

Dear Sirs,

Interested Party Reference: [REDACTED]

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

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

Regards

Benjamin Dove-Seymour
Associate

DLA Piper UK LLP

T +44 (0) 20 7153 7912

F +44 (0) 20 7796 6666

M [REDACTED]

E [REDACTED]

www.dlapiper.com

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C.RO Ports Killingholme Limited

The Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

The Able Marine Energy Park Development Consent Order

Planning Inspectorate Reference: TR030001

C.RO Ports 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.RO Ports Killingholme Limited ("C.RO"), the statutory harbour authority for, and operator of, C.RO Ports Killingholme ("CPK"). 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.RO's comments on the Written Representations ("WRs") and C.RO's response to comments on relevant representations ("RRs").
- 2 These comments are made further to C.RO's first written representation submitted on 29 June 2012 ("WR1"), the written summary of C.RO's representations at the Issue Specific Hearing submitted on 23 July 2012 ("WS1") and C.RO's second written representation submitted on 27 July 2012 ("WR2"). C.RO 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 **General comments on additional reports and information provided by Able on 27 June**
- 3.1 C.RO understands that Able has ostensibly provided the additional reports (which are addressed below) in response to points made in RRs, including C.RO's. C.RO contends that Able has been aware of C.RO's concerns for a considerable period of time before C.RO submitted its RR on 30 March 2012. Furthermore, a significant period of time has passed between 30 March 2012 and 27 June 2012. Able's approach is not only disappointing. It is also contrary to the expected practice - and requirements - for applications under the Planning Act 2008 ("PA 2008").
- 3.2 Whilst not all of the matters covered in the additional information provided on 27 June concern C.RO, it is clear that they are wide-ranging and properly fall within the scope of an environmental impact assessment. As a result, it appears that Able has sought to make its application without carrying out a full environmental impact assessment, or dealing with the concerns raised by statutory undertakers - and carrying out relevant assessments - before submitting its application. C.RO does not agree that the additional information can be treated as information to satisfy points made in RRs. Able has been fully aware of the breadth and nature of C.RO's concerns for a long time. They are concerns that required proper assessment. It has simply delayed assessment. The result is that Able's assessment of AMEP was, at the time of application, deficient, and is now inconsistent and confusing. Nowhere is it explained how additional information affects the content of the Environmental Statement and

accompanying reports. For example, does Able's new assessment of the quay wall simply replace that part of its previous assessment? What are the impacts of that new assessment on other parts of the Environmental Statement? This is entirely unsatisfactory and C.RO is at risk of prejudice. This is further explained in the following paragraphs.

- 3.3 In summary, notwithstanding outstanding concerns, Able should have carried out the relevant assessments as part of its environmental impact assessment, and reported them in the Environmental Statement as part of its application.

4 **Response to comments by Able on C.RO's relevant representation**

Paragraph 49.2

- 4.1 C.RO acknowledges the additional environmental information relating to hydrodynamic modelling that has been provided by Able and agrees with Able's comment at paragraph 49.2 that the modelling of estuarine systems is complex. However having reviewed the additional information C.RO remains concerned regarding the adequacy of the environmental impact assessment. The additional information and Able's comments on C.RO's relevant representation do not address the issues raised by C.RO, which remains concerned regarding the uncertainty of the effects of AMEP on CPK.
- 4.2 This uncertainty is acknowledged by the Supplementary Report EX8.7: *AMEP Supplementary Report - Modelling of Final Quay Design*. At paragraph 3.3.3 it states that the results in relation to the short-term sedimentary regime should be treated with caution, and notes several times that the uncertainty associated with this part of the assessment is "large" or "very large". This uncertainty is illustrated by Table 3-2, which provides a summary of the potential impacts of AMEP on sensitive receptors. Table 3-2 states that the modelling suggests that annual maintenance dredge rates may increase slightly at CPK (5,000-8,000m³) but then acknowledges that the assessment by HR Wallingford (Supplementary Report EX8.10) predicts a beneficial impact, and a decreased level of deposition as a result of AMEP. The impact AMEP will have on the river regime remains unclear and confused. This uncertainty is a matter of considerable concern and serves to emphasise the need for protective provisions to be included in the DCO to protect C.RO and CPK.
- 4.3 Supplementary Report EX8.6 (*Assessment of maintenance dredging requirements*) prepared by HR Wallingford creates further uncertainty. The figure of 192,000 tonnes dry solids used in Table 7 in Section 5 to state the observed annual deposition into the adjacent berths is incorrect in relation to the Humber Sea Terminal (now CPK). This figure is not recognised by

