

**The Planning Act 2008**

**The Infrastructure Planning (Examination Procedure) Rules 2010**

**The Able Marine Energy Park Development Consent Order**

**Planning Inspectorate Reference: TR030001**

**C.GEN Killingholme Limited (Interested Party reference: 10015531)**

**Comments on responses to the Examining Authority's second written questions**

## **INTRODUCTION**

- 1 This document ("WR5") has been prepared on behalf of C.GEN Killingholme Limited ("C.GEN"). 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 second written questions ("WQs").
- 2 C.GEN continues to consider the DCO application, including the representations made by other parties at the Issue Specific Hearings on 13 and 14 September. It therefore reserves the right to amend, or add to, the representations contained in the WR5.

## **APPENDIX 1 - NOTE FOR COMPULSORY ACQUISITION HEARING**

- 3 Attached to this WR5 at Appendix 1 is a Note prepared for the compulsory acquisition hearing on 16-18 October. The purpose of the note is to assist the Panel and Interested Parties at the hearing by drawing together the material before the Panel and place that material firmly within the legal and policy framework which must inform the Panel's decision concerning Able's application to seek powers of compulsory acquisition over the Killingholme Branch Line (the "Railway").

## **COMMENTS ON ABLE'S RESPONSES TO THE EXAMINING AUTHORITY'S SECOND WRITTEN QUESTIONS**

### **Comment on Able's response to Question 29 (Killingholme Branch and Loop)**

- 4 At Question 29 the Panel asked Able whether AMEP remained a viable proposition if the Railway were retained in Network Rail control, given Network Rail's opposition to the creation of new level crossings.
- 5 There are two existing level crossings at the AMEP site, and a bridge. It is understood that Able proposes to create two new level crossings.
- 6 C.GEN understands that some of the road traffic that Able would need to cross the Railway at AMEP may not be suitable for movements over bridges, because of the abnormal size of the components. The footprint of such a bridge would be considerable. As explained at 6.1 of its response, Able has allocated two crossings for such abnormal loads, and two further crossings

for C&U vehicles, which are those that can normally use the road network and which, therefore, are suitable for gradients e.g. on bridges.

- 7 At paragraph 6.3 of Able's response, Able explains that it has never asserted that the development of AMEP is only viable if the Railway is removed from the public railway network. Rather, "retaining Network Rail infrastructure would be a significant encumbrance to the efficient and cost effective operation of the development".
- 8 C.GEN has never stated that Able should not be able to operate any level crossings, in particular those in existence now. It is not aware that Network Rail has stated this either. What is at issue is the need for additional level crossings. Able has not shown why it needs four level crossings in addition to the existing bridge, nor that the level crossings it proposes are in the most suitable locations (to the extent that they are fixed and bearing in mind C.GEN's representations elsewhere about the impact on train movements of multiple level crossings all in operation at the same time). It has not considered whether limiting the use and number of level crossings will detrimentally affect its development. It has apparently not considered the proportion of AMEP traffic that could cross the Railway by the existing or additional bridges.
- 9 C.GEN has submitted elsewhere that Able wants maximum flexibility at AMEP. It has not demonstrated that it is prepared to constrain its project where possible and practicable to accommodate other interests. This is demonstrated by the statement at paragraph 6.3 of its response that, "bridge crossings of the railway are 'not reasonably practicable for the end use of the site as a port'". It is assumed that Able is stating that this end use is one that AMEP would be put to once it was no longer required as a marine energy facility. That is not a reason not to construct bridges or adequate justification of why it should obtain compulsory powers over, or control of, the Railway. This is particularly the case given that Able is not promoting a general purpose port, and has agreed to restrict the use of AMEP by suitable drafting in the DCO. It is irrelevant what Able might find convenient for its long-term plans. The interference with the Railway must be considered on the basis of what is reasonably required for AMEP, having regard to the tests in Section 122 of the Planning Act 2008.
- 10 The cost of bridges does not justify not installing them, and would not meet the tests in Section 122 either. £5-10 million cannot be considered an abnormal cost in the context of a circa £500 million development. Able has not produced any evidence to justify this figure. C.GEN considers that the cost of a bridge for C&U traffic is likely to be lower than these figures.

- 11 In summary, C.GEN recognises that some traffic movements across the Railway may not be suitable for bridges. However, Able has not investigated the scope for limiting what vehicles need to cross the Railway, and where. It has not, therefore, demonstrated that it requires four level crossings and, therefore, control of the Railway. It has not revealed why two level crossings for abnormal loads would not be sufficient, even if that meant some restrictions. It has not demonstrated the extent to which its traffic could use bridges. It has not demonstrated that it has looked at alternatives for the purposes of meeting the tests in the Guidance on compulsory acquisition. Able cannot, therefore, show that compulsory acquisition is necessary because of Network Rail and the ORR's restrictions on new level crossings.
- 12 Further, there has been no environmental impact assessment of these proposals. The Panel cannot know the environmental impact of AMEP on the Railway. It is, therefore, doubtful whether it could recommend that development consent should be granted, given the provisions of the EIA Regulations.

**Comment on Able's response to Question 30 (Specific proposals for Railway)**

- 13 C.GEN is not aware that Able has developed specific proposals in relation to level crossings with Network Rail but would be interested to know if any such proposals have been worked up. It considers them essential to understanding the impacts of AMEP's use of the Railway, and any compulsory acquisition.
- 14 C.GEN considers that protective provisions are also required to ensure that the construction and operation of AMEP does not interfere with C.GEN's free, uninterrupted and safe use of the Railway or any traffic on the Railway. C.GEN refers the Examining Authority to the draft protective provisions annexed to WS1, C.GEN's written summary of its oral submissions at the ISH on the DCO.

**Comment on Able's response to Questions 53 to 57 (Funding Statement)**

- 15 The Examining Authority asked five questions on funding matters. Rather than explicitly responding to three of the five of the Examining Authority's questions regarding the funding statement, Able has provided an Updated Funding Statement at Appendix 10.1. Given the significance of the financial viability of the applicant to the performance of obligations (in protective provisions and elsewhere), and potential liability for compensation, this is surprising. The Funding Statement does not address the matters raised in the questions. The submissions that C.GEN raised in its comments on these questions (WR4) at paragraphs 6.1 to 6.5 remain unaddressed by the Applicant.

- 16 C.GEN welcomes Able's acceptance of C.GEN's repeated request that a clause be included in the DCO requiring the existence of a guarantee or alternative form of security prior to the commencement of the authorised development. However, as well as a requirement for a guarantee, it is important that protective provisions are also included in the DCO. As stated by C.GEN at paragraph 6.4 of WR4 these protective provisions must:
- 16.1 provide financial protection for C.GEN and other affected parties should they incur loss or expenses as a result of the construction or operation of AMEP; and
- 16.2 secure an indemnity against any loss or damage incurred by the parties to whom the provisions apply by reason or in consequence of the construction, operation, or maintenance of AMEP.
- 17 C.GEN refers the Examining Authority to the draft protective provisions submitted as Appendix 1 to C.GEN's WS1.
- 18 Able's response to Question 56 regarding the securing and maintaining of funds should Elba Group dispose of AMEP does not address this issue. This is because the securing of a guarantee, whether by the Applicant or a subsequent company, will not provide adequate protection to affected parties. Protective provisions are imperative to ensure that any future operator of AMEP is financially responsible to the affected parties for the purposes set out in 16.1 and 16.2 above.

