

**Nolan, Sarah**

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**From:** Dove-Seymour, Benjamin  
**Sent:** 03 October 2012 18:12  
**To:** WALKER Angus (AngusWALKER@bdb-law.co.uk)  
**Cc:** DHOLLANDER, Iris; Bassford, Howard; Nolan, Sarah  
**Subject:** FW: C.GEN: Response re AMEP DCO  
**Attachments:** AMEP - C GEN comments on DCO version 3 (3 August 2012).pdf; AMEP - C GEN paper of amendments - mark up.pdf

Angus

Please find attached C.GEN's comments on Able's 3 August draft DCO.

Regards

Ben

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**C.GEN Killingholme Limited ("C.GEN")**

**Able Marine Energy Park ("AMEP")**

**Comments on DCO version 3, 3 August 2012**

Provision	C.GEN Comment (23 July 2012)	Able Response (explanatory note)	C.GEN Response
<p><b>Art. 2</b></p>	<p>Remove "any other development authorised by this Order".</p> <p>Amend "Order limits" to more accurately reflect the works plans</p>	<p>No change</p> <p>Amended so that defined as "the limits shown as such on the works plan, and are the limits within which the development and works may be carried out".</p>	<p>C.GEN's concern arises from the breadth of other, unspecified, works that the Order sought to approve in the absence of any restriction on use.</p> <p>If a Requirement is included that is an adequate restriction on use of the whole authorised development (and not merely relating to the type of cargo that can be handled), C.GEN would be content with the words "any other development authorised by this Order". This is not currently the case - see comments below on Schedule 11.</p> <p>Further amendment is needed to more accurately reflect the works plans. The definition should be amended so as to refer to a singular "limit" (as is the case in the works plans), and the words "as such" should be deleted as the works plans make no reference to the fact they delineate the Order limits. We note that "development", "works" and "development works" are not defined in the DCO.</p> <p>"Limits of deviation" should also be a defined term, as is the case in the Rookery Order and the River Mersey (Mersey Gateway Bridge) Order 2011.</p> <p>We also note that the new Articles 5(2) and 5A refer to "sections" however this is not a defined term and the sections to which these articles refer are not listed in the Requirements. This needs to be rectified. Article 5A</p>

			should also be subject to the Requirements.
<b>Art. 9</b>	Delete "enlarge and extend"	Amended.	Agreed.
<b>Art. 10 (1)</b>	Delete "railway lines", make railway works a separate work.	A passing loop will be added as a Work. It is not known what sidings any tenant may require.	<p>The addition of a passing loop as a Work is noted. C.GEN awaits a plan showing this. The loop alone is not sufficient as a solution to the concerns of C.GEN. While a passing loop is a solution to avoid AMEP blocking the North Killingholme Branch Line (the "Railway") for several hours, making it impossible to use the Railway for anyone else, C.GEN's concerns regarding the level crossings and the use of the main railway and level crossings remains.</p> <p>The request to delete "railway lines" arises from a concern: to understand what works Able proposes; to ensure that there is a control on the nature of works to the Railway; and to ensure that any works necessary for the operation of the Railway are indeed carried out. Indeed the comment that the sidings requirements are unknown emphasises this uncertainty.</p> <p>C.GEN has set out a number of times that Able has not stated what works it proposes to carry out to the Railway. These include those necessary in order to bring it up to operational standard, and those required in order to install level crossings, including the number and location of level crossings. C.GEN also needs information as to the frequency of use of the crossings.</p> <p>C.GEN would expect these to be included as Works in the DCO - see comments on Schedule 1. C.GEN will still require certainty on these elements even if Able does not propose to deal with them in the DCO, for example as part of any arrangements that may be agreed between C.GEN</p>