C.RO and does not correlate with the tonnage declared to ABP and the Marine Management Organisation as the most up to date total dredge returns. C.RO first questioned the accuracy of this figure in a meeting with Able in November 2011. The submitted dredge returns for CPK are published in the *ABP - Humber Estuary: Maintenance Dredge Protocol and Water Framework Directive*, the most recent version being October 2011. CPK's submitted dredge returns are measured in the unit of wet tonnes, however when the returns are converted into tonnes dry solids to allow a comparison with the figures used in the AMEP modelling, the following figures are produced:

2007: 269,713 tonnes

2008: 717,645 tonnes

2009: 384,809 tonnes

2010: 351406 tonnes

2011: 239837 tonnes

- 4.4 Able's failure to use the most up to date or accurate data, which is available, affects the rationale of this model and in particular the basis for the provision of a range. The assumptions for the model and the conclusions that have been drawn from that model cannot therefore be relied upon.
- 4.5 Able's comment at paragraph 49.2 overstates the nature and extent of discussions that have taken place with C.RO. As stated at paragraph 16.2 of WR2, C.RO does not agree that Able's proposed Heads of Terms would ensure C.RO would suffer "no detriment". There are still a large number of issues to be resolved between C.RO and Able, which are exacerbated by the uncertainty referred to above. C.RO refers the Examining Authority to the letter from C.RO to Able appended to WR1 at Appendix 3, which also addresses the need for protective provisions. This letter, dated 21 June 2012, illustrates the efforts being made by C.RO to progress these unresolved issues. C.RO has not yet received a response to that letter despite numerous attempts to obtain a response (refer to the email correspondence attached to this WR3 at Appendix 1). The reason for the delay has not been explained and is of concern given the stage of the examination. It indicates that there remains a considerable and unacceptable level of uncertainty in respect of AMEP. This is not acceptable where the functions of a statutory harbour authority are likely to be affected.

Paragraph 49.3

- 4.6 In response to paragraphs 4 and 5 of C.RO's RR which state that Able has not established that it needs to acquire the Killingholme Branch Line ("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.
- 4.7 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.RO's RR or provide any clarification. Able has thus failed to:
- 4.7.1 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
- 4.7.2 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.
- 4.8 The Examining Authority is referred to paragraphs 16.1 to 16.27 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.RO 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.RO 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.
- 4.9 C.RO has an existing right to connect to the Railway. The removal of the Railway from Network Rail's control will have significant implications for C.RO's ability to exercise that

right. C.RO refers the Examining Authority to paragraph 16.28 to 16.40 of WR1 which discusses this issue in detail. In summary, in the absence of any detailed proposals (that can be relied upon and are appropriate secured) the proposed acquisition of the Railway will deprive C.RO of the right to use that Railway. If the Railway is not privatised - and therefore remains part of Network Rail's network - C.RO would have no restrictions on the ability to make use of the Railway in the future, subject to its connection agreement with Network Rail. The regulatory framework of the Railways Act 2005 would apply. C.RO would have certainty about the processes involved and the way that decisions about C.RO's use of the Railway would be made, and that such decisions would be made in accordance with the regulatory framework.

- 4.10 Instead, as it stands, Able is proposing to remove the Railway from this regulated environment. This would mean that C.RO was reliant on Able being prepared to give C.RO access in the future. No information provided to C.RO or the Examining Authority, including in Able's response to Network Rail, addresses how access to the Railway by other parties would be secured. C.RO has not received any firm or sufficiently detailed proposals about how its access to the Railway would be managed and has serious concerns in this regard. If the Railway is to be privatised Able should afford the same rights of access to other parties as C.RO currently enjoys 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.
- 4.11 Further, as stated above, the Environmental Statement does not address the use of the Railway by others. C.RO also has serious operational concerns (as set out at paragraphs 16.37 to 16.40 of WR1) which are not addressed by Able's response to Network Rail. 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 impact that operations at AMEP will have on the Railway. 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 needed for AMEP and the Able Logistics Park ("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 must be necessary for proper assessment, it remains unclear as to

how the interactions 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.