## **COMMENTS ON NETWORK RAIL'S RESPONSES TO THE EXAMINING AUTHORITY'S SECOND WRITTEN QUESTIONS**

### **Comment on Network Rail's response to Question 31 (lease of Railway)**

- 19 C.GEN is concerned by Network Rail's comment that Able has stated to it that it requires unrestricted road vehicle access over the entire length of the line rather than a number of discrete crossing points. This also contradicts Able's representations, including in its response to these questions, that it will install level crossings. It has shown these on a drawing. There is a worrying lack of clarity about what Able actually proposes. This will prejudice other interested parties.
- 20 C.GEN has made extensive representations regarding the lack of detail provided by Able as to its proposals for the Railway, and the impact of those proposals on Railway operations. Detail

C.GEN Killingholme Limited

is required regarding Able's specific proposals, and those proposals must be the subject of environmental assessment.

**DLA Piper UK LLP on behalf of C.GEN Killingholme Limited**

**12 October 2012**

**- END OF REPRESENTATION -**

## **APPENDIX 1**

Note for Compulsory Acquisition Hearing concerning Killingholme Branch Line (with Appendix 1-2)

## **APPENDIX 2**



**C.GEN KILLINGHOLME LIMITED ("C.GEN")**

**EXAMINATION OF ABLE MARINE ENERGY PARK ("AMEP")**

---

**NOTE FOR COMPULSORY AQUISITION HEARING  
CONCERNING KILLINGHOLME BRANCH LINE**

---

**1. INTRODUCTION**

- 1.1 This Note has been prepared to assist the Panel - and other parties - for the purposes of the compulsory acquisition hearing ("CAH") on 16 - 18 October. It seeks to draw together the material before the Panel and to place that material firmly within the legal and policy framework which must inform the Panel's decision concerning Able Humber Ports Limited's ("Able") application to seek powers of compulsory acquisition over the Killingholme Branch Line ("the Railway").
- 1.2 It will be noted by the Panel that a similar Note has been prepared on behalf of C.RO Ports Killingholme Limited ("C.RO") to summarise its case concerning the compulsory acquisition of the Railway. It must be emphasised that, whilst they are represented by the same advisors, solicitors and Counsel, C.RO and C.GEN are nevertheless separate companies with separate interests and separate cases to advance to the Panel.

## 2. LEGAL AND POLICY FRAMEWORK

### 2.1 Section 122 of the Planning Act 2008 provides, so far as material:

*“An order granting development consent may include provision authorising the compulsory acquisition of land only if the decision-maker is satisfied that the conditions in sub-sections (2) and (3) are met.*

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

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

*...*

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

### 2.2 The relevant Guidance Note, “Guidance related to procedures for compulsory acquisition” issued by DCLG in February 2010 provides, so far as material, as follows:

*“19. Promoters must ... be prepared to justify their proposals for the compulsory acquisition of any land (or rights over land) to the satisfaction of the decision maker and will need to be ready to defend such proposals throughout the examination of the application. The following guidance indicates certain factors to which the decision maker must have regard it deciding whether or not to include provision authorising the compulsory acquisition of land in an order granting development consent...*

*...*

*[Concerning the section 122(2) condition]*

*24. The first criterion is the land is required for the development of which the development consent relates. For this to be met, 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 consent is sought. The decision maker should be satisfied, in this regard, the land be acquired is no more than is reasonably required for the purposes of the development.”*

*...*

*[Concerning the section 122(3) condition]*

27. *Compliance with one of the criteria in subsection (2) of section 122 is not, however, enough on its own. Under subsection (3), the decision maker must be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily.*
28. *For this condition to be met, the decision maker will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss. This is reinforced by the condition in section 122(3).*

*[Concerning the balance of public interest against private loss]*

...

32. *There may be circumstances where the decision maker could reasonably justify granting development consent for a project while at the same time refusing to include in an order the provisions authorising the compulsory acquisition of the land or modifying these to reduce the area of land so affected. This could arise, for example, where the decision-maker is satisfied of the case for granting development consent but is not persuaded that all of the land which the promoter seeks to acquire compulsorily has been shown to be necessary for the purposes of the scheme. Or the decision maker may consider that the scheme itself should be modified in a way that affects the requirement for the land which would otherwise be subject to compulsory acquisition. Such scenarios could lead to a decision to remove all or some of the proposed compulsory purchase provisions from a development consent order.*

*[Concerning resource implications of the proposed scheme]*

33. *As stated above, any application for a consent order authorising compulsory acquisition must be accompanied by a statement explaining how it will be funded. This statement should provide as much information as possible about the resource indications of both acquiring the land and implementing the project for which the land is required. It may be that the project is not intended to be independently financially viable, or that the details cannot be finalised until there*

*is certainty about the assembly of the necessary land. In such instances, the promoter should provide an indication of how any potential shortfalls are intended to be met. This should include the degree to which other bodies (public or private sector) have agreed to make financial contributions or to underwrite the scheme, and on what basis such contributions or underwriting is to be made.”*

2.3 The following observations can be made about the legal and policy framework:

2.3.1 It is for the promoter of the scheme to justify in detail why the land sought to be compulsorily acquired is *necessary* for the scheme. Desirability or convenience are insufficient; the test is that the land is needed.

2.3.2 The amount of land to be acquired must be no more than is reasonably required for the purposes of the development.

2.3.3 Unless and until the test of necessity is met, the issue of a compelling case in the public interest does not even arise.

2.3.4 If it does arise, it arises as a separate condition. The necessity of acquiring the land is not, of itself, sufficient.

2.3.5 In the event that either of the statutory conditions are not met, the Panel has power to refuse the compulsory acquisition of land even if it is satisfied that the scheme overall should be granted development consent.

### **3. SUMMARY OF C.GEN'S CASE IN OPPOSITION TO COMPULSORY ACQUISITION.**

3.1 Within the legal and policy framework set out above, C.GEN's case may be summarised as follows:

3.1.1 On the basis of the materials currently before the Panel, Able have failed to demonstrate that there is any necessity whatsoever for them to acquire the Railway. That failure is sufficient to cause the refusal of its compulsory acquisition.

3.1.2 In the event the Panel is satisfied that the compulsory acquisition of the Railway is necessary, the Panel will need to consider whether or not the value of that acquisition to the public interest outweighs the harm which would be done by the acquisition of the Railway by Able. That harm extends not merely to the loss of private rights suffered by Network Rail but also includes the consequences for the forthcoming operation of C.GEN's land caused by the removal of a direct connection to the national railway network. The consequences for the operation of C.GEN's power plant (itself a nationally significant infrastructure project ("NSIP")) are a matter of the public interest which must be firmly weighed in the balance. When that is done, it is plain that Able cannot meet the high threshold needed to establish a compelling case in the public interest.

#### **4. SECTION 122(2): THE NEED FOR THE ACQUISITION OF THE RAILWAY**

##### **Able's purported justification in the documents before the Panel**

4.1 At paragraph 5.12 in the Statement of Reasons (December 2011) submitted with its application for AMEP, Able states that the Railway is to be acquired “*in order to allow the site to be operated as a whole*”. The Statement of Reasons then goes on to assert that the remainder of the track (i.e. that extending beyond the north-western boundary of its site) is also required “*so that the railway can be treated as a single unit*”. These assertions are the full extent of the justification in the Statement of Reasons.

4.2 In Response to the Panel’s first set of questions (June 2012), Able asserted in answer to question 46 that:

*“Network Rail has stated that if the line remains within the network and on its current alignment, grade separated crossings will be required to cross it. This is not reasonably practicable for the intended purpose of the site and is not essential for the site specific conditions, viz a freight only line where speed restrictions can be imposed without detriment to operations.”*

4.3 In Response to the Relevant Representations (June 2012), Able asserted, so far as material, that:

*“30.8 The Applicant considers that the alternative of retaining Network Rail infrastructure through the site would be a significant encumbrance to the efficient and cost-effective operation of the development; Network Rail has advised the applicant that in this event, there would need to be “a solution that bridges the existing Rail Network line”. This is not a reasonably practicable solution for the end use of the site as a port.*

...