<p>and Able and other parties.</p> <p>This will, therefore, need to be addressed by Able, in the DCO or elsewhere. C.GEN's point therefore requires a response from Able because this uncertainty could have serious consequences for C.GEN's development.</p> <p>C.GEN also notes the suggestion that tenants at AMEP may require their own sidings. That would clearly have an impact on the capacity and operation of the Railway, which will need to be regulated. In relation to this C.GEN will require protection in the DCO/as part of any arrangements regarding the Railway. In any case, such potential use has not been assessed and should not, therefore, be empowered by this DCO in the absence of any assessment under the principles of the Rochdale Envelope.</p>		
<p>C.GEN does not require Able not to be able to carry out landscaping, or other mitigation, that is required and set out in the Environmental Statement and specified/secured elsewhere.</p> <p>However, the works "other works to mitigate any adverse effects of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works", is wide. Able may wish to explain to C.GEN what works it envisages. At present, this provision could allow the construction of any works that may fall within this sub Article notwithstanding that they may affect C.GEN. C.GEN requires that protective provisions control such works so that C.GEN is (a) consulted and (b) not detrimentally affected, bearing in mind the operational requirements of its proposed thermal generating station</p>	<p>No change.</p>	<p>Art. 10(2)(c) Delete (c)</p>

	("C.GEN Project") and potential use of the Railway in particular.			
<b>Art. 10(3) and (4)</b>	Agreed. For the avoidance of doubt the words "Subject to paragraph (3) below" should be added to the beginning of paragraph 10(1).	Removal of reference to "Part 11" from Art (3).	Amendments to remove the scope of Part 11 of GPDO.	
<b>Art 13</b>	Able proposes to carry out works to Rosper Road, specified as Work No.2 and additional works comprising associated development - C.GEN understands these to comprise road widening but it is not clear from the description.  Rosper Road will be the main access to the C.GEN Project, including during its construction period. C.GEN requires that this access is maintained during the construction and operation of the C.GEN Project. Any works to Rosper Road that impede access to construction traffic, or deliveries, must be prevented unless an alternative access is provided. It is not appropriate to expect C.GEN to rely on the licensing authority, it is also normal for a promoter to address such needs directly. If Able does not propose to impede/obstruct C.GEN's use of Rosper Road, there is presumably no reason why the additional drafting and/or PPs should be a problem.  The drafting of this paragraph is based on wording in the River Mersey (Mersey Gateway Bridge) Order 2011. It is established that a street works provision can include words to this effect in order to ensure that any street works are carried out in a manner to ensure that access to premises is retained. This requires the promoter, and the licensing authority, to carry out and authorise works respectively in	No change.	Insert a new paragraph (4) to require that Able does not close/impede access on the Streets in Schedule 2 without a suitable alternative being provided.	

			<p>accordance with this principle.</p> <p>It is, therefore, not acceptable to seek to carry out street works to Rosper Road that might prevent or impede access to the C.GEN Project, without agreeing to adequate mitigation and protection for C.GEN.</p>
<b>Art. 14</b>	<p>Insert a new paragraph (3) to provide for alternative routes.</p>	<p>Insert "where reasonably practicable".</p>	<p>As for Art. 13.</p> <p>The words "where reasonably practicable" do not deal with C.GEN's concerns. It is not appropriate to only seek to maintain access "where reasonably practicable" given that Rosper Road is the access road for the C.GEN Project.</p> <p>It is, therefore, not acceptable to seek to temporarily stop up Rosper Road - and therefore prevent or impede access to the C.GEN Project for both construction and later operational vehicles - without agreeing to adequate mitigation and protection for C.GEN. The stopping up of Rosper Road could have serious implications for the delivery, and thus continuity in supply of, equipment and other materials vital to the continuity of construction and operation of the C.GEN Project. In the worst case, the stopping up of Rosper Road, even on a temporary basis, could cause C.GEN to halt construction or operation of the power plant, incurring significant loss as a result.</p>
<b>Art 20(1)</b>	<p>Deletion of words "which may be affected by the authorised development"</p>	<p>Deleted.</p>	<p>Agreed.</p>
<b>Art 22(1)</b>	<p>Deletion of "reconstructed, extended, enlarged, replaced or relaid"</p>	<p>No change.</p>	<p>The same considerations apply here as are relevant for Article 9. If Able agrees to the removal of "extended or enlarged" in Article 9, it is appropriate to remove the same words here as Able would not be permitted to enlarge or</p>

