



**ABLE MARINE ENERGY PARK
RESPONSE TO DEPARTMENT FOR TRANSPORT'S
'MINDED TO APPROVE' LETTER IN RESPECT OF RAIL MATTERS**

OCTOBER 2013

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1. EXECUTIVE SUMMARY

1.1. General

- 1.1.1. Since the '*minged to approve*' decision made by the Secretary of State on 28 August 2013, the Applicant has consulted extensively with both Network Rail and the Office of Rail Regulation, as requested. The consultation has been entirely constructive with the establishment of a Statement of Common Ground with Network Rail and a clear, and supportive, position statement from the Office of Rail Regulation.
- 1.1.2. The three parties have concluded that securing a 'Network Change' is the appropriate mechanism to resolve any outstanding issues and concerns.
- 1.1.3. The process to establish a Network Change is now underway and has the active support of the three parties.



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2. INTRODUCTION

2.1. Purpose of the Report

2.1.1. On 12 January 2012 the Infrastructure Planning Commission accepted an application made by Able Humber Ports Limited (AHPL) to construct a Marine Energy Park at Killingholme in North Lincolnshire. The Examination of the application was completed on 24 November 2012 and the Panel's report was submitted to the Secretary of State for Transport on 24 February 2013.

2.1.2. On 28 August the Department for Transport (DfT) advised AHPL that whilst the Secretary of State (SoS) was *'minded to approve'* the application, two matters prevented him from doing so at that time. One of the two reasons given in paragraph 6 of the DfT's letter was the potential impact that the development could have on the Killingholme Branch Railway. Specifically, that said:

6. For the reasons explained at paragraphs 17 to 23 and 40 in this letter, the Secretary of State considers that he is not yet in a position to decide whether to accept the Panel's recommendation. He is, nevertheless, minded to agree with the Panel that he should make an Order granting development consent for the project, subject to receiving satisfactory evidence of the following:

(2) assurance from the applicant, having consulted with Network Rail and the Office of Rail Regulation ("ORR"), that the project will not jeopardise any future operations of the Killingholme Branch railway.

And, at paragraph 40:

40 The Secretary of State notes that during the examination the applicant reduced the extent of the compulsory acquisition powers sought over the Killingholme Branch railway which runs through the site of the project to four easements for level crossings. He notes the fact that Network Rail was prepared to grant one easement for a level crossing (referred to in the Examining Inspector's report at PR Appendix D). However, the Secretary of State attaches importance to the current policies of Network Rail and the ORR not to create new level crossings other than in exceptional circumstances. In particular, he is concerned that the creation of four new level crossings may hinder the future operation of the railway as well as create a safety hazard. The Secretary of State notes the Panel's conclusions (at PR 18.186-199) that the Order should authorise the compulsory acquisition of four easements for the purpose of creating level crossings, but seeks further assurances about the future operations of the Killingholme Branch railway. The Secretary of State accordingly invites the applicant to reconsider its proposals for access across the railway in consultation with Network Rail and the ORR for the purposes of providing assurance that the proposal will not prejudice the future operation of that railway. Should this require a reduction in the number of level crossings, the applicant is asked to propose any consequential amendments to the Order, the plans and the book of reference, to confirm the required easements and powers required to enable the construction of those facilities.

2.1.3. The purpose of this report is to explain the nature and outcomes of consultations with both Network Rail (NR) and the Office of Rail Regulation (ORR) and not least – through the provision of a Statement of Common Ground and a clear position statement – the progress that has been achieved and the constructive dialogues that have taken place.



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3. THE PROCESS

3.1. Network Rail

- 3.1.1. Four meetings and a number of telephone conversations took place in the period between 7 September 2013 and the date of this submission. From the outset, both parties were at pains to point out that the process of moving forward would not be influenced by any previously assumed positions or presumptions.
- 3.1.2. What was to be a constructive and iterative process initially involved both parties explaining (in the case of the Applicant) the base rationale of the project itself and (from NR's perspective) the limits and roles within their jurisdiction.
- 3.1.3. From the outset, NR welcomed the significant contribution that the project would make in both a local and national context but also highlighted that their priority would primarily require their seeking to protect the rights of those that had existing rights to use the Killingholme Branch line – the Access Beneficiaries.
- 3.1.4. In securing those rights, the Network Code is very clear in that NR are required under their own Network Licence to manage the change of infrastructure and operations using the Network Change process.
- 3.1.5. To this end, it has been agreed that NR will support and promote, with the applicant, a solution that by definition will ensure that changes made to the Network are operationally safe, recognising the principle of ALARP and the policies of both NR and ORR, including any alteration or introduction of level crossings on the network.
- 3.1.6. Furthermore, Network Change would also ensure that changes made to the network consider and allow industry stakeholders to use both present and potential.
- 3.1.7. The Applicant confirms that it has an existing Basic Services Agreement with NR and is in the process of finalising an Asset Protection Agreement.
- 3.1.8. In terms of communicating the progress to the SoS, both parties have agreed that a short Statement of Common Ground would best serve that purpose and a signed copy is reproduced in Appendix 1. Of note is that the parties agree that there are solutions for crossing the Killingholme Branch Line that will not prejudice its future operation.