*30.15 The AMEP proposals have been broadly consulted upon in accordance with the statutory requirements... And the applicant intends that the public interest is*

*best served by the development of AMEP as a coherent single port site with a private rail siding.*

30.16 *Whilst therefore, Network Rail has confirmed the applicant that it is no longer prepared to sell its land and infrastructure to the applicant, the case for retaining it as part of their operational network, as currently expressed, does not seem either compelling or to be in the public interest."*

4.4 In Comments on the Written Representations (August 2012), Able stated, so far as material, as follows:

"29.5 *AMEP will, if consented, provide a diverse manufacturing cluster for the burgeoning offshore wind turbine sector and as such the development will see the relatively frequent movement of large products and components around the site and therefore access across the existing railway line that the sector. These rail crossings are needed to move out going products and incoming raw materials to and from the new quay(s). For example, the site will require significant quantities of steel plate that could be supplied by TATA Steelworks at Scunthorpe and be transported by rail.*

...

29.7 *The rationale [for the acquisition] is to ensure the effective and safe management of the railway line that enables AMEP tenants to operate effectively, retaining the benefit of the line was being able to cross it at regular intervals. In this regard it is crucial to understand the nature of the manufacturing site proposed means that it produces very large and heavy units that need to be moved using specialist equipment that operate on flat ground. Private ownership of the line would unable proportionate arrangements regarding crossing points that reflect rail use and the (effective if not actual) speed limit. Thus, in private ownership level crossings can be used instead of the grade separated crossings necessary on Network Rail track that they say are necessary should the line remain under their direct management."*

4.5 In their Second Set of Questions, the Panel enquired:

*"... If the Killingholme Branch remains within the National Rail network is the development of the Marine Energy Park on the scale and extent proposed a viable proposition?*

4.6 In Response (September 2012), Able indicated that they had a strong preference for at-grade crossings (level crossings) and that they would suffer operational and financial disadvantages in the event that grade separated crossings (bridges) were required to be provided. Nevertheless, Able stated, so far as material, that:

*“6.3 The Applicant has never asserted that the development of AMEP is only viable if the Killingholme Branch is removed from the public rail network. Rather the applicant has made clear that "retaining Network Rail infrastructure through the site would be a significant encumbrance to the efficient and cost-effective operation of the development... The Applicant has further stated that bridge crossings of the railway are "not reasonably practicable for the end use of the site as a port”.*

*6.4 In determining what alternatives are reason be practical, the applicant has considered what is possible and then made an assessment of what should be considered reasonable on a cost/benefit basis....*

*...*

*6.10 In conclusion therefore, **AMEP remains viable with whatever crossings are required**, but the construction of bridge crossings would give rise to: –*

- a. Significant abnormal costs that are, given the evidence available to the Applicant, not reasonable. This, in turn, would be reflected in less competitive offers to prospective tenants.*
- b. The footprint occupied by the bridge approaches would be significant, provide a constraint to traffic movement across the site and reduce the external storage areas available. Again this would result in a less attractive site to prospective tenants."*

(emphasis added)

### **C.GEN's response on need**

4.7 As to the Statement of Reasons, this is entirely deficient as a justification for the acquisition. It is wholly unclear what is meant by either of the assertions set out in paragraph 4.1 above. No explanation is provided as to why the site cannot be operated



as a whole without the acquisition of the Railway. The Railway is already a single unit.

4.8 It is also to be noted that there is no suggestion that Able need to acquire the Railway in order to operate it as such.

4.9 This is the full extent of the justification provided in the Statement of Reasons.

4.10 As to the written representations provided by Able and set out as appropriate above, they make plain that the acquisition of the Railway is a matter of desirability and convenience, *not a matter of necessity*. The highlighted passage in the Response to the Panel's Second Set of Questions - “**AMEP remains viable with whatever crossings are required**” indicates clearly that there is no necessity to acquire the Railway. The fundamental statutory requirement that the acquisition be necessary cannot, even on Able's own representations, be made out.

4.11 Furthermore, insofar as Able's representations provide any justification for the acquisition, the relevant justification appears to be the need to move very large and heavy units across the Railway using specialist equipment that operates on flat ground. However, no details of the operations have been provided; this is perhaps unsurprising as no layout for the final form of AMEP has been provided. No detail of the location of units which might generate such transits of the Railway is available and there is no basis, from the wholly inchoate materials available, on which it could possibly be concluded that it is necessary for the development for the Railway to be compulsorily acquired.

## **Alternatives**

- 4.12 In the context of the conditions in Section 122 of the Planning Act 2008, as well as the criteria in the Guidance, Able is required to look at alternatives to compulsory acquisition. This includes examining how its proposals could (or could not) be modified, for example by building bridges or underpasses, or rearranging the layout of its development to have one bridge crossing accessed by gentle gradients, and/or diverting the Railway. Able has rejected the incorporation of bridges. The cost of these (£5-10 million) seems small in the context of the overall cost of AMEP. Its justification for not considering bridges is that they might inhibit the layout of the site in future.
- 4.13 There is no evidence that Able has looked at alternatives. This would appear to be a result of it failing to consult properly. As a consequence, C.GEN is being asked to give up its potential right to connect directly to the national railway network on the basis of a complete lack of any proper proposals. It is acknowledged that Able has mentioned the possibility of an agreement. However, no details or further proposals have been provided. This is not an acceptable position. Until Able can explain why there is no feasible alternative, including whether its development can be redesigned, C.GEN cannot agree to the proposed acquisition. There is no evidence that C.GEN's use of the Railway would be properly protected.
- 4.14 The absence of any proper consultation - through which alternatives could have been properly explored, based on detailed proposals - has put C.GEN in a position where it is now being pressured to accept a solution that is detrimentally worse, and uncertain. This is not reasonable.

## **5. COMPELLING CASE IN THE PUBLIC INTEREST**

### **Absence of justification for acquisition of the Railway**

- 5.1 C.GEN's primary case is that at no point has it been clear why Able needs to acquire the Railway at all. Indeed, as suggested above, materials submitted by Able itself make plain that there is no necessity to acquire. In the event, however, that the Panel takes a different view, Able will still need to establish that there is a compelling case in the public interest for the acquisition.
- 5.2 Should it become necessary to consider that issue, the nature of the justification for the acquisition must be considered and weighed up against the harm that would be done by the acquisition. C.GEN is seeking consent to construct and operate a powerplant which will serve the national economic interest (and which is itself an NSIP). As such, the practical effect of the acquisition on C.GEN's operations is a matter of the public interest which must be weighed in the balance.
- 5.3 C.GEN could not agree to the removal of the Railway from the national network - or a grant of lease to Able - without understanding how this would be achieved in a way that is not detrimental to their rights. That in turn demands a rationale for the acquisition.

## **6. C.GEN'S PROJECT**

- 6.1 As set out in full in C.GEN's first written representation (WR1) (paragraphs 9 to 21) C.GEN is proposing to construct a 470MW thermal generating station ("Generating Station"), which is a NSIP under the Planning Act 2008 ("PA 2008"). C.GEN

published preliminary environmental information in May 2012 as part of consultation. The preparation of the application for a development consent order ("DCO") is ongoing. This involves further consultation. C.GEN expects to make an application later in 2012.

