

Dear Sirs,

Interested party reference:

Please find attached C.RO Ports Killingholme Limited's comments on responses to the Examining Authority's first written questions.

Kind Regards,

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Solicitor (New Zealand qualified)

DLA Piper UK LLP

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The Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

The Able Marine Energy Park Development Consent Order

Planning Inspectorate Reference: TR030001

C.RO Ports Killingholme Limited (Interested Party reference: [REDACTED])

Comments on responses to the Examining Authority's first written questions

INTRODUCTION

- 1 This document ("WR2") has been prepared on behalf of C.RO Ports Killingholme Limited ("C.RO"), the statutory harbour authority for, and operator of, C.RO Ports Killingholme ("CPK"). It relates to the application by Able Humber Ports Limited ("Able") to the Secretary of State for the Able Marine Energy Park ("AMEP") Development Consent Order ("DCO") and sets out C.RO's comments on the responses received by the Examining Authority to its first written questions ("WQs").
- 2 C.RO continues to consider the DCO application, including the additional information that Able submitted on 29 June. C.RO therefore reserves the right to amend, or add to, the representations contained in the WR2.

COMMENTS ON RESPONSES TO THE EXAMINING AUTHORITY'S FIRST WRITTEN QUESTIONS

- 3 **General comments on Able's responses to WQ 1 (Economic factors) WQ 2 (Scope and scale of proposed development) WQ 4 (Associated development) and WQ 5 (Alternative uses)**
- 3.1 Although the Examining Authority has raised WQs 1 - 5 as separate questions, C.RO submits that it is worth considering these questions together as these questions, and Able's responses, raise a number of common issues. These address additional information/representations that have been made since responses to the WQs were submitted, including the Issue Specific Hearing on the DCO on 12 July ("ISH"), and the written summaries of representations made at the ISH submitted on 23 July ("WS1").
- 3.2 The Examining Authority will be aware of C.RO's concerns about the future use of AMEP, and its view of the need for a restriction on the use of AMEP. We refer the Examining Authority to paragraphs 17.8 to 17.10 of C.RO's first Written Representation submitted on 29 June ("WR1"), paragraph 4.2 of WS1 and paragraph 6 of the Paper of Amendments appended to WS1.
- 3.3 It is noted that as stated at paragraph 9 of Able's WS1, and also noted in the Examining Authority's letter to Osborne Clarke of 25 July, Able has agreed that "a restriction in the type of cargo that the development should be permitted to handle should be imposed in the DCO to reflect the basis of environmental impact assessment and shadow Habitats Regulations Assessment". As at the date of this WR2, C.RO does not have the benefit of considering the

nature of the restriction proposed. Furthermore, C.RO is concerned about the mechanism proposed for changes to this restriction.

- 3.4 C.RO is concerned that although Able may accept the principle of a restriction, it is trying to give itself an unacceptable level of flexibility. It has acknowledged that it may wish to use AMEP for other port uses. Its proposed mechanism to amend the restriction it says it will accept will presumably be designed to enable other development. Therefore, AMEP is proposed as a wind related port that may well be used for other port uses. As a result, it would be unlawful to grant development consent without having regard to any environmental information that relates to those other uses. In determining the measures that are appropriate to control development at AMEP (including any proposed relaxation) as part of the DCO, the decision maker must have regard to environmental information.
- 3.5 The purpose of the planning system is to control development, including in respect of the effects of a development on the environment. It also provides the mechanism for alterations to a development, including changes of use. That applies equally to a nationally significant infrastructure project ("NSIP") authorised under the Planning Act 2008 ("PA 2008"). On this basis, it appears unusual to create a mechanism (whatever that is proposed to be - details are not yet available) to deal with a "what if" scenario when one already exists. An alternative mechanism would seem to seek to supersede the specific provisions for alterations to a NSIP set out in the PA 2008 and the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011. Given that Parliament has set out specific procedures for the amendment of details - including restrictions - of a NSIP as set out in a DCO, there is no need - and indeed no justification - for seeking to provide a different system for AMEP. Explanation of what is proposed is awaited. The only basis on which any different - and presumably more flexible - system could be contemplated is if the environmental effects of that flexibility had been assessed, and the decision maker, in determining whether to include them, had regard to relevant environmental information.
- 3.6 As it stands, whilst alternative uses are apparently contemplated by Able, they have not been specified, or assessed. Able appears to be seeking to give itself a wide discretion and ability to construct works to enable, and then carry on, such alternative uses (whatever they may be).
- 3.7 C.RO considers that Able's responses to the WQs serve to make even plainer - explicitly so in some places - that Able desires to have considerable flexibility as to the port and other functions that AMEP can be used for. This introduces some doubt as to the justification for a facility of the size and scale of AMEP. This flexibility - and the way that Able has sought to

achieve it - also introduces concerns about the information that Able has supplied for the purposes of an assessment under the Conservation of Habitats and Species Regulations 2010 (an "HRA").