		<p>extend any works in any event.</p> <p>Approval of the Secretary of State for reconstruction after 5 years can still be provided for.</p>	
<b>Art 29</b>	<p>Removal of Railway from scope of land subject to compulsory purchase powers.</p>	<p>No change.</p>	<p>C.GEN's position remains that the Railway should be removed from the scope of this Article (by amendment of the Book of Reference ("BoR") and land plan or otherwise) unless a satisfactory arrangement is concluded in respect of the Railway. Given that no agreement has been reached, C.GEN still requires this provision to be inserted.</p>
<b>Art 30 (power to override easements) and Article 34 (private rights of way)</b>	<p>Insert wording to expressly provide for no acquisition of any easements or other rights, or overriding of any agreements between C.GEN and Network Rail regarding access to and use of the Railway</p>	<p>No change. This will be addressed by amending the BoR or land plan. Able is not aware of any existing easements.</p>	<p>C.GEN has commenced the process of obtaining a connection agreement to serve the C.GEN Project. It should be noted that C.RO, the company adjacent to the same part of the Railway, has easements in/over Network Rail's land, and subsisting agreements regarding connection to and use of the Railway.</p> <p>The BoR does not include reference to those easements and should not be amended without complying with the Infrastructure Planning (Compulsory Acquisition) Regulations 2010. C.GEN assumes that even if Able does acquire the Railway, it will not seek to acquire those easements, in which case it should not be a concern for Able to include specific provision, in these Articles or in PPs, to not acquire any such rights.</p> <p>It should again be noted that Able does not require this part of the Railway for AMEP and by compulsorily acquiring the Railway it might obstruct the activities of C.GEN and C.RO (a future and current statutory undertaker respectively).</p>

<p>As no agreement currently exists regarding the Railway, Able should agree to the inclusion of this wording in the event that agreement is not reached.</p> <p>If an agreement is reached, C.GEN requires the inclusion of this wording in any case, and the amendment of the land plans to remove the pink wash from the parcels that comprise the Railway/land owned by Network Rail.</p>			
<p>Deletion of Art. 47(1) agreed.</p> <p>In respect of Art 47(2) (power to operate and use the Railway as a system for carriage of goods) comments made above apply equally here. In particular: it is not clear what works (if any) Able proposes to enable it to use the Railway for this purpose. These should be specified. Able has not set out, or assessed, the manner of operation or the consequences of use of the Railway for the carriage of goods; as matters stand, any proposed operating regime or use does not adequately provide for C.GEN's potential use in the future.</p> <p>Unless there is an agreement dealing with the operation and use of the Railway (which will include confirmation of how Able proposes to use the Railway, what works it will carry out in order to do so (including the level crossings), which part of the Railway it will acquire and how C.GEN's rights will not be affected) Able should not be empowered to acquire the Railway, and this provision should be deleted. Use of the Railway would be subject to the Railways Act 1995 (as amended).</p> <p>As regards Art. 47(3) in the absence of a need to use the Railway, there is no need for a power to enter into agreements. It is not clear what the purpose of this</p>	<p>Delete Art. 47(1) (minor modifications). Art. 47(2) and (3) remain.</p>	<p>Delete.</p>	<p><b>Art. 47</b></p>