- 4.12 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.RO) the future operation of C.RO would be prejudiced. The current flexibility it has to serve customers would be removed. Such an outcome would be unconscionable bearing in mind the established need for port facilities with rail access (see NPS for Ports). As Able's proposals stand (bearing in mind the absence of any proper assessment), C.RO 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.RO 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 rail access to ports. It is notable that Able intends to ensure that it can serve its development by rail, but does not propose to afford others that opportunity, and in fact proposes to remove C.RO's ability to do so.
- 4.13 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 2, 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.RO and/or C.GEN Killingholme Limited's control.
- 4.14 Able's comments also fail to address Network Rail's concerns - which are shared by C.RO (see paragraph 27 of WR1) - regarding the validity of Article 47(1) of the DCO, which purports to disapply the Network Change procedure. In all respects, its reliance on this Article fails to address the representations that C.RO have made. It appears to have simply ignored them.

- 4.15 Able states at paragraph 49.4 that a comprehensive navigation risk assessment (14.2) has been undertaken. C.RO notes that Able has also submitted Supplementary Report EX 14.4, *Navigation Simulation Study* ("EX 14.4").
- 4.16 C.RO outlined its concerns regarding the inadequacy of the navigation risk assessment undertaken by Able in detail at paragraphs 14.2 to 14.13 of WR1. The additional environmental information submitted by Able does not address C.RO's concerns regarding the impacts of both construction and operational vessel traffic on its operations. This is discussed further at paragraph 13.1 of WR2. C.RO first raised concerns about the navigation simulation work in August 2011 (see the letter appended at Appendix 1 to EX 14.4), and again in its letter to Able of 21 June 2012 (appended to WR1 at Appendix 3). These concerns have not been addressed. The protective provisions drafted by C.RO and included in the Paper of Amendments appended to WS1 include protection for C.RO to ensure that construction and operational vessel traffic does not adversely affect its operations at CPK.
- 4.17 EX 14.4 appends correspondence from C.RO and C.RO's legal representatives DLA Piper UK LLP, which sets out C.RO's concerns in relation to the navigation simulation work. C.RO notes the date of the letter appended at Appendix 1, 31 August 2011, which was prior to the date of the application. However Able did not commission EX 14.4 until after C.RO's RR was submitted. Moreover, as stated elsewhere in this WR3, Able has not responded to the concerns C.RO raised in relation to navigation in C.RO's letter of 21 June 2012. Able has thus not sought to address C.RO's concerns in a timely way. C.RO cannot be certain that Able intends to do so at all. This is a relevant and important matter.
- 4.18 EX 14.4 has a stated objective of assessing the departure of off-shore wind vessels from AMEP with tug assistance. However the vessel used in the simulation, the Huang Shan, is a 289m LOA, 45m beam, 17.8 draft, 175,980 tonnes DWT bulk carrier. C.RO questions how a bulk carrier is related to offshore wind farm activity. Able provided C.RO with a list of vessels that will operate to and from AMEP, which is appended to this WR3 at Appendix 3. These vessels are markedly smaller in size than the bulk carrier used in the simulation. Able has not done any simulation work for these vessels, or any vessel typically associated with offshore wind farm activity, despite C.RO first raising concerns about this in its letter of 31 August 2011, prior to the application being made. The choice of vessel in the simulation work raises questions not only as to the adequacy of the environmental assessment that has been undertaken, but also as to the intended use of AMEP. It is not possible to be certain of the navigation impacts of AMEP on CPK, and therefore on C.RO's statutory harbour authority

duties. This second question regarding the intended use of AMEP is discussed at length in WR1, WR2 and WS1.

- 4.19 C.RO also has concerns regarding the determination that Able has made in relation to the turning area, which overlaps with the approaches to CPK. C.RO has no information as to how Able determined the dimensions and position of the turning area. If simulation exercises were used, no information is provided in EX14.4 or in the simulation studies submitted as part of the application. This is of particular concern given the type of vessel used in the simulation, as discussed above.
- 4.20 Finally, in relation to the exercise 9 screen print at page 12 of, it appears that the vessel modelled left the berth without the need for a turning area overlapping CPK approaches. It is not, therefore, established that Able need a turning area in CPK's approaches. Unless it does, Able should not be allowed to infringe on access to CPK in this way.