- 3.8 Nowhere is there a clear explanation of how the size of the quay (and potential scale of associated development) proposed is justified according to a likely throughput across the quay of marine energy components, based on an assessment of what can be expected to be handled across the quay. The assessment as it stands is based entirely on the potential storage capacity of the land proposed for associated development without explaining in any detail how the storage capacity of the land translates into a necessity for a quay wall of this size and scale.
- 3.9 This is of concern because Able appears to acknowledge that it may not, in fact, be able to achieve marine energy uses for the entirety of the quay wall and associated development land. It states this explicitly at paragraphs 5.1 to 5.7 of its Response. This is the basis for seeking flexibility. This gives rise to a fundamental concern: if Able cannot demonstrate what level of marine energy use it expects to attract, how has it determined an appropriate size and scale of development? Further, if it accepts that it may not be able to fulfil marine energy uses for the whole quay wall and associated development land, should it not adopt a phased approach? What Able is proposing, in short, is that it carries out new development that will affect the integrity of a Natura 2000 site on an entirely speculative basis, and if it cannot attract a level of market share that justifies a development of this size and scale, it will use it for something else.
- 3.10 It is submitted that the need and justification for standard harbour facilities alone of this size and scale in this location has not been established. This must be established if alternative uses are to be contemplated. The Examining Authority - and the Secretary of State - must have regard to the considerable level of doubt as to the need for a facility of this size, and whether there is any prospect of the whole of it being used for the purposes of marine energy uses. Able must show how the size and scale of the development - including the quay wall - relates to marine energy uses.
- 3.11 It would not be appropriate - or indeed lawful - to make a DCO that allowed Able to build a port of any description, which it states clearly it may well do, without having regard to relevant environmental information, and without having carried out an appropriate HRA for those potential uses. C.RO does not consider that the question of a restriction is resolved by Able's acknowledgement that it will accept one, because it is clearly seeking to allow itself a

wide degree of flexibility in the future, without carrying out the necessary work to specify and assess such uses now. This is a highly unusual approach.

4 Comments on Able's responses to WQ 2 (Scope and scale of proposed development)

- 4.1 It is indeed the case that the threshold in Section 24 of the PA 2008 for harbour facilities to be a NSIP relates to an expected capability to handle the relevant quantity of material as specified in that section. As part of the application, Able has submitted a report by Hochtief, *Nationally Significant Infrastructure Project Justification* (the "Hochtief Report").
- 4.2 The Hochtief Report does not explicitly set out how the required throughput will be capable of being handled. The length of the quay wall alone is not sufficient to establish that the threshold is capable of being met. It is noted that the application does not include any specific proposals (as Works, or in any other form) for cranes or other equipment to handle materials. Able's justification - as set out in the Hochtief Report - is purely that an amount of storage land (and what this means is not explained) can be related to a length of quay wall.
- 4.3 The Hochtief Report then relates the amount of storage land to potential metric tonnes. However, the figures used (see paragraph 3.6 of the Report) are not explained. It is not clear how they have been arrived at, or what they relate to. It is not explained how or if the figures used to make this calculation relate to throughput over a quay for a marine energy port. AMEP is not being proposed as a storage facility. Whilst it is acknowledged that bulk materials and components may be stored at AMEP, the determining factor is the capability of the quay. The Report is therefore deficient. It does not refer explicitly to the range, type, and quantities of bulk materials and components that are likely to be required to be handled across the quay, for the relevant offshore energy market, and the proportion of those metric tonne quantities. It does not set out a likely level of throughput other than on an assumption about storage capacity on land that does not comprise the NSIP.
- 4.4 Although C.RO does not object to AMEP in principle, the approach to justifying how AMEP qualifies as a NSIP raises concerns. It is not clear what level of throughput AMEP can reasonably be expected to achieve. The Report does not demonstrate the likely level of throughput relating to marine energy materials (and neither do any other of the documents submitted as part of the application for the DCO ("Application Documents")). This must be because either this exercise has not been carried out, or Able cannot actually demonstrate that it can achieve such levels. In the circumstances, it is perhaps not surprising that Able is intent on having flexibility to use AMEP for other port purposes.

