consultation has failed to adhere to paragraph 49 of CLG Guidance which discusses the need for consultation to be positive and legitimate. In addition it is stated that paragraphs 74 and 75 have not been followed due to there being a single round of consultation rather than an iterative approach. Finally, it is suggested that paragraph 78 has not been followed due to a lack of consultation following elements of the project being removed during the pre-application process.</p>	<p>consultees. We note the views of the local authorities on the applicant's compliance.</p> <p>We conclude that the applicant has had substantial regard to CLG Guidance and IPC Guidance and advice even though not all parties involved are satisfied as to the outcome.</p>
<p>Commissioner summary - s55(3)(e)</p>	<p>We have noted the representations as to the adequacy of the consultation made by RSPB and by Messrs DLA Piper on behalf of C.GEN, DLA Piper on behalf of Humber Sea Terminal, Osborne Clarke on behalf of Associated British Ports and Winckworth Sherwood on behalf of the Harbour Master Humber.</p> <p>We have concluded that the applicant has complied substantially with the procedural steps in Chapter</p>	

		2 of Part 5. We have had regard to the representations from the local authorities confirming the adequacy of consultation, the representations from third parties to the extent that they complain about the adequacy of consultation and whether this might affect our conclusion, the Consultation Report, the consultation responses and subsequent correspondence and the applicant's compliance, on balance, with DCLG and IPC Guidance Note 1e and we consider that it is reasonable to conclude that the applicant has complied with Chapter 2 of Part 5.
The Infrastructure Planning (Fees) Regulations 2010 (SI106)		
Fees to accompany an application		
NB: - The Commission must charge the applicant a fee in respect of the decision by the Commission under section 55. If the applicant fails to pay the fee, the Commission need not consider the application until payment is received by the Commission. The fee payable is presently £4,500 and must be paid at the same time that the application is made.		
Was the fee paid at the same time that the application was made?	The application fee was paid in advance of the application being submitted. See below.	Noted.
Date the fee received and confirmed as bankable	The IPC Finance team confirmed on 25/11/11 that: on 24/11/11: "An amount of £4,500 paid by Able UK Ltd has reached our accounts."	Noted.

Commissioner

Robert Upton



Signed

Date: 12 January 2012

Commissioner

Peter Widd



Signed

Date: 12 January 2012

Case Leader

Mike Harris



Signed

Date: 12 January 2012

Section 55 Acceptance of Applications

Application Checklist

Appendices

Able Marine Energy Park

A Legal Advice

Withheld from publication as potentially falling within one or more of the following categories of information:-

- excepted internal communications and / or
- excepted because publication would adversely affect the course of justice and/or
- exempted information protected by legal professional privilege

B Habitats Regulation Assessment Checklist

Withheld from publication as potentially falling within one or more of the following categories of information:-

- excepted internal communications and / or
- excepted because publication would adversely affect the course of justice and/or
- excepted because its publication would adversely affect the protection of the environment to which the information relates

C.GEN Killingholme Limited

The Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

The Able Marine Energy Park Development Consent Order

Planning Inspectorate Reference: TR030001

C.GEN Killingholme Limited (Interested Party reference: [REDACTED])

Comments on Written Representations and responses to comments on Relevant Representations

PART 1 - INTRODUCTION

- 1 This document ("WR3") has been prepared on behalf of C.GEN Killingholme Limited ("C.GEN"). It relates to the application by Able Humber Ports Limited ("Able") to the Secretary of State for the Able Marine Energy Park ("AMEP") Development Consent Order ("DCO") and sets out C.GEN's comments on the written representations ("WR") and C.GEN's response to comments on relevant representations ("RR").
- 2 These comments are made further to C.GEN's first written representation submitted on 29 June 2012 ("WR1"), the written summary of C.GEN's representations at the Issue Specific Hearing submitted on 23 July 2012 ("WS1") and C.GEN's second written representation submitted on 27 July 2012 ("WR2"). C.GEN continues to consider the DCO application and so reserves the right to amend, or add to, the representations contained in WR3.