Paragraph 49.5

- 4.21 In relation to Able's comment regarding navigation lighting at paragraph 49.5 in response to paragraph 7 of C.RO's RR, C.RO remains concerned regarding Able's navigation lighting proposals. This is discussed further at paragraph 14.11.14 of WR1. In short, the proposal involves the use of navigation marks and lights to identify the upstream extent of the AMEP swinging area. As this area overlaps with C.RO's approach channel C.RO has concerns regarding this proposal. The protective provisions drafted by C.RO and included in the Paper of Amendments appended to WS1 include protection for C.RO to ensure that navigation lighting does not adversely affect its operations at CPK.
- 4.22 C.RO has reviewed the proposed Navigation Lighting Plan (Figure 49.1). It has concerns regarding the red to white sector on the IsoGWR.4 s sector light positioned at the entrance of North Killingholme Haven at CPK. If a vessel is moored to the upstream end of the AMEP quay, or a large high structure is stored on the quay in a similar area, this will shield the light. Able must be prevented from shielding this light, or they must relocate it to C.RO and the Harbour Master's satisfaction. This must be secured in the DCO, though a requirement and protective provisions.

Paragraph 49.6

- 4.23 C.RO has already made lengthy representations in relation to the need for a restriction on operations and does not propose to repeat them in this representation. In short, C.RO

considers that a restriction on the nature of operations that may be carried on at the development is appropriate. C.RO acknowledges Able's statement at the Issue Specific Hearing on the DCO that it would include a restriction. However C.RO still has reservations. The responses that Able has provided regarding this issue to date have not addressed C.RO's concerns in this regard. Specifically C.RO refers the Examining Authority to:

4.23.1 paragraphs 17.8 to 17.10, and 24.1 of WR1;

4.23.2 paragraph 4.2 of WS1;

4.23.3 paragraph 6 of the Paper of Amendments appended to WS1; and

4.23.4 paragraphs 3.1 to 6.11 of WR2.

PART 3 - COMMENTS ON WRITTEN REPRESENTATIONS

5 Comments on Associated British Port's written representation

5.1 C.RO notes the objections of Associated British Ports to AMEP set out in its written representation and supports them.

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

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

7 Comments on Network Rail's written representation

7.1 C.RO notes the objections of Network Rail to AMEP set out in its written representation and supports them.

- END OF REPRESENTATION -

APPENDIX 1

Emails from DLA Piper UK LLP to Bircham Dyson Bell LLP

APPENDIX 2

Plan showing section of the Railway beyond AMEP site

APPENDIX 3

Email from Able UK to C.RO Ports Killingholme Limited

Dove-Seymour, Benjamin

From: Dove-Seymour, Benjamin
Sent: 02 July 2012 13:15
To: WALKER Angus [REDACTED]
Cc: RUBENS, Joost (CLDN) [REDACTED] Bassford, Howard
Subject: AMEP - reports/C.RO

Angus

When we met you and Peter Stephenson, I recall one of you saying (I think it was Peter) that although the additional river regime assessments/reports were not at that time available, Able was prepared to provide these directly to C.RO at the same time as submission to PINS, rather than waiting until PINS publishes them on its website.

If that is still the case, we should be grateful if you would provide these. It may assist everyone if these reports are provided now so that there is adequate time to review them. If these can be provided today, that would be very welcome.

When do you anticipate being able to respond on the points discussed in our meeting/DLA's letter?

Look forward to hearing from you.

Regards

Ben

Benjamin Dove-Seymour
Associate

DLA Piper UK LLP

T +44 (0) 20 7153 7912
F +44 (0) 20 7796 6666
M [REDACTED]
E [REDACTED]

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Dove-Seymour, Benjamin

From: Dove-Seymour, Benjamin
Sent: 27 July 2012 11:15
To: WALKER Angus
Subject: RE: AMEP - C.RO letter

Dear Angus

Has a response been sent - I'm afraid I have not received anything and we are now a week beyond your email below. Assuming it has not been sent and been delayed or lost in the post, can C.RO still expect something as promised?