3.2. Office of Rail Regulation

- 3.2.1. Two meetings and a number of telephone conversations took place in the period between 7 September and the date of this submission.
- 3.2.2. After the Applicant had explained the rationale of the project and detailed the nature of the proposed crossings and frequencies, ORR made an initial response by letter dated 24 September, refer to Appendix 2.
- 3.2.3. The ORR response firstly requested further information regarding the possibility of a 'Western Diversion' of the line towards the western edge of the site, which might avoid 'specialist' heavy plant and equipment crossings. In the event of a western diversion being inappropriate, ORR accepted that for heavy components *'movements on the level are the only reasonably practicable means of crossing*



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the Killingholme branch. In this instance we [ORR] would be prepared to accept the creation of new crossings. The considerable benefits to the local and national economic interest created by your [AMEP] development are compelling, and would satisfy the 'exceptional circumstances' referred to in ORR's Level Crossing Policy'.

- 3.2.4. As far as 'normal' motor vehicle crossings were concerned, ORR acknowledged that in the current circumstance *'whilst the branch is mothballed'* the situation, particularly during an initial construction phase, would require limited mitigation. However, ORR awaited further details regarding a phased approach, including the means by which appropriate mitigation could be enforced if, or when, the volume of rail traffic increased.
- 3.2.5. The ORR also recognised the potential in respect of an alternative solution to the 'Killingholme Loop', which the Applicant refers to as the 'Rosper Road Loop'.
- 3.2.6. ORR, in concert with NR, concluded *'that the best way forward is for you [AHPL] to develop a proposal under the Network Code - Part G, Network Change'*.
- 3.2.7. Following on from their initial response, and having had regard to additional information provided by the Applicant, ORR responded further by letter dated 14 October 2013. Their letter includes an acknowledgement *'that a western diversion of the Killingholme Branch Line through the AMEP site is not reasonably practicable given the needs and function of the development and the consequential impact on the scheme'*. The Applicant's supplementary report on the practicability of the western diversion accompanies this report.



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4. SUPPORTING INFORMATION

4.1. Western Diversion Option Study

- 4.1.1. The Applicant prepared the above in response to the ORR's request for further information in this regard.
- 4.1.2. The study concludes that there are three main factors that contribute to a western diversion not being reasonably practicable: the available choices for the route; the viability on the project and the environmental constraints. Indeed, each on their own render the proposal not reasonably practicable. The report will form part of the suite of documents that will inform the Network Change process.
- 4.1.3. The study was supported by leading rail consultants – TATA Steel Projects – and identified route diversions suited for alternative train speeds of 25mph and 60mph.
- 4.1.4. A major impact is the loss of 'productive' onshore land for the manufacture of marine energy infrastructure projects. At 25mph the area reduces from 158 hectares to 96 hectares and at 60mph down to 64 hectares.
- 4.1.5. As far as costs are concerned, and even excluding the costs and process of the physical re-alignment, the lost revenue from the sterilised land would impact on the overall scale of the project so that it would no longer viable.

4.2. The Alternative Rosper Road Loop

- 4.2.1. In September 2012, and following an initial suggestion by NR (meeting with AHPL 21 August 2012) the Applicant commissioned Tata Steel Projects to review the options for an alternative 'Killingholme Loop' to the south of the AMEP site. The resulting study concluded that a viable alternative route (enabling rail traffic to exit and enter ABP Immingham Port from the northern end and to rejoin the 'main' line thereafter), could be delivered and avoid a route that would cross through AMEP.
- 4.2.2. The study will form part of the suite of documents that will inform the Network Change process.
- 4.2.3. The study also highlighted a number of other advantages that could be derived, in addition to delivering the material benefit of the Killingholme/Goxhill Loop. Those advantages include:
 - a) The Rosper Road Loop being a significantly cheaper option with costs (Q4 2012) estimated at £38m (including contingency) against the reported (2009) cost of the Killingholme Goxhill Loop at £56m+.
 - b) The Rosper Road Loop would be significantly shorter at 1,625m against c. 5,687m.
 - c) The Rosper Road Loop would confront far fewer environmental/ecological issues given that the land required; has been the subject of extensive environmental investigation; has already benefitted from ecological mitigation; avoids bisecting the North Killingholme Haven Pits (SPA/SSSI).