PART 2 - RESPONSES TO COMMENTS ON RELEVANT REPRESENTATIONS

3 Response to comments by Able on C.GEN's relevant representation

Paragraph 48.2

- 3.1 In response to paragraph 3 of C.GEN's RR (inadequacy of consultation), Able states it has not ignored consultation requirements of the Planning Act 2008 ("PA 2008"). However, C.GEN maintains that Able has not adequately consulted C.GEN about AMEP, particularly in relation to its proposals for the Killingholme Branch Line (the "Railway"). This is despite assurances from Able that it would do so. C.GEN refers to an adequacy of consultation representation that it submitted to North Lincolnshire Council on 30 November 2011, a copy of which is attached at Appendix 1. C.GEN also refers to the IPC's section 55 Application Checklist (attached at Appendix 2), which states at page 12 that it is "not possible to exclude entirely the likelihood of a potential breach of s42 as C.GEN were not consulted as a section 42(d) person".
- 3.2 As stated at paragraph 25.3 of C.GEN's WR1, if Able had carried out consultation properly, it would have been aware of the concerns of C.GEN (and others) in relation to the Railway, and importantly, it would also have been aware of C.GEN's proposals for the future use of the Railway. As a result of this failure, the application, the DCO, and also the Environmental Statement fail to take account of future requirements for train movements on the Railway that are likely to be generated by existing and future operators including C.GEN (and also Able at Able Logistics Park ("ALP")) or future growth in those movements, and the compatibility of

those movements with the operation of AMEP. Most importantly, Able has not considered how it might accommodate C.GEN's requirements for use of the Railway in the future. This is a serious deficiency of Able's application. C.GEN considers that if Able had carried out consultation properly this would have been addressed. Notwithstanding this failure, it needs to be addressed now.

Paragraph 48.3

- 3.3 In response to paragraph 4 of C.GEN's RR which states that Able has not established that it needs to acquire the Railway (as operational rail network as opposed to merely the land on which the Railway is located) Able refers to its responses to Network Rail's RR No. 35.
- 3.4 C.GEN submits that Able's response to Network Rail's RR does not - and indeed fails - to address the fundamental requirement for Able's proposal in regards to the Railway: need. Able has failed to properly explain why AMEP requires the compulsory acquisition of the Railway, or why AMEP cannot be constructed or operated unless the Railway is acquired. It has also failed to explain what use of the Railway is required in relation to AMEP. Able has provided very little detail regarding its proposals for the Railway and its response to Network Rail's concerns does not actually respond to C.GEN's RR nor provide any clarification. Able has thus failed to:
- 3.4.1 Establish that the Railway is required for AMEP, or to facilitate AMEP, or is incidental to AMEP, pursuant to section 122(2) PA 2008. It simply sets out, in inadequate detail, how it wishes to acquire the land on which the Railway is located, disregarding the need for use of the Railway by others; and
- 3.4.2 Make a compelling case that the compulsory acquisition of the Railway is in the public interest under section 122(3) PA 2008, having regard to the requirements of others to use the Railway and the disproportionate and unjustified interference with the rights of others that the acquisition would represent.
- 3.5 The Examining Authority is referred to paragraphs 25.1 to 25.27 of WR1 which discuss the absence of an adequate justification for the acquisition of the Railway at length. It must be emphasised that even if there were adequate justification for Able to acquire the Railway (which C.GEN submits there is not) any acquisition must be conditional on satisfactory requirements for the carrying out of works to the Railway, and to secure the future access and use requirements of others by appropriate arrangements. The Examining Authority, and the Secretary of State must have full understanding of these arrangements and be satisfied that

C.GEN is not prejudiced - and is adequately protected - before it can be satisfied that the provisions of Section 122 and the Department for Communities and Local Government's *Planning Act 2008: Guidance related to procedures for compulsory acquisition* are met.