<p>provision is in any case. The DCO does not need to authorise Able to enter into a connection agreement, for example. It is otiose.</p>		
<p>C.GEN's concern in relation to the onshore Works relates to their disposition and the effect of this on the operation of the Railway. The relationship of the two parts of AMEP bisected by the Railway is fundamental to understanding the potential effect on the operation of the Railway, in particular in relation to the number and location of crossing points. This is intrinsic to the concern about a lack of specificity relating to works to the Railway, including level crossings.</p>	<p>No change. Not in the nature of a single engineering construction.</p>	<p>Specification of onshore development as Works; Works to Railway including Level Crossings</p>
<p>C.GEN considers that Able should agree to restrict the number of crossings, and specify their location, type and the frequency of use (if an agreement is to be reached). This may be done by reference to drawing AME-02006. However, the interfaces with the Railway in that drawing are unclear as is the nature of the level crossings. Greater specificity would help address the concern about the wide discretion as to the layout of the onshore works. It is understood that Able wishes to have flexibility but if it expects to be able to conclude any arrangements regarding the Railway it should agree to limit the impact of the development on the Railway by accepting some restrictions on that flexibility.</p> <p>See also comments above on Art. 10(1).</p>		
<p>C.GEN has no objection to the PPs offered in Part 6 of Schedule 9. They are not, however, sufficient on their own.</p> <p>It is not clear why the draft provides for PPs for C.RO and</p>	<p>Limited provisions offered in Draft 3 of DCO.</p>	<p>C.GEN requested PPs and provided a draft.</p>
<p><b>Schedule 1</b></p>		
<p><b>Schedule 9</b></p>		

<p>C.GEN in the same schedule. Although the two companies may have similar concerns, C.GEN requires its own set of PPs. Once the C.GEN Project is operational C.GEN will be a statutory undertaker. Moreover, the C.GEN Project is a nationally significant infrastructure project for the purposes of the Planning Act 2008.</p>	<p><u>Rosper Road</u></p> <p>In relation to Rosper Road, please see the points made above. It is appropriate for Able to agree to provisions to ensure that C.GEN's use of Rosper Road is not impeded. It is difficult to see why this should be a problem.</p> <p><u>Railway</u></p> <p>Refer above as regards the Railway. In the absence of an agreement, C.GEN requires this protection.</p> <p><u>Indemnity</u></p> <p>It is not acceptable to refuse to give C.GEN an indemnity, or to state that C.GEN should rely on seeking redress through the Courts. Once the C.GEN Project is operational C.GEN will be a statutory undertaker to whom this protection should be afforded.</p>	<p><b>Schedule 11</b></p> <p>Insertion of a new Requirement 3[A] to restrict the use of the Authorised Development.</p> <p>Change made.</p> <p>Some words appear to be missing from the drafting in Requirement 3A(1). It would need amendment to read clearly.</p> <p>It is not clear, however, why the restriction should apply only to what cargoes can be handled across the quay. The lack of assessment of alternative uses of AMEP applies equally to the authorised development/rest of the site as to the quay wall. For example, if the onshore area were to be</p>
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<p>used for logistics or storage, the impacts would be different to those assessed, including on the local road network and potentially the Railway. Able should not have a concern with a restriction on use of the whole site, unless it intends to use other parts of the development for other purposes, which it could not do in any case given the lack of assessment. If Able is content to offer a restriction, that restriction should be effective for the issue that it is designed to address.</p>	<p>Leaving aside C.GEN's view that Requirement 3A(1) is not adequate, the purpose of Requirement 3A(2) is not fully understood. It appears to seek to avoid the need to amend the DCO in future by providing that any consent that allowed other types of cargo to be handled would not constitute a breach of Requirement 3A(1).</p>	<p>This is an unusual approach. C.GEN does not believe that there is a precedent in the Associated British Ports (Hull) Harbour Revision Order 2006. Paragraph 2(4) of Schedule 1 to that Order deems subsequent provisions to be conditions imposed on a planning permission. As a result, they are enforceable by the local planning authority. It does not provide a mechanism for amending them (in fact no provision in the Order achieves that). Neither does it provide that any future permission that might allow a breach of any of the specified conditions would not constitute such a breach.</p>	<p>C.GEN considers that in any case a Requirement cannot achieve what Able is seeking to do here. There is also no precedent for providing in a DCO that amendment of a DCO can be achieved by other means. We assume that PTNS has not given a view on such an approach. Bearing in mind that there are specific procedures in the Planning</p>

				Act 2008 and the Infrastructure Planning (Changes, to, and Revocation of, Development Consent Orders) Regulations 2011 for amending a DCO, this Requirement is not acceptable in principle. It is also ineffective. It should be deleted.
	Amend Requirement 4, include list of plans.	Change made to refer to a list of plans.		C.GEN welcomes the inclusion of a list of plans but remains concerned that none of these plans deal with works to, or interfaces with, the Railway. C.GEN is also concerned that some of the plans are marked as "Indicative" or "Preliminary".

