

C.GEN PROTECTIVE PROVISIONS

23 November 2012

Black text denotes provisions agreed by Able

Red text denotes provisions on which C.GEN makes submissions/not agreed

PART 5

FOR THE PROTECTION OF C.GEN KILLINGHOLME LTD

47. For the protection of C.GEN Killingholme Limited ("C.GEN") the following provisions shall, unless otherwise agreed in writing between the undertaker and C.GEN, have effect.

47A. The undertaker shall not exercise any powers under this order for the purposes of acquiring any part of the Killingholme Branch Line unless and until it has entered into an agreement with C.GEN for the purposes of the joint control and operation of any such part of the Killingholme Branch Line, at the absolute discretion of C.GEN.

48. The undertaker shall not in the exercise of the powers conferred by this Order [unreasonably] prevent C.GEN's access to the railway crossing the Order land.

49. The construction and operation of the authorised development must not cause [unreasonable] interference with or [unreasonably] prevent the free, uninterrupted and safe use by C.GEN of the railway crossing the Order land.

49A. The undertaker shall not in the exercise of the powers conferred by this Order unreasonably prevent C.GEN's access to and use of Rosper Road.

49B. The construction and operation of the authorised development must not unreasonably interfere with or obstruct the free, uninterrupted and safe use of Rosper Road or any traffic on Rosper Road, unless an alternative access that is suitable and commodious is provided prior to and for the duration of any such interference.

50. With the exception of any duty owed by C.GEN to the undertaker which is expressly provided for in this Part of this Schedule, nothing in this Order shall be construed as imposing upon C.GEN either directly or indirectly, any duty or liability to which C.GEN would not otherwise be subject and which is enforceable by proceedings before any court.

51. Unless otherwise agreed in writing, any dispute arising between the undertaker and C.GEN under this Schedule shall be determined by arbitration as provided in article 59 (arbitration).

51A. (1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance operation or failure of the authorised development any damage is caused to any property of C.GEN or C.GEN suffers any loss (including without limitation as a result of the failure by the undertaker to meet its obligations to C.GEN under this Part) the undertaker shall—

(a) bear and pay the cost reasonably incurred by C.GEN in making good such damage; and

(b) indemnify C.GEN against all claims, demands, proceedings, costs, damages and expenses which may be made against, or recovered from, or incurred by it

by reason or in consequence of any such damage or the exercise by the undertaker of its powers conferred by this Order.

(2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of C.GEN, its officers, servants, contractors or agents.

(3) C.GEN shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand with such assistance from C.GEN as may be reasonably necessary.