- 6.2 C.GEN's project is fully supported by Government policy, including the National Policy Statements ("NPS") EN-1 and EN-2. The Government recognises the need for new energy generating capacity in the UK. Many existing coal-fired plants will cease operating in the next few years. 2015/2016 is recognised as being a critical period for energy production, when new plant will need to fill the gap left by the closure of old conventional coal-fired plants. As a consequence, the Government considers that the construction of new generating capacity is vital to ensure that the UK continues to have sufficient energy supplies to meet demand.
- 6.3 Under European and UK requirements, energy production must diversify away from conventional fossil fuel plants to less CO<sub>2</sub> polluting methods. Whilst this includes more renewable energy - including the development of marine renewables such as wind turbine farms - gas-fired and clean-coal technologies are recognised in policy (including the NPS) as playing a vital role in diversifying energy sources. C.GEN's project is among these.
- 6.4 C.GEN's Generating Station will be capable of operating as a combined-cycle natural-gas fired plant ("Combined Cycle Gas Turbine" or "CCGT"), or as a plant fired on syngas ("Integrated Gasification Combined Cycle" or "IGCC"). To operate as an IGCC, a gasification island ("Gasifier") is constructed. The technological developed for the CCGT allows it to run on syngas and/or natural gas, differentiating it from a

normal natural gas fired CCGT. Solid fuel - including coal, petcoke, and biomass - is treated in the Gasifier to produce the syngas. This is burnt in the same way that natural gas is burnt to drive the turbines. CO<sub>2</sub> and other pollutants can be removed prior to combustion. This is referred to as pre-combustion CO<sub>2</sub> capture. CO<sub>2</sub> can then be transported to a storage facility. Under NPS EN-1, an IGCC plant must demonstrate carbon capture, transport, and storage ("CCS").

6.5 C.GEN has to rely, for CCS, on the availability of a relevant transport and storage solution. C.GEN signed a LOI with National Grid. It has to be noted that the Humberside area is considered as an appropriate area for this technology C.GEN is on the shortlist for NER300 funding and is involved in the UK CCS Commercialisation programme. The practical conditions/requirements for a CCS demonstration project in the UK have still to be defined in a legal framework (expected late 2012/early 2013).

6.6 It must be understood that C.GEN is not promoting its project in terms of phases i.e. that it will construct a CCGT plant first, and subsequently an IGCC plant. That is only one possible scenario. There is an entirely reasonable prospect that it will construct the Generating Station as an IGCC plant from the start. This is why C.GEN is applying for development consent so that it can do so. C.GEN has spent in excess of £2.5m in developing its project. This includes developing the technology to integrate a CCGT plant into an IGCC plant. Integration is only possible by developing a type of CCGT (at a cost) which can run on syngas and/or on natural gas, differentiating it from a normal natural gas fired CCGT. It is plain that this level of commitment and expenditure would not be incurred without C.GEN fully intending to operate the Generating Station as an IGCC plant. The requirement to have direct access to

Network Rail's Network is clear. It would, therefore, not be acceptable for AMEP to be approved in such a way that frustrated or prevented construction and operation of the project as an IGCC plant, by removing C.GEN's ability to access and use the Railway.

6.7 Also relevant is the suitability of the site proposed for C.GEN's project for fossil fuel electricity generating infrastructure. Of paramount importance for C.GEN is the availability of a suitable site, located close to water (for use in cooling, and steam generation), and the availability of multi-modal transport links. In respect of each of these, C.GEN's project conforms with policy set out in the NPS (EN-2) which sets out policies specific to fossil fuel projects. This is discussed in greater detail at paragraphs 15 to 17 of WR1.

6.8 EN-2 emphasises at paragraph 2.2.6 that Applicants should locate new fossil fuel generating stations in the vicinity of existing transport routes wherever possible. C.GEN has done so. It has selected a site that is adjacent to an existing Network Rail railway line, which will enable the delivery of solid fuel by rail, and also the transport from the site of waste and other residues. This will minimise the impact of C.GEN's project on the road network, and lead to carbon reduction benefits. In addition, C.GEN considers that the only way to enable the use and delivery of coal mined in the United Kingdom is to ensure the availability of reliable rail access.

## **7. C.GEN'S NEED FOR USE OF THE RAILWAY**

7.1 As part of developing its proposals, C.GEN has commissioned studies into how it would secure supplies of solid fuel to enable operation as an IGCC. C.GEN's requirements for use of the Railway for solid fuel supplies is set out in Appendix 2 to

C.GEN's third written representation ("Fuel Study"). On the basis of these studies, C.GEN is promoting its project so that it can obtain supplies of solid fuel by rail or barges - which would be handled at the wharf in Killingholme Haven. The use of the Railway for the transport of coal to, and waste from, the new Generating Station, is a fundamental part of the supply chain requirements for C.GEN's project and therefore vital for the economic feasibility of the plant.

- 7.2 Coal trains would arrive at C.GEN via the Railway. They would originate from locations in the UK, which may include ABP Immingham. Wherever coal trains originate, they will need to pass along the Railway. C.GEN's concern is that activities at AMEP - whether train movements or the movements of components across the Railway - will impede the availability of the Railway for use by trains.
- 7.3 The Fuel Study describes an assumed base case, which sets out the basic requirements for use of the Railway. Operation of the plant as an IGCC will require an average throughput of at least 4,500 tonnes of coal per day. This translates into a requirement for an average of minimum five half coal trains per day (a total of ten movements) along the Railway. C.GEN cannot know the exact number of train movements that would be required. An average of minimum five half trains is, therefore, considered reasonable. Waste may also be transported from the site by rail.
- 7.4 C.GEN will organise fuel supply according to market and shipping conditions to optimise the economics of its plant. The supply of solid fuel and the number of train movements per day will depend upon a set of variables such as: commercial and market opportunities, logistics constraints, technical implications on the fuel mix, storage limitation etc. The fundamental point is that C.GEN has comfort that it could

manage the necessary train movements with Network Rail, who would be required to allow trains to arrive at/depart from its connection to the Railway ("Connection Point"). By these means, C.GEN can ensure that it can respond to its fuel supply requirements flexibly. It can also be certain that any future increase in train numbers will be dealt with by Network Rail appropriately. That flexibility cannot be assured if Able owns and operates the Railway.

## **8. C.GEN'S CONNECTION AND SIDINGS**

- 8.1 C.GEN will require a connection to the Railway. This will be achieved at the Connection Point, shown as "A" on Plans 1 and 2 in Appendix 1. C.GEN is in discussions with Network Rail about the necessary connection agreement to achieve this. It should be noted that Network Rail will not enter into a connection agreement until connection works have been carried out. That occurs at the end of a process, which begins with entering into a Basic Services Agreement ("BSA") with Network Rail. Completion of the BSA is imminent. There is no reason to believe that the BSA will not be completed. C.GEN's intention to connect to the Railway is clear.
- 8.2 As explained by Network Rail at the Issue Specific Hearing on rail transport, Network Rail operates on the assumption that a connection agreement will be entered into, unless there is a good reason to the contrary. No such reason exists. C.GEN fully expects that it will obtain a connection.
- 8.3 Evidence of discussions with Network Rail to date is provided in the emails at Appendix 2. Discussions have also been addressing the available capacity in the area



for additional trains. Paragraph 9 of the email of 21 June at Appendix 1 states, "*I advised that I felt there was sufficient capacity for C.GEN's requirements and would feed the requirement to our Network Planning Team who would incorporate into their future traffic projections for the area (already completed)*".

- 8.4 Although it has not made its application for development consent, C.GEN is well advanced in securing the necessary agreement for connection. It is developing its proposals for the Connection Point and sidings on its site ("C.GEN Sidings") in discussion with Network Rail. It is ensuring that there is available capacity in the area for its trains. Those capacity requirements are being taken account of by Network Rail. This approach contrasts with Able's.
- 8.5 As stated above, C.GEN is developing its proposals for the C.GEN Sidings in consultation with Network Rail. It has modified its proposals through consultation. Plans 1 and 2 shows the current design of the C.GEN Sidings for both half trains (Plan 1) and full trains (Plan 2). They are of sufficient length to accommodate the solid fuel trains that C.GEN proposes to handle.
- 8.6 C.GEN will operate the C.GEN Sidings by accepting the whole length of a train. The train will enter the sidings locomotive first. At point "B" on Plans 1 and 2 the locomotive would be decoupled and move onto adjacent rail. The solid fuel wagons would then be connected to a shunter. This would move the wagons from point "B" to point "C" on Plans 1 and 2. They would pass through an unloading facility. Once the full length of the train had passed through the loading bay, the locomotive would run back to connect to the wagons, and would then pull the train locomotive first back onto the Railway to its destination.