26 September 2012

**THE PLANNING ACT 2008**

**THE PROPOSED ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER**

**C.GEN Killingholme Limited**

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**REVISED PAPER OF AMENDMENTS TO DRAFT ORDER  
PROPOSED BY C.GEN KILLINGHOLME LIMITED**

**26 September 2012**

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**Introduction**

1. This paper is a marked up version of the Paper of Amendments appended as Appendix 1 to the Written Summary of the oral representations of C.GEN Killingholme Limited ("C.GEN") at the Issue Specific Hearing on the draft Development Consent Order ("DCO"), submitted to the Examining Authority on 23 July 2012. It is provided in response to Able's version 3 of the DCO submitted to the Examining Authority on 3 August 2012
2. An explanation of these amendments is provided in the accompanying comments table. Where C.GEN agrees with the amendments proposed to a particular provision by Able in the amended version of the DCO, the amendments originally sought by C.GEN in the previous version of this document have been crossed out. Where C.GEN maintains its position that an amendment is required, the requested amendment has been retained in this document. Any text which has been inserted since the previous version of the Paper of Amendments is underlined.

**Amendments**

3. Amend Article 2 by:
  - 3.1 Unless an appropriately worded restriction on the use of AMEP is agreed between Able and C.GEN. Deleting the words "and any other development authorised by this Order" from the definition of "Authorised Development";
  - 3.2 Amending the definition of "Order Limits".

[Drafting note: in the works plans the limits are delineated with a dashed blue line and described as "limit within which the development and works may be carried out". There is no reference to "order limits" between the various plans which must be rectified and reflected in

the definition of Order Limits. It is not correct to state that the limits are shown "as such" as the plans do not make any reference to the Order Limits. The deletion of the term "authorised" is not appropriate and the terms "development", "works" and "development and works" are not defined]

3.3 Inserting a definition of "sections".

3.4 Inserting the following definition of "limits of deviation":

" "limits of deviation" means the limits of deviation for the scheduled works shown on the works plans"

4. Amend Article 5A so that it is stated to be subject to the Requirements.

~~5. Amend Article 9 by deleting the words "and within the limits of the harbour, from time to time enlarge, relay or extend temporarily or permanently the authorised development,".~~

6. Amend Article 10 by:

6.1 Amending 10(1) by:

6.1.1 Inserting at the beginning of the paragraph the words "Subject to paragraph (3) and (4)"; and

6.1.2 Deleting the words "railway lines".

6.2 Amending 10(2) by deleting the words "and other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works" from sub-paragraph (c).

~~6.3 Amending 10(3) by inserting the words "Subject to paragraph (4) below," at the beginning of the paragraph.~~

~~6.4 Inserting a new sub paragraph 4 as follows:-~~

~~(4) Insofar as the authorised development falls within Part 11 in Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 it shall be subject to Article 3(10) of that same Order and in that case Article 3(12) of that Order shall not apply.~~

7. Amend Article 13 by inserting the following sub-paragraphs and re-numbering the remaining sub-paragraphs accordingly:

(4) No works permitted by this Article shall allow the closure of or impeding access via any of the streets specified in Schedule 2 to or from any premises on such street, unless a suitable and commodious alternative is provided prior to and for the duration of any works permitted by this Article.