- 4.5 Further, quay length alone is not a sufficient indicator of capacity. The expected capacity of any harbour facility is dependent on the shore-side infrastructure necessary to enable the loading and unloading of cargo. In the absence of such proposals, it is difficult to see how Able can assert that the facility can be expected to handle the relevant quantity of material. It is not explained what quantity of material it expects to handle, or how. Its justification is based entirely on storage land and the quay size, and on an assumed economy of scale. A much smaller quay could equally handle a large amount of material provided it had the necessary cranes and other infrastructure. Able has not specified any such infrastructure. As a result, there is no way of controlling the development - the environmental effects have not been assessed.
- 4.6 It is significant that Able does not state that it will achieve the relevant levels of throughput. At paragraph 2.4 of its Response, it states that although it is clear that AMEP is not expected to handle more than 5 million tonnes of cargo per year at the point of consent, "it is clearly expected to be capable of doing so without any physical modification". The meaning of this statement is not clear. It may well be the case that AMEP would not require physical modification - although presumably it would require the installation of cranes and other infrastructure to enable the handling of more than 5 million tonnes of bulk materials per year. However, the requirement is to demonstrate that AMEP is in fact capable of handling the relevant quantity of material per year. To do so requires, at least in part, an explanation of what levels of cargo AMEP does expect to handle.
- 4.7 As matters stand, it seems there is a level of doubt about how AMEP can be expected to handle the relevant quantity of material, certainly in respect of marine energy materials. Able has not actually stated what is the minimum amount of material it expects to handle. It must be assumed that it cannot do so, or does not want to do so, otherwise neither the proposals nor the explanation and justification would need to be so vague.
- 4.8 C.RO submits that if AMEP is anticipated to serve the offshore energy market, Able should be able to demonstrate in greater detail, using an appropriate and relevant method of calculation, what amounts of bulk materials and components are expected to be handled over the quay. The existing level of doubt only strengthens concerns that Able is relying on using AMEP for other port-related uses, and is seeking to do so without specifying those uses, or assessing them. At present it appears to C.RO that Able is attempting to future proof AMEP to ensure that it can be used as a cargo port in the future. This would explain the size of the quay proposed, the lack of constraints in the DCO and the lack of detail regarding potential wind energy customers.

- 4.9 It is submitted that Able cannot demonstrate that it will handle the relevant quantity of cargo for the marine energy sector alone to justify its assertion that AMEP, as a marine energy facility alone, is a NSIP. On that basis, its assessment of need and alternatives is also flawed.

5 Comments on Able's responses to WQ 4 (Associated development)

- 5.1 Able must be able to establish that there are no alternative solutions that would have a lesser effect or avoid an adverse effect on the integrity of the protected areas, and that there are Imperative Reasons of Overriding Public Interest ("IROPI") that support the project. C.RO submits that the Examining Authority has not had sufficient evidence put before it that either of these requirements are satisfied by AMEP.
- 5.2 In response to the Examining Authority's WQ 4(c) requesting clarification why a scheme of this size is required, given its significant impact on European sites, Able states that "the scale of the site reflects the scale of the need". C.RO acknowledges that there is strong policy support for the development of renewable energy projects in the UK. However, an acknowledged need across the whole of the UK by no means justifies an individual project being built at a scale that results in such significant environmental effects. There will be no doubt numerous renewable energy projects being promoted in the future across the UK reliant on the policy support for renewable energy. It is not an adequate approach to the promotion of major infrastructure projects that so directly affect the integrity of a European site to suggest that each should be built to as large a scale as possible, to meet as large a proportion of the UK's energy needs as it can, regardless of the environmental effects. Any assessment of alternatives must necessarily examine the relevant market, and the share of that market that the proposed development can reasonably be expected to serve.
- 5.3 C.RO has not seen any evidence to date that justifies why a quay wall of this size and scale is required to meet the requirements of the specific and relevant market of the broader offshore marine energy industry. Only vague detail has been provided in relation to potential customers, with huge variations in the general enquiries from anonymous customers listed in Able's response to WQ 4(a). For example, enquiries have been received from Nacelle manufacturers for requirements from 25 to 90 hectares, with a related 200 to 600 metres of quay for exclusive use. The number of enquiries have not been set out, or what amount of land and quay are actually likely to be required. A commercial enquiry is not the same - for the purposes of assessment - as a reasonable assumption about likely use. It is a very unusual approach to justifying this sort of project within the relevant legal frameworks.

- 5.4 It is notable that Able's response to WQ 4(c) is entirely lacking in specific information. In addressing the question as to why it is essential for the scheme to be the size proposed, it states baldly that "the scale of the site reflects the scale of the need". It then merely discusses the nature and categorisation of investment options for the UK. It is surprising that Able cannot address the question directly, and explain for the benefit of the Examining Authority and other interested parties how a particular market share - because it must be assumed that AMEP will not serve all of the offshore renewable market in the UK - will be met by AMEP, and therefore requires the scheme to be of a specific size and scale.
- 5.5 At paragraph 4.18 of its Response, Able states that "reducing the scale of the development would not seem to serve any useful planning purpose - it is demonstrably beneficial that the whole site be developed". This paragraph - with others - demonstrates the fundamental weaknesses in Able's assessment and justification of why AMEP should be the size proposed. The purpose of considering whether reducing the scale of the development is appropriate is of extreme relevance for a HRA. Able has not shown that it is in fact demonstrably beneficial, or indeed necessary or required, for the whole site to be developed. The useful planning purpose that would be achieved by constructing a development of a scale proportionate to the market would be to ensure that the integrity of a European site is not affected where there is no justification - having regard to the IROPI - for doing so.
- 5.6 C.RO wishes to make clear that it is not stating that there is no market for AMEP. However, neither the Application Documents nor Able's responses explain (if at all) the likely market that AMEP expects to serve. As a result, the justification for the scale and size of the scheme is distinctly lacking. This means that the assessment of alternatives is weak, if not wholly deficient. Able has not demonstrated what alternative designs might be appropriate, or even why they are not. It can only do so by explaining properly what market share it reasonably expects to achieve. This vague approach gives further credence to the belief that Able is prepared to build a speculative scheme and, should it not fulfil its aim of using the whole quay for the marine energy industry, try to use it for something else. This is a fatal flaw in its IROPI argument. A decision to grant development consent on the basis of the current information is likely to be unlawful. More information is required, and with a much higher level of detail, before the Examining Authority can be satisfied that there is a need, and an overriding public interest under the Habitats Regulations, for a facility of this size to be constructed in such a sensitive location.