- 8.7 Significantly, the train would not be allowed to stand, or block, the Railway. This is why C.GEN has designed sidings that are long enough to handle the length of trains it proposes to use. Able has not designed its project - including the proposed loop - in such a way.
- 8.8 These works will be promoted as part of C.GEN's application for development consent for the project. This demonstrates C.GEN's commitment to securing a rail connection to its site and to carrying out the works necessary to enable it to accept solid fuel by rail. They were included in C.GEN's Preliminary Environmental Information Report ("PEIR") and are the subject of further environmental assessment as part of the preparation of the DCO application.

## **9. EASEMENTS TO CROSS THE RAILWAY**

- 9.1 C.GEN is in negotiation with Network Rail for the grant of easements to allow it to install, and maintain, infrastructure required for its project across the Railway. This is for the cooling water intake/discharge pipes, and the coal conveyor, which would be used to transport solid fuel delivered at the wharf at Killingholme Haven to the Generating Station. These easements will be of vital importance to the operation of the Generating Station.
- 9.2 Should Able acquire the whole of the area of the Railway that it seeks, the effect on these easements is not clear. The working assumption is that the land would remain subject to the easements if granted, although Able has sought powers enabling the easements to be extinguished. If the easements have not been granted, C.GEN would

have to rely on Able granting it the rights required. Able has declined to qualify the powers it seeks. Further, if the more northerly portion of the Railway would be used for trains accessing Able Logistics Park ("ALP"), the effect upon these easements has not been assessed.

- 9.3 Paragraph 5.1.2 of the Statement of Reasons purports to deal with the need for Able to acquire the stretch of Railway between the AMEP boundary and the site of the proposed ALP. In summary, Able does not need to control this part of the Railway - under a lease or by owning the Railway itself - for the purposes of AMEP. This section of Railway should be removed from the order limits.

## **10. THE IMPORTANCE OF RAIL TO C.GEN'S BUSINESS**

- 10.1 The paragraphs above explain why unimpeded connection to, and use of, the Railway is of such importance to C.GEN. This must be contrasted with AMEP, for which there is no specified need for use of the Railway.
- 10.2 C.GEN is fully aware that use of the Railway is subject to available capacity. However, Network Rail is required to monitor capacity requirements and deliver improvements where required. In any case, C.GEN's capacity requirements have already been taken into account. If Network Rail continues to own and control the Railway, C.GEN is confident that it will be able to operate the Generating Station as an IGCC plant, obtaining the supplies of solid fuel it requires by rail.
- 10.3 C.GEN has explained elsewhere that it was not properly consulted by Able. In fact, Able only met with C.GEN to discuss the Railway in July 2012. The result of this

failure to consult is that Able has not assessed the practical and operational consequences of AMEP on the use of the Railway by other parties. It has not considered or incorporated proposals as part of its application for AMEP that would accommodate the use of the Railway by others. There is no information that can give C.GEN comfort that it will be able to construct and operate its nationally significant Generating Station.

10.4 Section 11 below deals with a number of practical and operational concerns that C.GEN has in relation to AMEP and the Railway. In considering these, it is essential to understand that the consequence of any interruptions to use of the Railway by C.GEN's fuel trains (because of blocking, or maintenance failures), so that the Generating Station cannot produce electricity because it has run out of fuel, would have extreme consequences for C.GEN. For example, if C.GEN could not generate electricity, it would lose revenue. This would potentially amount to millions of pounds per day. If a generator cannot supply contracted levels of power output to the grid, there are also financial penalties to reflect the fact that the supplier must obtain supply from elsewhere at a premium. Furthermore, there are significant operational costs in powering down/up the generator.

10.5 It is C.GEN's responsibility to manage its fuel stocks. It is, however, entitled to rely on the rail network being operated in such a way so that it can manage those stocks. It is satisfied that the regulatory burdens on Network Rail, and its track record, are such that it would be able to do so if the Railway remains owned and operated by Network Rail. There are also compensation arrangements in place.

10.6 C.GEN is not satisfied that Able would be in a position to meet any compensation payments. In any case it has rejected the need to put adequate guarantees in place. It is questionable whether such obvious risks could be adequately insured. Further, Able's proposals for the Railway are inchoate, if they can be said to exist at all. C.GEN has no confidence that Able intends to operate the Railway in such a way to prevent unnecessary interruptions.

## **11. OPERATIONAL AND PRACTICAL CONCERNS**

11.1 Set out below is an analysis of the operational and practical concerns posed by AMEP to the use of the Railway by C.GEN. C.GEN has raised these issues repeatedly, both in its representations as part of the AMEP examination and to Able directly. The Panel is referred to paragraphs 25.43 to 25.45 of C.GEN's first written representation (WR1) and the correspondence appended to C.GEN's third written representation (WR3) at Appendix 1.

### **Regulated Framework**

11.2 Currently, access to and use of the Railway is controlled by Network Rail subject to the regulatory framework of the Railways Act 1993 (as amended by the Railways Act 2005). If C.GEN were to obtain a connection agreement Network Rail would be required to maintain its connection to the network and facilitate the movement of trains to/from C.GEN's facility. This is subject to other factors, such as capacity of the network.

- 11.3 C.GEN has received no assurance from Able that C.GEN would be able to obtain access to the Railway should it be privatised, and on what basis that access would be provided. The guarantees and protections that a contract with Network Rail would have secured will not be provided and C.GEN would be dependent on Able making available times/space for train movements delivering fuel to C.GEN's facility.
- 11.4 C.GEN considers that the interests of all parties are best secured by Network Rail retaining ownership and control of the Railway.

### **Restrictions on capacity**

- 11.5 As stated above, C.GEN expects that it will require an average of minimum five trains per day to allow it to operate as an IGCC plant. Depending on operational variables the figure could be much greater.
- 11.6 C.GEN is concerned that if compulsory acquisition was allowed, Able would be able to restrict the number of train movements to accommodate movement of components at AMEP across the Railway. Limits on the number of trains could have significant implications for the security of fuel supply for the proposed power station.
- 11.7 Any restriction on train movements would mean that rail traffic to/from C.GEN might not be able to be accommodated, or at least would be severely limited. It is not appropriate or acceptable to seek to restrict C.GEN's ability to service its development with fuel deliveries on the basis of Able's priorities at AMEP. Under Network Rail control, use of the Railway would be subject to network capacity. Network Rail is required by its licence to respond to capacity demands.

- 11.8 Accordingly C.GEN does not know whether it will be possible to rely on regular fuel deliveries by train to its proposed facility. C.GEN believes that Able would have to impose operational restrictions on trains, such as line speed restrictions, restrictions on the times at which level crossings can be used, protocols applicable before trains could be accepted to cross AMEP, and possibly restrictions such as gates across the Railway at each end of AMEP if relevant TranSec requirements for port security applied. C.GEN has not seen any proposals from Able that explain how any restrictions might operate. This is because Able has not carried out any analysis.
- 11.9 Able has not shown to C.GEN's satisfaction why bridges - and/or a limited number of level crossings in specific locations - are unviable, except that it would restrict design flexibility at AMEP. This is an assertion in relation to unknown consequences - Able has not shown that bridges would prevent, or seriously diminish, future flexibility.

#### **Level crossings/other crossing points**

- 11.10 Able has not agreed to fix the location of the additional level crossings it wishes to construct. C.GEN needs more information as to how many crossings are proposed, where they would be located, what form they would take and whether they will be sufficiently spaced to allow trains to be stopped between crossings. If there is not sufficient space between crossings, trains will be forced to wait outside the AMEP site until the entire length of track across the AMEP site is clear. How this would be signalled/controlled is likewise unclear. This is likely to cause a backlog of trains and disruptions to the supply of fuel to C.GEN's facility.

