

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

**Your reference**

**Our reference**

SN/SN/328740/2  
UKM/45023516.3

17 September 2012

**By email**

Dear Sirs

**IPC REFERENCE NUMBER: TR030001**  
**APPLICATION FOR DEVELOPMENT CONSENT ("APPLICATION") BY**  
**ABLE HUMBER PORTS LIMITED ("ABLE") FOR THE PROPOSED**  
**MARINE ENERGY PARK ("AMEP")**  
**OUR CLIENT: C.GEN KILLINGHOLME LIMITED ("C.GEN")**  
**(REFERENCE 10015531)**

We refer to the examination of the above Application.

1. We are aware that the Panel is meeting on Tuesday 18 September to discuss any further information that may be required from Able and other parties and to consider the need for further issue specific hearings.
2. This letter makes legal submissions on behalf of C.GEN, and which C.GEN requests the Panel to consider, in relation to the matters set out below. This letter is not intended to substitute C.GEN's written summary of its oral representations at the Issue Specific Hearings ("ISH") on 13 and 14 September, which will be submitted on 24 September in accordance with the examination timetable. It simply raises a non-exhaustive list of concerns that may be relevant to the Panel's consideration of various matters at its meeting on 18 September.
3. To assist the Panel this letter sets out a list of issues in relation to which the Panel may wish to request further information pursuant to Rule 17(1) of the Infrastructure Planning (Examination Procedure) Rules 2010. We wish to emphasise that this list is not an exhaustive list of the concerns that C.GEN has about AMEP. It is intended to be a list of additional information that C.GEN considers would assist the examination. Provision of this further information would be welcomed by C.GEN. It is clear that there is a lack of clarity as to what Able is proposing in a number of areas, and the information (including environmental information) that relates to those proposals, if it exists. This is relevant to C.GEN's consideration of the Application, the effects of AMEP on its own proposals for a nationally significant infrastructure project, and accordingly its submissions as part of the examination.

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+44 (0)8700 111 111



4. Accordingly, C.GEN kindly requests that the Panel consider the following matters, as well as any others it considers relevant:

*Content of the Environmental Statement ("ES")*

- 4.1 It is apparent that there is now a large number of documents that form part of the environmental impact assessment of AMEP, some of which update previous reports. C.GEN understands that Able is providing a signposting document. This was agreed during the hearings on ecological matters. C.GEN requests that this document is comprehensive across the environmental topics and not only in relation to ecological matters. C.GEN requests that this document addresses not only where a part of the ES has been superseded by any supplementary environmental information submitted by Able and the replacing document, but also its consequential effect on the environmental impact assessment carried out by Able. This would require Able to identify how any statements in the ES have been modified or updated. C.GEN does not consider that a list of documents alone will assist in the way required;

*Plans*

- 4.2 A number of revisions to the Application have been proposed since the Application was made. These comprise new drawings (for example a new Works Plan for the proposed railway loop within AMEP), although additional planning/other drawings have not been updated e.g. the Indicative Masterplan. A comprehensive set of revised drawings, with an indication of which drawings have been replaced, is important. In connection with this, C.GEN would welcome confirmation from Able that the environmental impact assessment contained in the ES is not affected by the details that have changed since the date of the Application;

*The Killingholme Branch Line ("Railway")*

- 4.3 As submitted by C.GEN at the Land Access and Transport ISH on 14 September, there has been no assessment of the operational effects of AMEP on the Railway. The implications of this generally, and for C.GEN, are explained further below, which C.GEN asks the Panel to consider;

4.3.1 C.GEN has limited information on what is being proposed by Able in relation to the Railway, which is a result of it not having been consulted previously, and the very limited amount of information regarding Able's proposals for the Railway contained in the Application itself;

4.3.2 no evidence has been placed before the Panel - as part of the Application or otherwise - to establish that AMEP could operate without seriously compromising the safe and efficient provision of rail services to C.GEN's facility. C.GEN considers that the proposed use of the Railway by C.GEN is a relevant and important matter. C.GEN has confirmed to the Panel that it is in the process of negotiating a connection agreement with Network



Rail and notes the confirmation received from Network Rail at the ISH on 14 September that Network Rail operates on the basis of a presumption in favour of granting a connection agreement. This means that there have to be reasons why a connection to the network is not possible. Where there are no such reasons, Network Rail will offer a connection agreement. Given that C.GEN is in discussions with Network Rail - further information on this will be provided in other submissions - C.GEN submits that the expected requirement for a minimum of five trains per day (see paragraph 18 of C.GEN's first written representation submitted on 29 June 2012) must be taken into account;

- 4.3.3 it is not known - i.e. there is no assessment, or other type of appraisal - and it certainly has not been shown, that AMEP could operate viably and safely in conjunction with third party train movements on the Railway in the way that Able proposes (with level crossings or on an open/unrestricted crossing arrangement, whichever is in fact proposed). This is relevant to the question of viability of AMEP. Whilst C.GEN notes that Panel asked clarificatory questions of Able, Able has only addressed the issue of financial viability in terms of bridges. It has not demonstrated that it is in fact possible to operate a Railway at all across the site at the same time as trying to move large components across the Railway. The scope for conflict is considerable, given that AMEP will be subject to the commercial and time pressures of its tenants. Information on these is also scarce;
- 4.3.4 it must be noted that there is not any agreement between Network Rail, Able, and other parties about the Railway. It cannot be assumed that there will be. If Able wishes to retain the potential for use of compulsory purchase powers over the Railway, C.GEN submits that it must carry out the necessary assessments as required by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. It is not appropriate for this not to have been done; and
- 4.3.5 C.GEN remains confused about the proposals for level crossings and/or bridge crossings as discussed at the ISH on 14 September. It urges the Panel to require clarity on what is proposed now, and their implications for the efficient operation of the Railway.
5. C.GEN reserves its position and the right to amend, or add to, the list of further information it considers is required.

Yours faithfully

*DLA Piper UK LLP*

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