6 Comments on Able's response to WQ 5 (Alternative uses)

- 6.1 Able's response to WQ 5(a) as to whether it intends to import cargoes other than those relating to the manufacture of wind turbines (on a temporary or permanent basis) is that "it is the intention to import and export cargoes relating to the renewable energy market". It then acknowledges, in response to WQ 5(b), that "the project documentation does not consider cargoes other than those related to marine energy".
- 6.2 It is noted that Able acknowledges that it has not specified any other cargoes, and has not assessed them. Clearly, any works necessary for handling cargo (whatever it might be) other than those relating to the marine energy market are not included within the DCO, and the environmental effects of such cargo cannot be known. They would certainly be different.
- 6.3 C.RO has already made submissions at paragraph 24.1 of its WR1 on this question, and the appropriateness of including a restriction on the nature of operations that may be carried on at the development (see paragraphs 17.8 to 17.10 of WR1, paragraph 4.2 of WS1 and paragraph 6 of the Paper of Amendments). The Examining Authority is referred to those submissions.
- 6.4 There are a number of further comments to make on Able's response to WQ 5(c). At paragraph 5.4, Able states that it would not be willing to accept such a restriction. However, the imposition of such a restriction is not a matter of choice; still less is it a matter of commercial reality. It is a matter of law. Having regard to the EIA Directive¹, and the EIA Regulations², C.RO submits that development consent could not lawfully be granted without such a restriction. C.RO refers the Examining Authority to paragraphs 17.4 to 17.10 of WR1, paragraph 4.2 of WS1 and paragraph 6 of the Paper of Amendments.
- 6.5 C.RO recalls that Able suggested at the Issue Specific Hearing on the DCO that it might accept a restriction.
- 6.6 Able's response at paragraph 5.4 that the imposition of a restriction might affect funding, and therefore preclude the significant economic benefit for the UK that it believes AMEP represents, is not an appropriate reason to avoid a restriction. If the success of AMEP is dependent on a degree of flexibility, that can be achieved by specifying what other uses might be carried on, and assessing them. There would then need to be an HRA of those uses. Either

¹ Council Directive 85/337/EEC, on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC and Article 3 of Council Directive 2003/35/EC.

² Town and Country Planning (Environmental Impact Assessment) Regulations 2011

AMEP is capable of being funded on the basis of the renewable energy sector alone, or it is not. If the viability of AMEP is dependent on other uses, then those uses must be specified and assessed. It is entirely possible - and indeed required by law - to attain a level of flexibility by carrying out the appropriate and required assessments.

- 6.7 Able states at paragraph 5.5 that "it is fairly certain that any definition of permitted use would need to be broad enough to reflect opportunities in the future beyond the offshore renewable sector". It is submitted that the way to achieve flexibility is to be clear about what flexibility is required, and then assess that. It is not enough simply to want flexibility. It will be noted that C.RO has not stated that AMEP should never be used for any other purpose, merely that it must specify and assess those uses (as required by the EIA Regulations) now, or make the necessary applications in future.
- 6.8 This approach to flexibility is also material to the HRA, and in particular the IROPI justification (see WQ 5(d)). It will be noted that Able has not set out an HRA justification for the proposal in relation to port uses. The assessment of alternatives, and the IROPI justification, relies entirely on AMEP being a facility for the offshore marine renewable energy industry (see also Able's Response paragraphs 4.10 and following). This is acknowledged in Able's response to WQ 5(d). However, it states that "if additional cargo were to be handled, then at least the final two IROPI reasons [grow manufacturing in the UK, and regenerate the Humber sub-region] would still be fulfilled".
- 6.9 Whilst it may be the case that a port in this location might help regenerate the Humber sub-region, this remark is not sufficient for the purposes of establishing IROPI, or explaining what provisions might be necessary to ensure no derogation from the IROPI case that Able has put forward. It is clear that if the use of AMEP is not appropriately restricted there will be a derogation from the IROPI case put forward. Able has made clear that it genuinely contemplates other uses.
- 6.10 If Able wishes to establish that there are IROPI for other port uses, it needs to present a detailed justification in a similar format to Chapter 6 of the Environmental Statement in respect of AMEP being used as a port in this location, and establish that there is a need, no alternative, and IROPI for a port of this size and scale in this location. There is no evidence that there is such a case. It is not sufficient to state that at least if other uses were to occur the IROPI case for AMEP as a marine energy port might still be satisfied in respect of a regeneration aim, particularly as Able has not shown what port uses might be carried on, and how there is a need for them that relates to the size of this proposal.