11.11 Able has not carried out any analysis of whether it is possible to operate trains through AMEP with any number of crossings, certainly not four as proposed (and in unspecified locations).

11.12 An entirely open arrangement - i.e. with no level crossings but where track is inset in a level surface and components can cross anywhere - will be unnecessarily complicated and potentially dangerous. Able has not carried out any analysis of whether such an arrangement/interface is feasible. It has not assessed the impacts on the Railway, or on C.GEN, as environmental receptors. It has not carried out any safety assessment.

### **Loop/siding**

11.13 Able now proposes a loop/siding which it will provide if other parties wish to use the Railway. It is referred to as a passing loop. It is not clear whether Able proposes that this loop will operate as a siding for AMEP trains or as a passing loop for other non-AMEP trains to move round AMEP trains standing on the Railway for the purposes of loading/unloading. Regardless of the purpose, it will not solve the problem of interfaces between the Railway and AMEP's component movements.

11.14 C.GEN considers that if the loop is to operate as a siding for AMEP trains, it will only be a solution if Able does not accept any train that is longer than 250 metres. It seems from general knowledge that it is unlikely that steel trains would be this short. Therefore if Able requires trains that are longer than 250 metres the front or back end of the train will block the Railway. In this sense the loop would not allow trains to pass. C.GEN does not consider that it would be acceptable for an AMEP train to stand



on the Railway to be loaded/unloaded. Network Rail will not allow this at C.GEN's site.

11.15 If Able proposes that the loop is to allow other parties' trains to pass, a 250 metre length of track will not be long enough for most trains. While 250 metres is the approximate length of the half trains that C.GEN envisages it may accept, it should be noted that this is an assumption for the purposes of assessment and it is entirely likely that C.GEN will accept longer trains. It is understood that the longest freight trains able to operate on the network are circa 700 metres long. There is a real risk, therefore, that an AMEP train standing on the Railway will prevent other rail traffic passing via the loop unless the loop is of sufficient length.

11.16 C.GEN considers that any siding or loop should conform with good practice in the rail industry to provide for future long lengths and increases in rail freight movements.

11.17 If the loop is not long enough (for AMEP trains as a siding or other trains as a passing loop) the Railway would only be suitable for use by one train at a time, for its entire length between the Port of Immingham and the Buffer at point "A" on Plan 3. This is because if a train was standing on the Railway (and the loop is not long enough) it would not be able to move out of the way to allow a C.GEN train to access the C.GEN Sidings. It would not be able to move beyond the C.GEN Sidings towards the buffer because this would prevent a C.GEN train from entering the C.GEN Sidings. Likewise, if a C.GEN train wished to return along the Railway towards Immingham, it could only do so once the AMEP train was no longer blocking the line. The practical effect of this would be to make the Railway suitable for use by only one C.GEN or AMEP train at a time. Restricted use of the Railway - including as a result

of blocking/congestion - would have a knock on effect for all users of the Railway. It may mean that trains miss their slots on the wider network. That is entirely contrary to good practice or the commercial interests of any of the parties, including Able.

11.18 It is accepted that Able has proposed a loop of 250 metres, and that is longer than a C.GEN half train. However, constructing a loop of limited length will operate as a capacity restraint on the line. That would be disruptive to both Able and C.GEN, as well as other users. It may require the disruption and expense of works in the future to enable longer trains to use the Railway. This might also require AMEP to be reorganised. It is appropriate to ensure that adequate capacity for any loop is provided from the outset. Alternatively, Able should construct sidings that will allow AMEP trains to be handled off the Railway.

11.19 Good practice is demonstrated by ABP Immingham which is proposing to have 1000 metre long sidings for trains likely to be 500 metres in length (see Plan 4). Over provision is required to ensure sufficient capacity to meet future need.

11.20 Able states that it will provide a siding as and when it wants to receive/despatch trains. It should therefore be prevented from operating trains until it has built a siding of adequate length for the trains it intends to receive/despatch at AMEP.

11.21 As stated above Able has proposed the loop would be constructed as and when other parties wish to use the Railway. Whilst this could be provided for in the DCO through protective provisions, in a contract or through a section 106 obligation C.GEN is concerned that it would have to seek to enforce any obligation. This would mean that their ability to use the Railway would be subject to uncertainty and potential delay. It is extremely important to C.GEN that it is able to secure access to the Railway and

accept/despatch trains with the minimum delay. C.GEN is also concerned as to whether Able would have the necessary finance to deliver any such solution.

11.22 C.GEN questions whether the proposed loop/siding is a meaningful proposal. Components will presumably need to be transported across the loop as well as the Railway itself. This will merely ensure that AMEP trains are not in the way of trains delivering fuel to C.GEN's facility. It will not solve the problem of interfaces between the Railway and AMEP's component movements.

11.23 C.GEN requires more information regarding how the interface between trains delivering fuel to C.GEN's facilities and trains moving to/from the proposed loop on the AMEP site would be managed, and in particular, which trains would have priority. C.GEN also needs to know the loop length and whether the loop would be crossed by level crossings or whether such crossings would be either side of turnouts.

### **Lack of experience**

11.24 Able does not have any experience of operating a mainline railway. Whilst Able does have rail sidings at other facilities, that is not the same as operating a railway accepting through traffic, including to C.RO Ports Killingholme, C.GEN and potentially ALP. C.GEN is concerned that, given its lack of experience in operating railway facilities, Able will not be able to manage the interface between trains supplying C.GEN's facility and the transport of components/machinery associated with wind turbine manufacture across the Railway without compromising safety and efficiency.

11.25 Able has relied on appointing a train manager (see paragraphs 8 and 65 of Able's notes to accompany version 3 of its draft DCO). It is not clear what this means, to whom the manager would report or be liable, or how such a manager would discharge its responsibilities (quite apart from what such responsibilities might be).

### **Able's obligations**

11.26 C.GEN's potential commercial and financial exposure is significant and it is concerned that if compulsory acquisition proceeds there will be no guarantees that Able will discharge all the obligations, including access and maintenance, that would otherwise fall on Network Rail. C.GEN is concerned that it would have to rely on Able performing its contractual obligations to provide C.GEN with access and to maintain the Railway to an appropriate standard (rather than Network Rail, which has a statutory duty to do so).

11.27 C.GEN has concerns regarding the remedies available to it should there be operational disruptions to its fuel deliveries as a result of conflict between those deliveries and Able's movements across the Railway or even the use of the Railway for train movements by Able. C.GEN would have no immediate recourse in that situation absent protective provisions or a suitable contractual arrangement. At present Able has proposed neither and has not suggested any means of producing such an arrangement to protect C.GEN. This could have significant financial implications for C.GEN, particularly in the event that operations at its facility had to be suspended because of an inadequate supply of fuel.

- 11.28 No safeguards have been proposed to deal with the situation should compulsory acquisition proceed but AMEP is not built out. It is unacceptable for C.GEN to have to seek powers of compulsory acquisition to be able to use the Railway.
- 11.29 Moreover there are no guarantees that any future requirement of C.GEN for easements in relation to level crossings and services beneath level crossings would be provided on request and on a reasonable basis. C.GEN will require these easements in order to operate its facility. C.GEN will require easements to install, retain, and maintain cooling water pipes and a fuel conveyor across the Railway and potentially other services, for example data or potable water. It would not be acceptable for Able to not grant such easements, or at a prohibitive cost.
- 11.30 In light of these concerns C.GEN considers that is not acceptable, or appropriate, for C.GEN to be expected to rely on the ability to use a private siding under Able's control in place of a mainline railway operated by Network Rail. C.GEN's preference is that the Railway be retained in Network Rail's control.
- 11.31 If the Railway is to be acquired by Able, under no circumstances should control be given to Able alone. An equitable solution between Able, C.RO and C.GEN would be the minimum appropriate protection.