Thanks

Ben

Benjamin Dove-Seymour
Associate

DLA Piper UK LLP

T +44 (0) 20 7153 7912
F +44 (0) 20 7796 6666

www.dlapiper.com

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From: WALKER Angus [REDACTED]
Sent: 11 July 2012 16:42
To: Dove-Seymour, Benjamin
Subject: AMEP - C.RO letter

Dear Ben

I am advised that a reply to your letter with supporting information is imminent and will be with you next week at the latest.

Regards


BIRCHAM DYSON BELL

Angus Walker Partner
T +44 (0)20 7783 3441
[REDACTED]
W www.bdb-law.co.uk

For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL

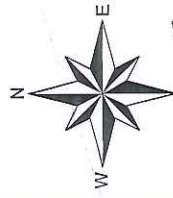


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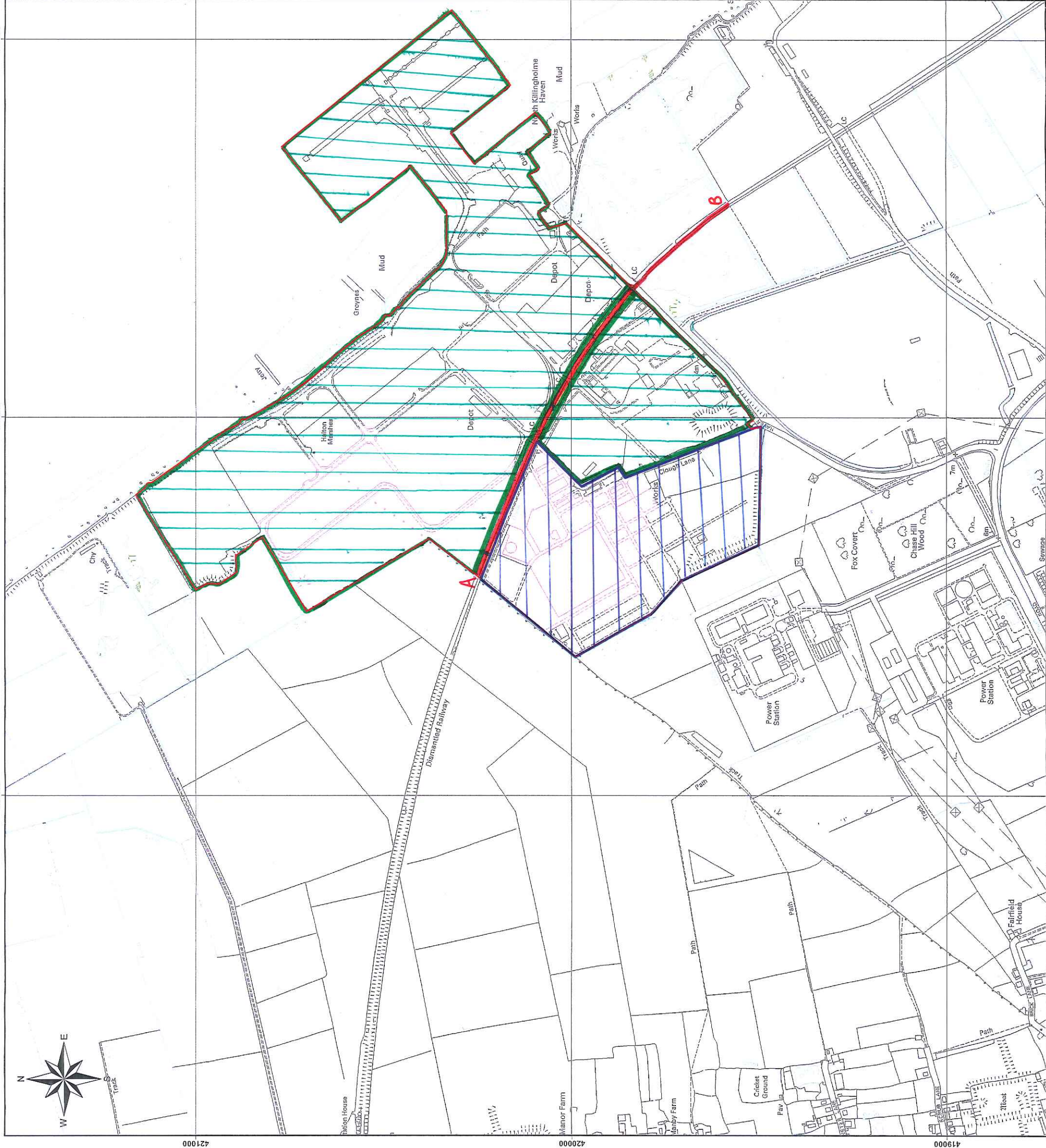
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Legend