- 3.6 In response to paragraph 5 of C.GEN's RR in relation to C.GEN's future requirements for access to and use of the Railway, Able's comment at paragraph 30.12 relates again to C.GEN's concerns regarding the adequacy of consultation discussed above. As stated above at paragraphs 3.1 and 3.2, if Able had consulted C.GEN it would have a much greater understanding of C.GEN's proposal to use the Railway in the future and could have incorporated this into its proposals, and assessment.
- 3.7 The removal of the Railway from Network Rail's control will have significant implications for C.GEN's future use of the Railway. C.GEN refers the Examining Authority to paragraph 25.28 to 25.45 of WR1 which discusses this issue in detail. In summary, in the absence of any detailed proposals (that can be relied upon and are appropriately secured) the proposed acquisition of the Railway will deprive C.GEN of the use of the Railway in future. If the Railway is not privatised - and therefore remained part of Network Rail's network - C.GEN would have no restrictions on the ability to make use of the Railway in the future, subject to the negotiation of connection agreements and securing train paths with Network Rail. The regulatory framework of the Railways Act 2005 would apply. C.GEN would have certainty about the process involved and the way that decisions about C.GEN's use of the Railway would be made, and that such decisions would be made in accordance with the regulatory framework.
- 3.8 Instead, as it stands, Able is proposing to remove the Railway from this regulated environment. This would mean that C.GEN was reliant on Able being prepared to give C.GEN access in the future. There would be no regulatory framework. C.GEN has not received any firm or sufficiently detailed proposals about how this access would be managed and has serious concerns in this regard. Likewise no information provided to C.GEN or the Examining Authority, including in Able's response to Network Rail, addresses how access to the Railway by other parties would be secured. If the Railway is to be privatised Able should afford the same rights of access to other parties as would be available as if the Railway remained within Network Rail's regulated framework, and on that same basis. The Examining Authority cannot be satisfied that this will occur, or that future rail requirements will be delivered.

- 3.9 Further, as stated above, the Environmental Statement does not address the use of the Railway by others. It is therefore not at all certain - and Able has not sought to address this at all in its Environmental Statement - that Able's proposals for the crossing of the Railway by vehicles carrying components for AMEP is compatible with the operation of a railway carrying through traffic. Indeed, given the lack of certainty about where it might install any level crossings, or how many (none are specified as Works in the DCO), and the number of train movements associated with AMEP and ALP, it is not certain that an operational Railway is compatible at all with the nature of the movements across the Railway that Able suggests it would need to make. As no firm proposals for crossings are explained, as would be necessary for proper assessment, it remains unacceptably unclear as to how the interaction between the Railway and AMEP will work, if at all. There is nothing in Able's application that can satisfy or address this deficiency or concern.
- 3.10 As a result, if Able were to be empowered to acquire the Railway (without proper assessment, and without appropriately secured arrangements to ensure its use by C.GEN) the delivery and operation of C.GEN's project as an Integrated Gasification Combined Cycle Turbine generating station (which required the delivery of solid fuel by rail) would be put at unacceptable risk. This is because it would result in complete uncertainty as to the feasibility of achieving deliveries of solid fuel by rail. It would also result in financial consequences for C.GEN where electricity generating commitments could not met because fuel deliveries could not be made by rail. Such an outcome would be unconscionable bearing in mind the established need (as set out in National Policy Statement EN-1) for facilities of this kind as part of the diversification of the UK's electricity generating capability. As Able's proposals stand (bearing in mind the absence of any proper assessment), C.GEN would suffer a disproportionate loss. That loss is not outweighed by any purported public benefits of AMEP such that Able should not be required to provide alternative rail access, or guarantee the ability of C.GEN to connect the Railway and operate trains on it. Given the lack of assessment, and of any proposals, the decision maker could not conclude that the balance of interest lies in Able's favour (see paragraph 30. Of CLG's *Guidance related to procedures for compulsory acquisition*). The need for port facilities to support the construction/operation of offshore wind electricity generating does not of itself outweigh the equally important need for new CCGT and IGCC electricity generating stations, and the infrastructure required to support them.
- 3.11 The Examining Authority is also referred to paragraph 13.1 of WR2, which deals with the question of the need for a railway link between AMEP and ALP. If AMEP does not need to

use, or have access to, ALP, and there is no intention to secure direct access to it from AMEP, then there can be no justification for the acquisition of the section of the Railway beyond the AMEP site. This section of the Railway is shown by the plan attached at Appendix 3 as the red line between points "A" and "B". The conditions of section 122 PA 2008 are not satisfied. The land is not needed for AMEP and should either be retained in Network Rail's control, or put under C.GEN and/or C.RO Ports Killingholme Limited's control.