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- d) The Rosper Road Loop land is in the ownership of only two parties – with the Applicant owning the major share.
- e) In planning terms, North Lincolnshire Council (the Local Planning Authority) is known to favour a southern option that would protect the positive economic impacts of AMEP.

4.2.4. Furthermore, the Killingholme/Goxhill Loop – as proposed in 2009 – would meet a number of additional obstacles surrounding the establishment of a number of bridleways, the requirement to procure c. 2,500m of new track, the mitigation of ecological habitat that has developed on the 'existing' line and the need to secure additional compulsory purchase powers.



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5. **LIST OF ACCOMPANYING DOCUMENTS**

'Western Rail Diversion Options Report', (ABLE & TATA Steel Projects, October 2013)

'Rosper Road Loop – Feasibility Study', (TATA Steel Projects, October 13)



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APPENDIX 1

Statement of Common Ground between AHPL and Network Rail

A STATEMENT OF COMMON GROUND BETWEEN THE PARTIES

The Parties are:

1. ABLE HUMBER PORTS LIMITED ('ABLE')
2. NETWORK RAIL LIMITED ('NR')

The Parties:

1. Recognise that any modification to the rail infrastructure needs to be, and can only be, delivered through the Network Change process defined in Part G of the Network Code.
2. Understand that the Network Change process is consultative and involves all rail Access Beneficiaries. It provides the requisite degree of confidence that any changes to the rail infrastructure delivered in accordance with its process will not prejudice the operation of the railway.
3. Have agreed that whilst it is not possible to forecast the solution the intent to maintain the objective of the 'Killingholme Loop', or an alternative, will be achieved.
4. Agree that there is a range of design solutions that can be developed for safely crossing the Killingholme Branch Line that need not prejudice the future operation of the Killingholme Branch Line.
5. Agree that Network Rail can assist Able in the development and promotion of a Network Change that meets the requirements of the Access Beneficiaries.
6. Have agreed the roles, responsibilities and obligations in respect of the Network Change process.
7. Have a signed Basic Services Agreement in place between both parties and are finalising a Network Rail Asset Protection Agreement.

Signed on behalf of Able Humber Ports Limited



Neil Etherington - 14th October 2013

Signed on behalf of Network Rail Limited



Stephen Hind - 14th October 2013



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APPENDIX 2

Correspondence with ORR



OFFICE OF RAIL REGULATION

Neil Etherington
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Able UK Ltd
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Your Ref NFE-KJ.A.L13-0854

24 September 2013

Anna O'Connor
ORR

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E-mail anna.oconnor@orr.gsi.gov.uk

Dear Neil

ABLE MARINE ENERGY PARK – RAILWAY SAFETY AND FUTURE FREIGHT MOVEMENTS

I have now studied your proposals, spoken with Network Rail and consulted colleagues within ORR. I have tried to weigh the requirements of the Secretary of State's request that we find an agreed means to optimise risk control and safeguard future developments in the vicinity of the proposed Able Marine Energy Park site.

The first, important principle to establish is that the preferred option would be to divert the existing Killinghome branch to the perimeter of your site, so that it no longer bisects the area of your operations. This removes the need for the four proposed easements for new level crossings and the problem of how to establish suitable protection for foot crossings and remaining open crossings. The main matter to be agreed would be how to safely route traffic to and from your site.

ORR has not yet seen a suitable and sufficient account of why this might not be reasonably practicable.



Should this not be practicable, we are left with the issue of the four proposed new level crossings. Here, I have made a distinction between the routes for 'normal' road traffic and the crossings required to transport heavy turbine components. For the latter – ORR accepts that movements on the level are the only reasonably practicable means of crossing the Killinghome branch. In this instance we would be prepared to accept the creation of new crossings. The considerable benefits to the local and national economic interest created by your development are compelling, and would satisfy the 'exceptional circumstances' referred to in ORR's Level Crossing Policy.