- 6.11 It is submitted that it would be unlawful to make the DCO without an appropriate restriction, both under the Habitats Regulations and the EIA Regulations.

7 Comments on Able's response to WQ 9 (Alternatives)

- 7.1 C.RO refers to the comments it has made above. In addition, it is noted that the alternatives referred to here relate only to AMEP being used as a marine energy facility.

8 Comments on Able's response to WQ 14 (Mitigation)

- 8.1 Able's response at paragraph 14.35 refers to a mitigation strategy to reduce navigational risk to a level that is as low as reasonably practicable and is assessed using experience and professional judgement. Whilst it is acknowledged that is the aim of a navigational risk mitigation strategy, no strategy appears to exist. No detail is set out as to what liaison will be carried out with adjacent operators. This is necessary.
- 8.2 The draft Code of Construction Practice ("COCP") merely refers (at paragraph 14.1) to an objective for contractors to implement site practices and working methods to ensure that construction activities do not interfere with commercial navigation. It is also noted that the draft COCP is not referenced in the Requirements, as would be expected. This approach (if not remedied) would mean that the COCP required to be submitted and adhered to by Requirement 15 may not necessarily reflect the draft.
- 8.3 Whilst this objective is welcome, C.RO cannot find any detail of how this objective will be implemented through specified measures. In fact, it seems entirely possible that there will not be such methods. This is because the draft COCP at paragraph 14.3 merely refers to exploring the viability of a marine control centre during the construction phase.
- 8.4 C.RO submits that mitigation must be specified now. If it is required, then it must be submitted and approved and implemented prior to construction. It is not appropriate to deal with mitigation on a "wait and see" basis. This approach risks giving rise to the very things that Able states in paragraph 14.35 should be avoided. Further, whilst this aim is indeed what is required, there is no detail as to how it will be achieved, if at all. The mitigation is highly deficient in this respect, which raises not only commercial risks to C.RO, but the risk of potentially fatal accidents.
- 8.5 Further, as the Examining Authority will be aware, this is a significant issue for the capital and maintenance dredging of the overlap channel. The Examining Authority is referred to the

Relevant Representation of the Harbour Master, and paragraph of its first Written Representation where the need for a specific arrangement with C.RO is insisted upon.

- 8.6 Without assessing how mitigation reduces any risks, it cannot be said that the risk is acceptable. The EIA is therefore deficient.

9 Comments on Able's response to WQ 15 (IROPI)

- 9.1 It is submitted that Able's response does not address the basis of the Examining Authority's question, which is that the plan or project - within the Habitats Regulations - that gives rise to a need to establish IROPI is a quay wall, which is not the principal element of the works required for the purposes of a marine energy park. Given comments elsewhere in this WR2 and in WR1 and WS1, the primary purpose of AMEP must in any case be questioned.

10 Comments on Able's response to WQ 16 (Environmental Statement)

- 10.1 At the Examining Authority's request Able has prepared a schedule identifying the matters identified in the Environmental Statement as requiring mitigation, and identifying the corresponding provisions in the draft DCO delivering that mitigation.
- 10.2 As stated in its WR1, C.RO has serious concerns regarding the adequacy of the Environmental Statement. The Examining Authority cannot be confident that the Environmental Statement correctly identifies all the potential impacts of AMEP that require mitigation.
- 10.3 Furthermore, the mitigation proposed in the draft DCO, particularly in relation to effects on sedimentation, navigation and the road and railway network, is not adequate. The schedule contains very little detail. The mitigation proposals it contains are vague, lack specificity and rely too heavily on plans to be developed at a future unspecified date by unspecified Contractors. There is no certainty that the assertion made in the Application Documents and elsewhere will travel through to future plans or documents. These plans do not form specific requirements themselves, but are subsumed within the generic COCP or Ecological Management Plan. There are insufficient protections to ensure that any mitigation referred to in these plans is carried out to an appropriate standard, or even at all. The proviso that the plans must be prepared to Able's satisfaction does not suffice. It is C.RO's submission that the approach Able has taken to mitigation is haphazard, and Able's response to this WQ reinforces this submission.

