

**PLANNING ACT 2008
("THE 2008 ACT")**

**THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010
("THE 2010 RULES")**

**THE PROPOSED ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER
("THE PROPOSED ORDER")**

**NOTE ON BEHALF OF NETWORK RAIL INFRASTRUCTURE LIMITED ("NETWORK
RAIL") ON THE INTERPRETATION OF SECTION 122 OF THE 2008 ACT**

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(Our ref: ClarkJZ)

1. Legislation and Guidance

1.1 Section 122 of the 2008 Act (emphasis added to highlight relevant points).

122 Purpose for which compulsory acquisition may be authorised

(1) *An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met.*

(2) *The condition is that the land –*

*(a) **is required** for the development to which the development consent relates,*

(b) is required to facilitate or is incidental to that development, or

(c) is replacement land which is to be given in exchange for the order land under section 131 or 132.

(3) *The condition is that **there is a compelling case in the public interest** for the land to be compulsorily acquired.*

1.2 Relevant extracts from the Department for Communities and Local Government Guidance related to procedures for compulsory acquisition under the Planning Act 2008 (“the Guidance”) (emphasis added to highlight relevant points)

*Paragraph 23: “the decision-maker must be in **no doubt** as to the **particular purposes for which any land is to be compulsorily acquired**”*

*Paragraph 24: “the promoter should be able to demonstrate to the satisfaction of the decision-maker that **the land in question is needed for the development for which the consent is sought**”*

*Paragraph 28: “the decision-maker will need to be persuaded that there is **compelling evidence** that the public benefits...will outweigh the private loss”*

2. Network Rail’s case

2.1 As has been submitted in evidence, Network Rail have made the following offers to the Applicant:

(a) An agreement for the lease of the land; and/or

- (b) An easement over the railway for the construction and operation of a level crossing; and/or
- (c) An easement over the railway for the construction and operation of a bridge.

2.2 The Applicant has rejected the above offers without explanation.

Section 122(2) and Paragraph 23 of the Guidance

2.3 Network Rail do not consider that the Applicant has demonstrated that the compulsory acquisition of the land is **required**, and as such do not consider that the Examiner can be **in no doubt as to the particular purpose** of the proposed acquisition for the reasons set out below:

2.3.1 It is assumed on the face of the Order that the intended purpose of the proposed compulsory acquisition of the railway land is to gain access from one part of the AMEP site, to the other. Indeed, the Applicant has not properly demonstrated that the acquisition of the railway is required except for access reasons.

2.3.2 If accepted, the offer referred to in paragraph 2.2 of this note would achieve access across the site.

2.3.3 Should the Applicant consider that a compulsory acquisition of the land would enable them to construct more than one level crossing, Network Rail would point out that statutory constraints on the building and operating of new level crossings would apply. As such, the Applicant has not proved that it can gain any operational advantage from the compulsory acquisition.

2.3.4 The Applicant has not demonstrated that it has any contact with the ORR to explore the acceptability of its aspirations with regard to level crossings. It has not presented assessment of comparative level crossing safety risk between the *status quo* and their aspirations for the AMEP site. There is no evidence, therefore, that the compulsory acquisition of the railway would facilitate the operation of the AMEP site.

2.3.5 Network Rail believes that its offer to the Applicant for crossing the railway by bridge and/or level crossing should enable the operation of the proposed AMEP site. Network Rail maintain that the statutory protection set out in section 127 of the Planning Act 2008 should not be circumvented. In evidence, Network Rail has demonstrated KIL2 is operational railway land that is used for the purposes of carrying out its undertaking. Compulsory purchase of it would be of serious

detriment to Network Rail's undertaking, as has been shown in evidence with regard to the Killingholme Loop proposals as well as obligations to existing users of that section of the Network.

Section 122(3) and paragraph 28 of the Guidance

- 2.4 As demonstrated in evidence submitted to the Examiner, based on a wide consultation process and industry knowledge, Network Rail predict an increase in demand on the Killingholme Branch Line ("KIL2") in the near future. To service this demand, Network Rail have formulated proposals for the construction of the Killingholme Loop, as detailed in the Written Representation and further oral evidence submitted by Network Rail.
- 2.5 In addition, existing users of KIL2 anticipate on-going and increased usage of that section of the rail network.
- 2.6 Network Rail cannot agree that there is compelling evidence that the public benefit will outweigh the private loss should KIL2 be subject to compulsory acquisition. As demonstrated in paragraph 2.3 of this note, there is no clear need for the acquisition, and no clear operational benefit to the AMEP proposals.
- 2.7 The rail network is essential infrastructure. The proposed development of the network in the vicinity of the Port of Immingham have clear economic and environmental benefits, both to private business and the public. To take this section of railway from the network for questionable motivation, as set out in this note, is manifestly not in the public interest.