The crossings for 'normal' traffic movements are a different matter. I have seen no forecasts for numbers of road vehicles expected to use these crossings each day, but based on your claims of jobs created by the site they would be considerable. Even with very low numbers of rail vehicle movements (those for Able itself and possible movements to and from C.Ro/C.Gen) these crossings would be problematic and it is hard to make a case for creating such new crossings when alternative, grade separated means of traversing the railway might be created. I note the summary evidence to the planning panel that creation of bridges on your site would be costly and would have an impact on site operation – but ORR has yet to see a suitable and sufficient assessment of the risks versus the disbenefits to demonstrate that such a step would not be reasonably practicable.

Whilst the branch is mothballed, with no train movements, the risks are clearly negligible. ORR is, therefore, quite satisfied with your proposal for protecting the haul road during construction.

In our earlier discussions we considered a phased approach to development – with various triggers based on rising risk. I was in favour of this approach as a pragmatic, proportionate solution. However, discussions with colleagues have revealed the vulnerability of this approach; it is hard to envisage the framework that would **ensure** that the necessary steps are taken in a timely way. I am open to further argument.

To summarise so far:

- The preferred option for minimising risk and facilitating all future freight movement aspirations is to divert the existing branch to the perimeter of the Able site
- If this is not possible – ORR would accept that there are exceptional circumstances that would justify the creation of new crossings for movements of abnormal loads across the site
- ORR policy does not tend towards agreeing the creation of new level crossings for normal road vehicle traffic if it is possible to find a grade-separated solution.

It is my belief that if a solution is found that entails two new level crossings for abnormal loads, and these are operated as speedily and simply as described in Tata's proposal, then this would be no bar to any future development of the Killinghome/Groxhill branch. However, I note the work you have done to develop the 'Killingolme chord' solution.



What is abundantly clear is that there is no prospect of agreeing detailed proposals in the timescale imposed by the Secretary of State. I think the most we can do is state that you have engaged with ORR and Network Rail to seek a solution.

It is my view that the best way forward is for you to work with Network Rail to develop a proposal under the Network Code – Part G, Network Change. This is an established framework that allows consultation with all affected industry parties, including ORR. It gives you a mechanism to satisfy the concerns of the Secretary of State.

Yours sincerely

A handwritten signature in black ink, reading 'A. E. O'Connor', is positioned below the 'Yours sincerely' text.

Anna O'Connor
HM Principal Inspector of Railways
Railway Safety Directorate



OFFICE OF RAIL REGULATION

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14 October 2013

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Dear Mr Etherington

ABLE MARINE ENERGY PARK DEVELOPMENT AND RAIL INTERFACE

Further to my letter of the 24th of September I am now in a position to provide additional detail regarding ORR's views of the implications of your proposed development.

Many thanks for the most recent information you have provided; this has clarified a number of matters. I am now able to state:-

1. Having studied the report provided ORR is persuaded that a western diversion of the Killingholme Branch Line through the AMEP site is not reasonably practicable.
2. As stated in my letter of September 24th ORR accepts that the only reasonably practicable way in which to move abnormal loads comprising exceptionally heavy plant and equipment is on the level. Due to the compelling national interest represented by your proposals ORR would consider the creation of new level crossings for these abnormal loads; these are the sort of 'exceptional circumstances' referred to in ORR's policy on level crossings.
3. I am pleased to note that you have made progress in your discussions with Network Rail. All parties (Able Humber Ports Limited, Network Rail Limited and the Office of Rail Regulation) recognise that any modification to the rail infrastructure is best delivered through the established process of Network Change as defined in part G of the Network Code.



INVESTOR IN PEOPLE

4. One of the advantages of the Network Change process is that it is consultative and involves all rail access beneficiaries. It provides the requisite degree of confidence that any changes to the rail infrastructure delivered in accordance with its process will not prejudice the operation of the railway.
5. All parties have agreed that, whilst it is not possible to forecast the solution, the intent to maintain the functionality of the Killingholme loop, or an alternative will be achieved.
6. One of the main issues to be determined in coming months is the preferred design solution for safely crossing the Killingholme branch line. We will seek to develop the safest reasonably practicable solutions that will not prejudice the future operation of the Killingholme branch line.

I hope that you feel that this is an accurate summary of our discussions so far. I trust it will provide the necessary assurance to the Secretary of State that all parties have identified a mechanism to successfully resolve the various issues around Able's development and future freight activity in the port.

Please contact me if you need anything further.

Yours sincerely

A handwritten signature in black ink that reads 'A. E. O'Connor'.

**Anna O'Connor
HM Principal Inspector
Railway Safety Directorate**