- 10.4 C.RO submits that the mitigation proposed must be appropriately described and adequately secured. Any plans referred to in this schedule, such as the Construction Traffic Management Plan, Framework Travel Plan and Site Drainage Plan should be prepared and circulated in draft now, and the drafts referenced in the relevant requirements. This will allow the Examining Authority (and the other parties) to review them and will ensure the proper testing of their appropriateness and likely efficacy. These additional plans should be included as distinct requirements in the DCO in their own right, rather than being subsumed within the umbrella of the COCP. Otherwise there can be no confidence that the adverse impacts of AMEP will be satisfactorily addressed.

11 Comments on Able's response to WQ 28 (Marine matters)

- 11.1 In relation to Able's response to WQ 28 in relation to the work done to comply with the requirements of the Port Marine Safety Code, C.RO remains concerned regarding the lack of detail provided by Able in relation to marine operating procedures. The development of a Safety Management System, as referred to in Able's response, may involve procedures relating to manoeuvring parameters with the AMEP approaches and turning area. This could conflict with CPK's existing marine procedures on approach and manoeuvring, particularly for the downstream berths of 1, 2, 5, and 6. It is essential that any development of a Safety Management System takes place in consultation with the Harbour Master and on the basis of simulation work.

12 Comments on Able's response to WQ 30 (Marine matters)

- 12.1 C.RO notes Able's response, and also refers to paragraph 15 of the Harbour Master's Written Representation which refers to the need for a requirement that all berthing and unberthing occurs within one hour either side of slack waters high water/low water. This must be secured by a Requirement.

13 Comments on Able's response to WQ 31 (Marine matters)

- 13.1 C.RO is not satisfied with Able's response to WQ 31 in relation to the management of the capital dredging in respect of the operations of other river users. Able has made only vague proposals and has provided no detail as to how construction vessel traffic, including dredging vessels, will be managed. The Examining Authority is referred to the comments at paragraph 10 above. It will be noted that the measures set out at paragraphs 31.1 to 31.5 are not reflected in the draft COCP, or elsewhere. They are meaningless without being set out and there can be no certainty that they would occur; they are mere assertions. They must be

secured through a detailed Requirement. Able's response does not clarify the situation. C.RO's WR1 submitted that insofar as the DCO could be made at all (which is not accepted), it should not be made without the inclusion of protection for C.RO for its scheduled services, and measures to ensure that any other disruption to vessel movements associated with CPK is subject to agreement. C.RO maintains this submission. Existing scheduled vessel movements should take precedence over construction traffic associated with AMEP. C.RO refers the Examining Authority to the draft Protective Provisions contained in C.RO's Paper of Amendments.

14 Comments on Able's response to WQ 35 (Marine matters)

- 14.1 Able's responses to WQ 35 is inadequate. Able does not state what existing survey regime it is referring to. In any event, Able is not apparently aware of the existing regime at CPK. It is not appropriate to rely on the existing monitoring regimes of other berth operators. It has not explained what would happen, in any case, if additional sedimentation did occur at C.RO's berths. Able must specify the proposed methodology and regularity of any survey regime. Further protection in favour of Natural England do not - and are not designed to - deal with the operational consequences of increased siltation. Specific provisions relevant to C.RO must be included in the DCO. As is the case elsewhere, Able has relied on assertions without committing to a regime that will deliver any mitigation, and therefore certainty. The absence of commitments means that - as matters stand - environmental effects will not be appropriately controlled.
- 14.2 Notwithstanding mitigation, C.RO requires Protective Provisions to protect C.RO from the cost associated in any increases in dredging requirements resulting from the construction and operation of AMEP.

15 Comments on Able's response to WQ 36 (Marine matters)

- 15.1 Able's response to this WQ is also inadequate. C.RO refers to its comments at paragraphs 13.1 and 13.2 in this regard.

16 Comments on Able's response to WQ 37 (Marine matters)

- 16.1 Able's response to WQ 37 in relation to the overlap in approach channels with CPK does not address the question, or give an accurate response. Whilst the material exposed at the dredged depth may be inerodible boulder clay, the dredged channel will fill with siltation. Maintenance dredging will therefore be required. C.RO notes and supports the comments

made by the Harbour Master Humber in relation to the overlap in the approach channels in its Relevant Representation and in its first Written Representation. There must be a clear division of responsibilities between C.RO and Able and workable arrangements must be formally agreed that will not result in any interference with C.RO's operations. C.RO must also be appropriately protected.

- 16.2 Able has overstated the nature and extent of discussions that have taken place with C.RO in relation to dredging of the shared approach. The draft Heads of Terms sent to C.RO by Able did not address the issue of the overlap specifically and C.RO does not agree that Able's proposals would ensure C.RO would suffer "no detriment". The Examining Authority is already aware of the efforts C.RO has made to progress this. C.RO refers the Examining Authority to the letter from C.RO to Able appended at Appendix 3 to its WR1 which illustrates the lack of clarity and the extent of unresolved issues between C.RO and Able in relation to shared dredging. C.RO has still not received a response. In the absence of formal agreement between C.RO and Able, protective provisions for the benefit of C.RO will be critical in ensuring that C.RO's port operations are not adversely affected.