- Railway beyond AMEP site
- C.RO Ports Killingholme Limited
- C.GEN Killingholme Limited



Van: Peter Stephenson <[REDACTED]>

Onderwerp: AMEP: Ships : dredge depths

Datum: 18 juni 2012 10:23:45 GMT+02:00

Aan: Frank VanBellingen <[REDACTED]>

Kopie: Joost Rubens <joost.rubens@simonports.co.uk>, Hugh Gates
<[REDACTED]>, WALKER Angus <[REDACTED]>, Richard
Cram <[REDACTED]>, Neil Etherington <[REDACTED]>

Frank

Please further to your request at the meeting at your solicitors in London on Friday 15th June 2012 please find below list of typical vessels that may be operating from AMEP.

Please note

1. this is the operating draft under keel clearance will also be required and this will vary from a minimum of 0.5m to 1.5m for normal berthing but the crane vessels also need to allow for the tilting of the deck when lifting.
2. We also want to reduce dredging frequency so additional allowance is also needed to allow the berth to operate with an amount of siltation.

Name	Length m	Width m	Deck Area sq m	Moulded Depth	Summer Draught
FLAT TOP DEEP SEA BARGES					
H105	91.44	30.48	2,787	7.62	6.10
H106	91.44	30.48	2,787	7.62	6.14
H111	91.44	27.43	2,508	6.10	4.85
H113	91.44	27.43	2,508	5.84	4.83
H115	110.00	30.40	3,344	7.00	5.58
Anambas	115.00	31.60	3,634	6.80	
H404	122.00	36.60	4,465	7.60	
H401	122.00	36.60	4,465	8.00	
H402	122.00	36.60	4,465	7.60	5.73
AT11	122.00	35.00	4,270	8.00	6.50
Intermac 600	152.40	36.60	5,578	6.14	
H114 Phillips	160.00	42.00	6,720	10.70	7.53
H541		165.00	42.00		
Intermac 627	176.80	48.80	8,628	10.97	
Intermac 650	198.00	51.80	10,256	12.20	
H851	260.00	63.00	16,380	15.00	10.73

Name

**Moulded
Depth**

Ships

Lengh

Width

Draft

ASV Pioneer	100.60	30.48	6.09	3.82
MV Jumbo Javelin	144.21	26.70		8.10
MV Fairpartner	144.21	26.70		8.10
MV Fairlane	110.49	20.85		7.72
MV Jumbo Vision	110.49	20.85		7.72
MV Fairlift	100.78	20.98		7.42

MV Daniella	98.37	20.98		7.42
Congo	143.14	22.80	13.30	9.70

Cable Laying Vessels

CS Sovereign	130.70	21.00	21.00	7.01
Wave Venturer	141.50	19.39	19.39	6.10
Enterprize	115.00	31.60	6.80	5.17

Supply Vessel

Typhoon	73.40	16.60		6.50
Cirrus	80.77	18.00		4.95
Torrent	73.40	16.60		6.50

Construction Vessel

Cygnus	122.00	22.00		7.30
Solitaire	248.65	40.60		8.50
Casterone	330.00	39.00		8.00

Tugs

Fairplay-30	38.72	12.70		5.80
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Best Regards

PETER M STEPHENSON
Executive Chairman
Able UK Ltd

Able House
Billingham Reach Industrial Estate
Billingham
Teesside TS23 1PX
United Kingdom

Switch: +44 (0) 1642 806080

Email: [REDACTED]

Web: www.ableuk.com www.ablehumberport.com www.amep.co.uk & www.ableshiprecycling.com

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BS OHSAS **18001** : 2007 (Occupational Health & Safety Management System)
Working towards BS EN ISO **30000** : 2009 (Ship Recycling Management System)

Received BP Diamond award.

Received IMareEST prize for Excellence.

Ernst & Young North and Midlands Overall Entrepreneur of the Year.

DEVELOPING ABLE HUMBER PORT 964 hectare (2,383 acres) with a MARINE ENERGY PARK

Our new AMEP flyover is available to view on www.ablehumberport.com

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