## **12. THE RELEVANCE OF AMEP AS AN NSIP TO GRANT OF POWERS OF COMPULSORY ACQUISITION**

- 12.1 Network Rail has indicated that AMEP's status as an NSIP means that Network Rail may well find it difficult to defend a position to keep the Railway as part of the

Network. There is no basis for this proposition, either in law or policy. In fact, it is entirely contrary to the usual method of assessing whether the impacts of a project are acceptable.

- 12.2 As matters stand, it is proposed that the Railway - for which there is a reasonable prospect of use by others - is removed from the network because it is an obstacle to the proposed development. This argument is apparently based on the assumption that AMEP is an NSIP. This is a novel concept in compulsory purchase law. It is also plainly wrong. A project is an NSIP if it meets the capacity thresholds set out in the Planning Act 2008. That does not by itself justify the acquisition of land and rights in land, which the Guidance on procedures for compulsory acquisition makes clear. It is not sufficient to rely on the fact that the project is an NSIP.

### **13. THE RELEVANCE OF OTHER NSIP CONSIDERATIONS**

- 13.1 It is not Government policy that there is a hierarchy of projects, with some - such as an NSIP - trumping the needs of other projects or facilities. Where there are differing requirements, a compromise may be possible. It is not the case, however, that one project can justifiably remove access to publicly owned facilities for its own ends. Network Rail has an important role in this respect to ensure that access to its network remains unimpaired.
- 13.2 There is an identified need for port facilities to support the construction of offshore wind generating capacity, but that is not an overriding policy that on its own justifies removing land and interests from others. That must be judged on a case-by-case basis

having regard to the availability of alternatives to the acquisition, or indeed the project as a whole. That is particularly the case where existing or proposed projects that are affected by proposals are supported by NPS, and those NPS also support the requirement for rail access envisaged by C.RO and C.GEN.

13.3 Under Section 104 of the Planning Act 2008, the Secretary of State is required to determine an NSIP with reference to the relevant NPS. That means having regard to policies that may also dictate that he should not allow certain elements of a proposal to go ahead, where they would conflict with a NPS. For each of C.RO and C.GEN, there is NPS support for rail access. In this respect, a decision about AMEP must have regard to the relevant NPS that require rail access to be maintained.

13.4 C.GEN's proposed power station is an NSIP. Its requirements for rail access are no less significant than the considerations applicable to AMEP. C.GEN selected the site for its project for reasons that included its proximity to the Railway.

13.5 In this case, what is proposed by Able is that an NSIP with no identified need to use the Railway - other than, put simply, for it not to be there at all - will deprive a nationally significant, low-carbon energy generator of the regulated access by which it should be able to obtain supplies of solid fuel by rail.