17 Comments on Able's response to WQ 43 (Completeness of design)

- 17.1 The Planning Application Drawings, whilst they contain some detail, are described as Preliminary. They are not referred to in the draft DCO. As a result, their purpose is not clear. They do not provide a framework by which future decisions on siting/appearance might be determined. There is no explanation of how a final decision on siting/appearance and other aspects of development will be determined. This is normally the function of a Design and Access Statement ("DAS"), or a design code. Neither exist here. It is also not clear how - if at all - future development will relate to the Indicative Masterplan, given that there is no Requirement securing development in accordance with it.
- 17.2 The result is that Able seeks to allow itself a great degree of flexibility without accepting the need to constrain the development at all.
- 17.3 Able's response to WQ 43 makes clear that there is no final design. It is accepted that there may be a need to ensure flexibility. At this stage, Able will not reveal the sort of layout and structures that may be required by occupiers, on the basis of commercial confidentiality. Whilst the Rochdale case is relevant, it is not the case that Sullivan J was accepting that the need to reflect demand should enable absolute flexibility. He states (paragraph 85) that the environmental assessment process should take full account of the implications for the environment. It is indeed possible for it do so, and accepted practice. By the same token, the

environmental effects of the development then need to be constrained to those that have been assessed, accepting that further environmental assessment may be required in future. That is achieved by imposing Requirements that limit the nature and scope of the development to that which has been assessed. This will require reference in the Requirements to the Planning Drawings, and the Indicative Masterplan.

17.4 This issue is of concern to C.RO because the layout and scale of the development may lead to unspecified consequences, which have not been assessed. For example, the layout of the development in a form other than that specified in the Indicative Masterplan may result in impacts on the Killingholme Branch Line, or on Rosper Road. It is important therefore that those effects are not allowed to occur.

17.5 In respect of Able's answer to WQ 43(c), it is not usual to constrain the development by reference to the environmental statement. For the Rookery South DCO, the DAS contains the design of the development and the principles by which elements of the development that were not fixed and required further design would be developed. It provided the framework for the local planning authority to approve those details, and constrained the development accordingly because the EIA had been carried out on that basis. The difficulty with what Able proposes is that the environmental statement does not contain the level of information in the DAS for Rookery. The environmental statement does not (and cannot) fulfil that function. As a result, the future layout/design of the development would not be constrained, and there would not be certainty.

18 General Comments on Able's Response to WQs 44 to 47 (Railway construction and operation)

18.1 C.RO has serious concerns about the nature of Able's responses to the Examining Authority's WQs regarding railway construction and operation, and in general regarding Able's proposals for the Killingholme Branch Line ("Railway").

18.2 The Environmental Statement, Application Documents and draft DCO contain no proposals in relation to the Railway. For example, there are no specified Works in Schedule 1 of the draft DCO in relation to the Railway or level crossings as discussed at paragraph 24.8 of WR1 and paragraph 6.1 of WS1. There is an unacceptable level of uncertainty about the Railway in relation to AMEP, which will prejudice the ability of C.RO to maintain its existing connection to the Railway, and therefore the national railway network, and to be able to use the Railway now and in the future according to demand. The Examining Authority is referred to paragraphs 16.1 to 16.42 in WR1, where these points have been set out in full.

19 Comments on Able's Response to WQ 44 (Railway construction and operation)

- 19.1 Able's response to the question of whether it is proposed to operate the Railway as a single siding both fails to answer the question, and betrays how Able has failed to consider future use of the Railway by C.RO and others.
- 19.2 If Able had done so, it would have been able to specify what works are required to the Railway (including level crossings), assessed them, and reported on the impact of AMEP on existing and future use of the Railway. It has done none of those things. It has simply assumed that it will acquire the Railway and use it as it sees fit.
- 19.3 It is of particular concern that Able has stated only that additional sidings "may be added", and also in response to WQ 47 that discrete crossing points would be installed. It is not clear how Able would achieve this given that no Works are specified in the DCO, and the location of such sidings or crossing points is not specified or secured. There is no guarantee that Able would indeed install such facilities. It is noted that Able has not applied to construct a siding on AMEP, or set out (and applied for authorisation for) any infrastructure associated with trains. It has simply stated elsewhere that it will require two trains per day, although it is not clear where these trains will come from, where they will be going to, and what they will be used for.
- 19.4 In the absence of specific design, it must simply be assumed that if Able were to acquire the Railway without any requirement to carry out appropriate works to enable its use by others, trains would simply stand on the track, and thereby block the rail access for others. Such an outcome would not be appropriate and could not be accepted.
- 19.5 As submitted in WS1, regardless of whether compulsory acquisition goes ahead, if Able proposes works to the Railway (which is unclear given the lack of any detail in the application and Environmental Statement) these works must be specified in Schedule 1 to the DCO as Authorised Development. The works must be properly reflected in plans listed in the DCO and Able must be required to carry them out. These works must also be properly assessed.