8. Amend Article 14 by:

8.1 Amending 14(1)(b) by inserting "and (3)" after the words "subject to paragraph (2)"

8.2 Inserting the following sub-paragraph and re-numbering the remaining sub-paragraphs accordingly:

(3) No street shall be wholly or partly stopped up under this Article unless a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and thereafter maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and re-opening up of the street affected by the temporary stopping up.

~~9. Amend Article 20 by deleting the phrase "or which may be affected by the authorised development" in sub-paragraph (1).~~

10. Amend Article 22 by deleting the phrase "reconstructed, extended, enlarged, replaced or relaid" in sub-paragraphs (1) and (2).

11. Unless an agreement or other arrangement is reached between Able and C.GEN, Amend Article 29 by inserting the following sub-paragraph:

(5) Nothing in this Order shall permit the compulsory acquisition of interests in railway, track bed and associated structures from Network Rail Infrastructure Limited, being the parcels numbered 02008, 03013, 03014, 03015, 04004, 04014, 04024, 04025, 05023, 05024, 05025, 05026, 05027, 05028, 07001 in the land plans.

12. Unless an agreement or other arrangement is reached between Able and C.GEN, Amend Article 30, by inserting the following sub-paragraph and renumbering the remaining sub-paragraphs accordingly:

(6) Nothing in this Article shall

(a) apply to any easement or other right in which C.RO Ports Killingholme Limited or C.GEN Killingholme Limited has an interest in, or has the benefit of; or

(b) override any agreement between Network Rail and either C.RO Ports Killingholme Limited or C.GEN Killingholme Limited relating to the rights to connect to and use Network Rail's railway.

13. Unless an agreement or other arrangement is reached between Able and C.GEN, Amend Article 34 by inserting the following sub-paragraph and re-numbering the remaining sub-paragraphs accordingly:

(6) This article does not apply to any easement in relation to crossing the Railway or other right to access and use the Railway in which C.RO Ports Killingholme Limited or C.GEN Killingholme Limited has an interest in, or has the benefit of.

14. Unless an agreement or other arrangement is reached between Able and C.GEN, Amend the land plans to remove the pink wash from the parcels numbered 02008, 03013, 03014, 03015, 04004, 04014, 04024, 04025, 05023, 05024, 05025, 05026, 05027, 05028, 07001.

15. Delete Article 47.

~~16. Amend Article 59 by deleting it in its entirety, and replacing it with the following provision:-~~

~~59. (1) The provisions of section 72 of the 1990 Act shall apply so that the requirements shall be deemed to be imposed as and as if they were conditions imposed upon the grant of planning permission pursuant to section 72 of the 1990 Act and the development consent granted by this Order was a planning permission granted under the 1990 Act.~~

~~(2) Sub-section (1) of section 78 of the 1990 Act shall apply to the development consent granted by this Order and to the requirements save that it shall be modified so as to read for the purposes of this Order only as if there were inserted after subsection (b) the following —~~

~~"(bb) refuse an application for any consent, agreement or approval of that authority required by a requirement imposed on a grant of development consent or contained in a development consent order, or a grant it subject to conditions; or"~~

~~(3) Sections 78 and 79 of the 1990 Act shall have effect in relation to any appeal under the terms of this article save that the Secretary of State in question shall be the Secretary of State who would be responsible for determining an application for development consent with the subject matter of this Order if section 103(1) of the 2008 Act applied.~~

~~(4) The terms of any development order, and other rules and regulations, including without limitation regulations requiring environmental impact assessment, and which apply to applications pursuant to conditions or the subject matter of section 78 of the 1990 Act shall apply to any application or appeal made under the requirements or terms of this article.~~

~~(5) Nothing in this article shall alter the effect of section 161 of the 2008 Act.~~