- 3.12 Able's response also fails to address the points that Network Rail raises up as to why the Railway should be acquired - concerns which are shared by C.GEN (see paragraph 33 of WR1) - regarding the validity of Article 47(1) of the DCO, which purports to disapply the Network Change procedure. In all respects, its response also fails to address the representations that C.GEN has made. It appears to have simply ignored them.

Paragraph 48.5

- 3.13 Able's response to comments request that C.GEN identify the aspects of AMEP that were not adequately assessed so that Able can respond. As stated in C.GEN's WR1, WR2 and WS1, C.GEN has serious concerns about the adequacy of environmental assessment that has been carried out in relation to the Railway. The Environmental Statement, application and draft DCO contain no proposals in relation to the Railway. As a result there is an unacceptable level of uncertainty about the effects of AMEP on the Railway. This will prejudice the ability of C.GEN to obtain a connection to the Railway, and therefore the national railway network, and to be able to use the Railway in the future. If Able proposes to works to the Railway, which is unclear given the lack of any detail in the application and Environmental Statement, these works must be specified in the DCO, properly reflected in the plans listed in the DCO, and be subjected to full environmental assessment.
- 3.14 There is also an inadequacy of information regarding the impact that operations at AMEP will have on the Railway. Able has not specified in any detail where any crossings would be located and what form those crossings would take. C.GEN is concerned about the level of interruption to the movement of trains across the Railway while Able is moving marine energy components across the track to other parts of AMEP. Given the lack of information provided by Able in this regard, the Examining Authority cannot be certain that it would even be possible to operate trains on the Railway, let alone how Able could accommodate the operational requirements of other Railway users.

Paragraph 48.6

- 3.15 Able also comments on C.GEN's reliance on Able's hydrodynamic modelling. The point that C.GEN sought to make in its relevant representation related to the *adequacy* of the environmental assessment carried out by Able. As stated at paragraph 23.1 of WR1, there has been inadequate assessment of the navigational and hydrodynamic impacts of AMEP on C.RO Ports Killingholme ("CPK"). This is in part because of deficiencies in the hydrodynamic and accretion/scour modelling carried out by AMEP. C.GEN may transport fuel for, and waste from, its project via CPK and is concerned to ensure its future operations are not prejudiced by any adverse navigational or marine impacts AMEP may have on the facility. The environmental assessment carried out by Able was deficient in this regard.
- 3.16 As stated in WR1 at paragraph 23.2, the inadequacy of the environmental assessment carried out by Able in relation to effects on the hydrodynamic regime will also have implications for the environmental impact assessment process for C.GEN's project. C.GEN can only have limited confidence, if any, in its own assessment of the impacts of its cooling water intake pipes on the hydrodynamic regime because it will need to rely on Able's assessment of AMEP's impacts to produce an assessment of the in-combination effects with AMEP.

PART 3 - COMMENTS ON WRITTEN REPRESENTATIONS

4 Comments on C.RO Ports Killingholme Limited's written representation

- 4.1 C.GEN notes the objections of C.RO Ports Killingholme Limited to AMEP set out in its written representation and supports them.

5 Comments on Network Rail's written representation

- 5.1 C.GEN notes the objections of Network Rail to AMEP set out in its written representation and supports them.

6 Comments on the Harbour Master, Humber's written representation

- 6.1 C.GEN notes the objections of the Harbour Master, Humber to AMEP set out in its written representation and supports them.

- END OF REPRESENTATION -

APPENDIX 1

Letter to North Lincolnshire Council, 30 November 2011

APPENDIX 2

Section 55 Acceptance of Applications Checklist

APPENDIX 3

Plan showing section of the Railway beyond AMEP site