20 Comments on Able's Response to WQ 45 (Railway construction and operation)

- 20.1 Able's response to WQ 45 states that a spur will be taken into the Logistics Park, "subject to demand". This is a further example of the vagueness of Able's proposals in relation to the Railway, and in general. It is also inconsistent with Able's response to WQ 3, which states

that AMEP does not need to use, or have access to, the Logistics Park, and that there is no intention to secure direct access to it. If this is the case, then the purpose of any spur is unclear. Moreover, if there is no intention to create a link between AMEP and the Logistics Park, then there can be no justification for acquisition of that section of the Railway beyond the AMEP site and the conditions of section 122 of the PA 2008 are not satisfied. The land is not needed for AMEP.

21 Comments on Able's Response to WQ 46 (Railway construction and operation)

- 21.1 In addition, in relation to this WQ regarding compulsory acquisition of the Railway, Able has failed to properly explain why AMEP requires the compulsory acquisition and privatisation of any part of the Railway, or why AMEP cannot be constructed or operated unless the Railway is acquired. C.RO refers the Examining Authority to 16.8 to 16.26 of its WR1, which provides a more detailed analysis of Able's failure to comply with section 122 of the PA 2008. Able's response to WQ 46 does not provide any such justification, other than to state that if the Railway was not privatised grade separate crossings would be required, which is not reasonably practicable for the intended purpose of the site and is not essential for the site specific conditions. This is not an adequate explanation of why there is no feasible alternative to compulsory acquisition. As submitted at paragraph 16.26 of C.RO's WR1, if level crossings could be installed - even if this requires some redesign of elements of AMEP to accommodate those crossings - there is no need for Able to acquire the Railway and certainly no compelling case in the public interest. Able must provide more evidence in this regard.

22 Comments on Able's response to WQ 48(c) (Transport and travel)

- 22.1 C.RO does not agree with Able's response. As stated in C.RO's WR1 at paragraph 24.18, assumptions based on the growth of traffic associated with existing facilities should have been included in the traffic modelling. CPK is only operating at part of its capacity on existing berths and there is potential for growth and a resulting increase in traffic. It is not sufficient to input only future traffic levels as a result of committed development (and developments for which planning permission has been sought). Contrary to the inference made by Able, C.RO is not expecting Able to relieve existing road congestion to improve the viability of its expansion plans at CPK. C.RO's concern relates to the adequacy of the assessment of effects. The failure to include assumptions regarding growth in port traffic at CPK and Immingham means that the assessment undertaken by Able is defective and fails to properly assess the effect of AMEP on the environment.

23 Comments on ABP's response to WQ 60(c) (Questions primarily for ABP)

- 23.1 C.RO agrees with ABP's analysis of Requirement 3(b) of Schedule 1 to the draft DCO. This Requirement is permissive rather than restrictive. It fails to prohibit other uses of the facility and does not constrain AMEP to the uses which have been the subject of environmental impact assessment. As stated above in relation to WQs 2 to 5, amendments to the DCO are required to constrain operations.

24 Comments on Network Rail's response to WQ 62 (Questions primarily for Network Rail)

- 24.1 C.RO agrees with Network Rail's response to this WQ. The closure of the Railway does not constitute a minor modification under Section 24 of the Railway Act 2005. The appropriate regulatory framework for railway closures of this nature, the Network Change procedure, must be retained. C.RO refers the Examining Authority to the comments in relation to this issue at paragraph 27 of its WR1.

25 Comments on the MMO's responses to WQs 51, 69, and 70 (Questions primarily for the MMO)

- 25.1 C.RO does not propose to comment in detail on the points made by the MMO. However, as a general point, it is of some concern that the MMO still cannot be satisfied with the deemed marine licence, and the content of the Environmental Statement, given the importance of these to the MMO's functions, and the need for it to be satisfied as regards impacts on the marine environment.

It is of considerable concern that such fundamental matters remain unresolved. The result is that discussions on the marine licence in particular are still on-going, given the clear deficiencies in the draft deemed licence, and the apparent failure of Able to address the MMO's concerns. Whilst these matters fall principally within the purview of the MMO, they are relevant to C.RO. Most importantly, all parties are at a considerable disadvantage at not being able to consider at a suitably early stage in the process the scope and content of the final draft licence, and thereby consider the effect of the proposed licence on their functions, including any mitigation in that licence and conditions thereto. It is submitted that this is wholly unsatisfactory and at variance with the principle of preparing as complete as possible documentation, based on adequate consultation, for the purposes of an application under the PA 2008.

- END OF REPRESENTATION -