17. Amend Schedule 1 by:
  - 17.1 Inserting the words "Work No. 3 - " at the beginning of sub-paragraph (3)(b);
  - 17.2 Unless an agreement or other arrangement is reached between Able and C.GEN, inserting the following sub paragraphs and renumbering the remaining sub-paragraphs accordingly:
    - (d) Work No. 4 - [works to the Killingholme Branch Line];
    - (e) Work No. 5 - [construction of level crossings];
18. Amend Schedule 11 Requirements by:
  - 18.1 Unless an appropriately worded restriction on the use of AMEP is agreed between Able and C.GEN, Amending the definition of "authorised development" by deleting the words "and any other development authorised by this Order"
  - 18.2 Inserting an additional Requirement after Requirement 2 and renumbering the remaining provisions accordingly:

*Restriction of operations*

3. The Authorised Development shall be operated only as a facility for the manufacture, assembly, storage and transport of components and parts for offshore marine energy and related items.

- ~~18.3 Amending Requirement 4 by deleting the text in its entirety and replacing it with the following Requirement:-~~

~~4. (1) Except where the authorised development is carried out in accordance with the plans listed in paragraph (2) below, no authorised development shall commence until details of the layout, scale and external appearance of Works No. 1, 2, 3, 4, and 5 comprised in the authorised development so far as they do not accord with the authorised plans have been~~



~~submitted to and approved by the relevant planning authorities. The authorised development must be carried out in accordance with the approved details.~~

~~(2) The authorised development shall be carried out in accordance with the approved plans submitted with the application and bearing references [ ] (unless otherwise approved in writing by the relevant planning authorities and the altered development accords with the principles of the design and access statement and falls within the Order limits) as follows:-~~

~~{Insert list of detailed drawings}~~

~~(3) Where any alternative details are approved pursuant to this requirement, those details are to be deemed to be substituted for the corresponding approved details set out in this requirement.~~

19. Insert Protective Provisions into Schedule 8.

[Drafting note: Able has confirmed it is supplying a further draft of Protective Provisions. Below is a draft of Part 7 containing the protection that C.GEN expects to see. C.GEN will, however, review any further draft supplied by Able].

## PART 7

### FOR THE PROTECTION OF C.GEN KILLINGHOLME LIMITED

#### *General*

**34.** The following provisions shall apply for the protection of C.GEN, unless otherwise agreed in writing between the undertaker and C.GEN.

**35.** In this Part of this Schedule-

"construction" includes execution and placing, maintenance, extension, improvement, enlargement, relaying and renewal and "constructed" should be construed accordingly;

"C.GEN" means C.GEN Killingholme Limited;

"C.GEN land" means the land owned by C.GEN adjacent to the Order land;

"CPK" means C.RO Ports Killingholme Limited, a statutory harbour located to the west, and upriver of, the proposed Able Marine Energy Park;

"plans" includes arrangements, sections, descriptions, drawings and specifications;

"Railway" means the track and track bed of the Killingholme Branch Line;

#### *Railway*

**36.** The undertaker shall not in the exercise of the powers conferred by this Order prevent C.GEN's access to the Railway.

37. (1) The construction and operation of the authorised development must not interfere with or obstruct the free, uninterrupted and safe use of the Railway or any traffic on the Railway.

(2) If any such interference is caused or takes place in consequence of the construction or operation of the authorised development the undertaker shall pay to C.GEN all reasonable expenses to which C.GEN may be put and compensation for any loss which it may sustain by reason of any such interference or obstruction.

#### *Rosper Road*

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

39. (1) The construction and operation of the authorised development must not 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.

(2) If any such interference is caused or takes place in consequence of the construction or operation of the authorised development the undertaker shall pay to C.GEN all reasonable expenses to which C.GEN may be put and compensation for any loss which it may sustain by reason of any such interference or obstruction.

#### *Indemnity*

40. (1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure resulting from any of the authorised development any damage is caused to any property of C.GEN or C.GEN suffers any loss as a result of delays or other interruptions to port operations at CPK or as the result of delays or interruptions to the operation of the Railway 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 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.

*Liability*

**41.** 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.

*Drainage*

**42.** Article 4(2) of this Order shall not apply to any watercourse which is used for the drainage of the C.GEN land.

*Disputes*

**43.** 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 66 (arbitration).