**ANDREW FRASER URQUHART**

**4/5 Gray's Inn Square**

**Gray's Inn**

**LONDON WC1R 5AH**

**DLA Piper UK LLP**

# APPENDIX 1

Plans

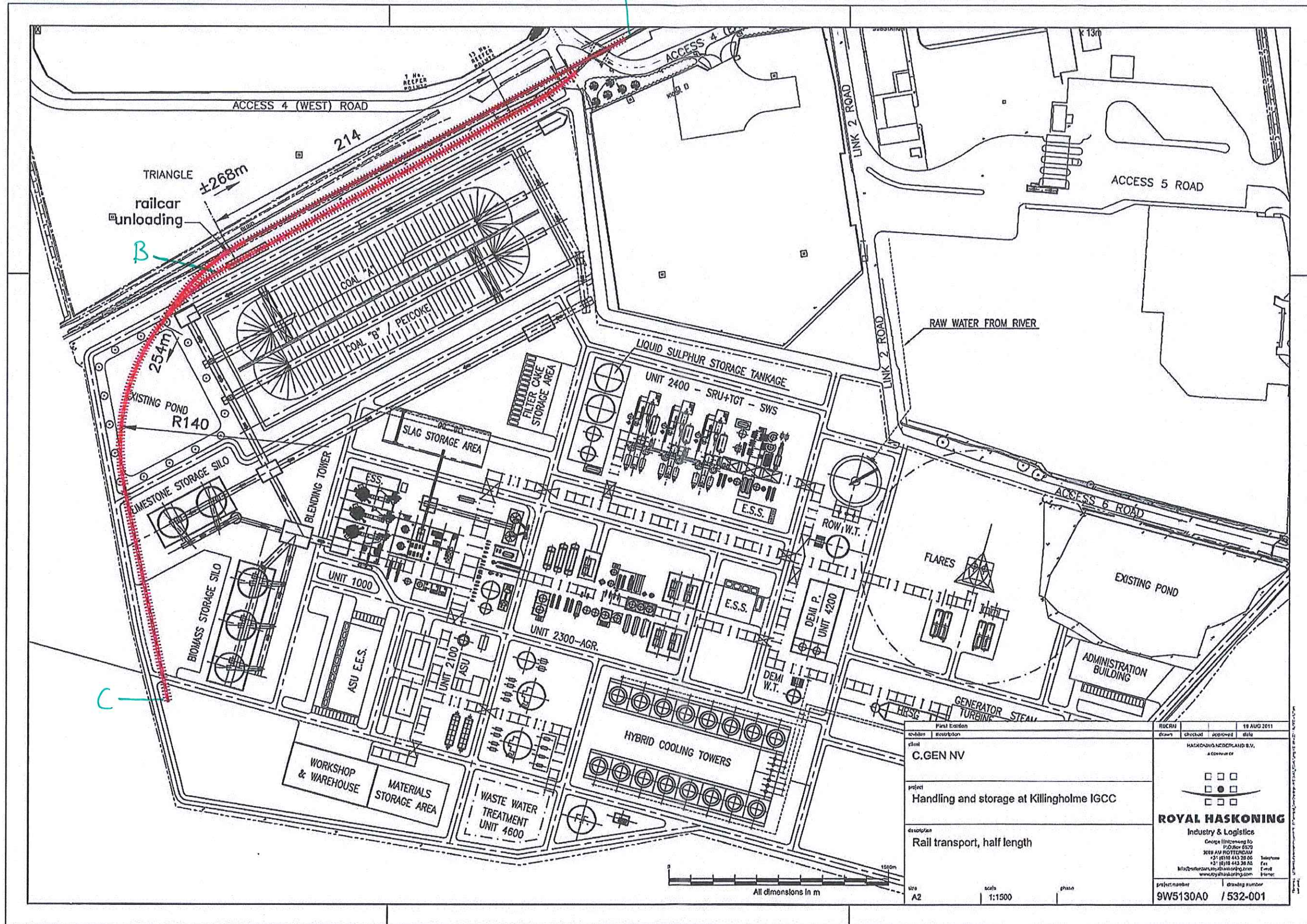


## **APPENDIX 2**

Email Correspondence between C.GEN and Network Rail



PLAN 1

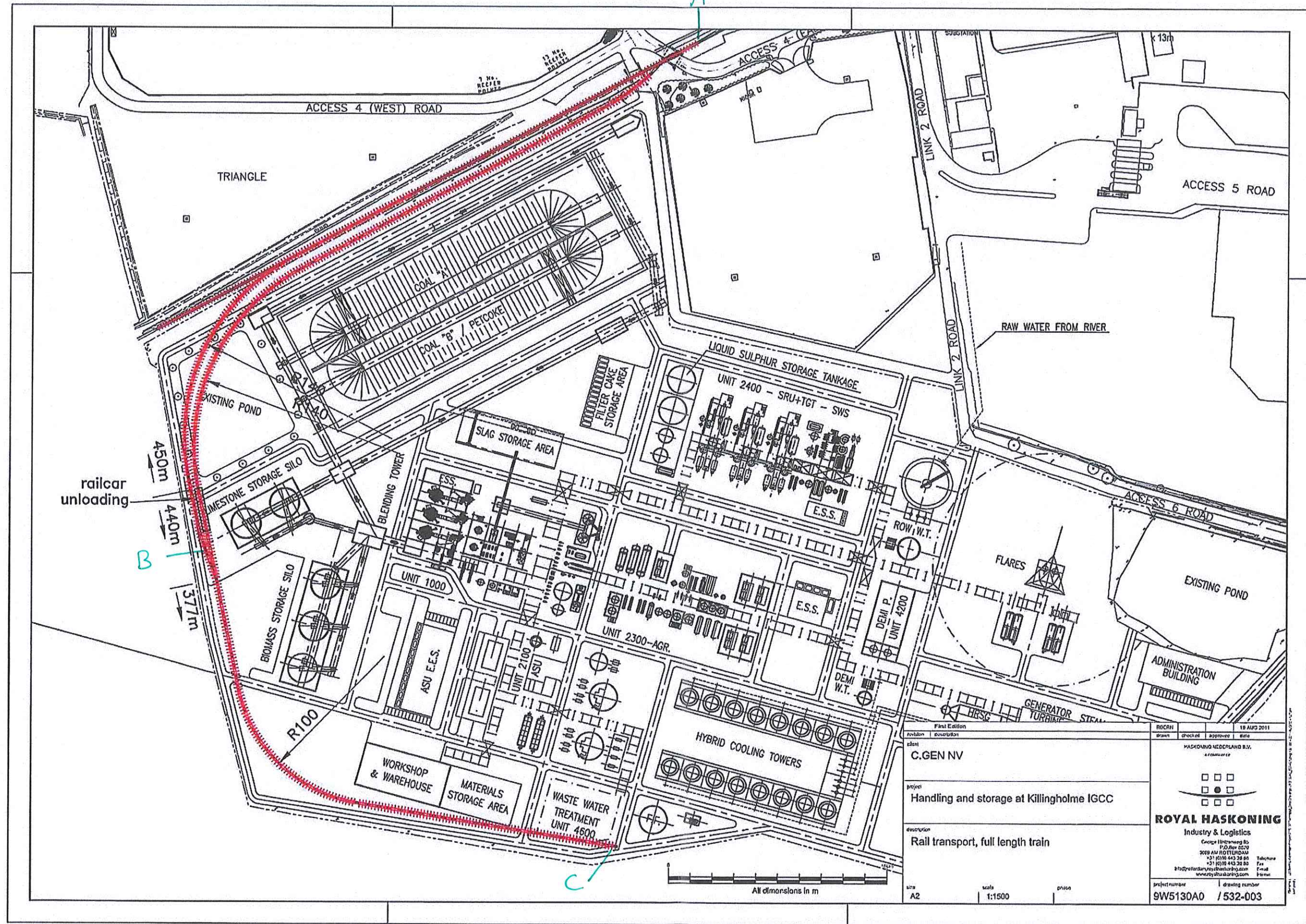


revision	First Edition	drawn	checked	approved	date
client	C.GEN NV				18 AUG 2011
project	Handling and storage at Killingholme IGCC				
description	Rail transport, half length				
drawn	A2	scale	1:1500	phase	
project number	9W5130A0	drawing number	532-001		

**ROYAL HASKONING**  
Industry & Logistics  
George Huismaning 10  
3089 AV ROTTERDAM  
+31 (0)10 443 30 00  
+31 (0)10 443 30 00  
info@haskoning.nl  
www.haskoning.nl



PLAN 2

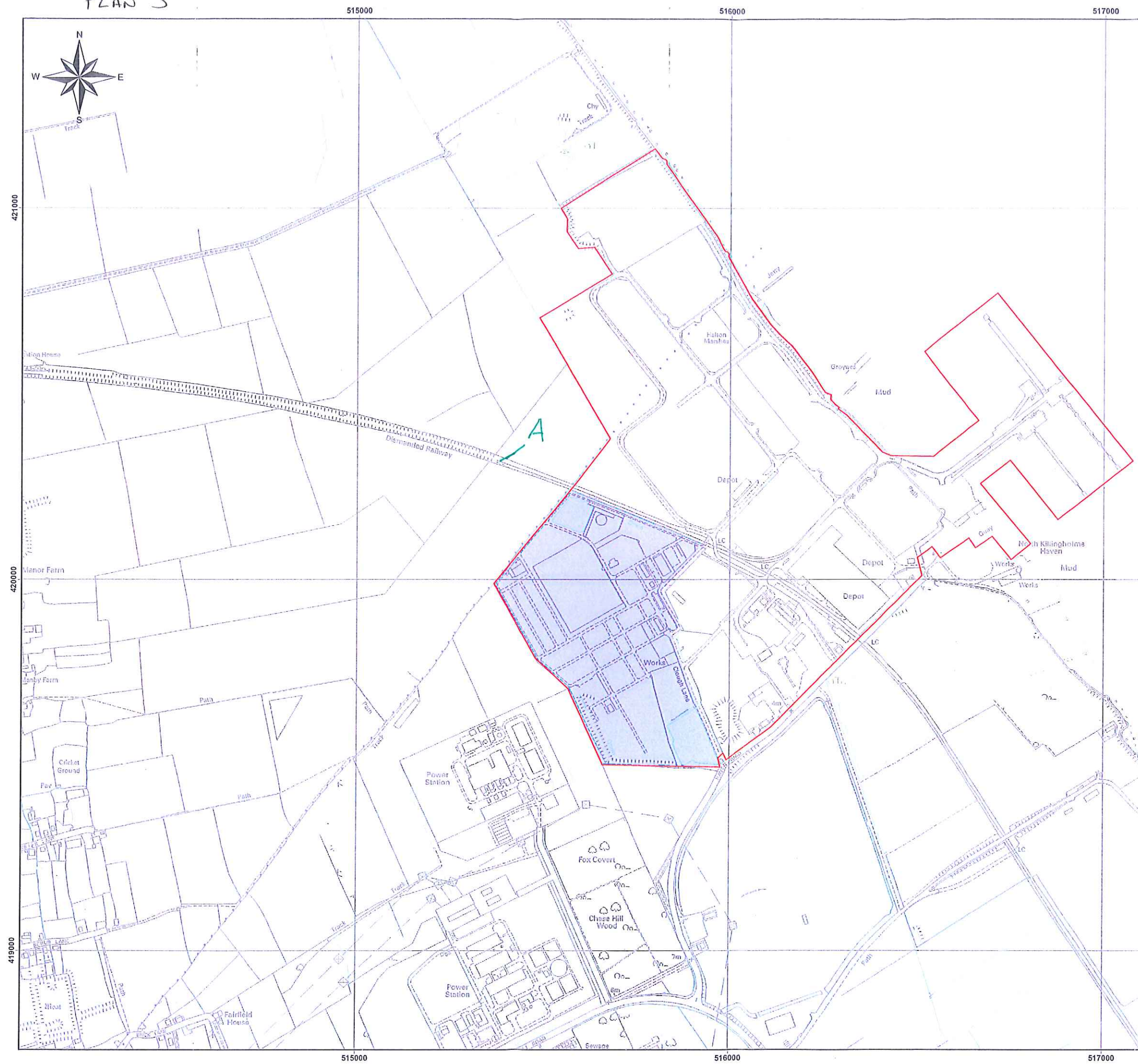


First Edition		18 AUG 2011	
revision	description	drawn	checked
client	C.GEN NV	drawn	checked
project	Handling and storage at Killingholme IGCC	drawn	checked
description	Rail transport, full length train	drawn	checked
size	A2	scale	1:1500
project number	9W5130A0	drawing number	/532-003

**ROYAL HASKONING**  
Industry & Logistics  
George IIthweg 80  
P.O. Box 6200  
3009 AN ROTTERDAM  
+31 (0)10 443 38 88  
+31 (0)10 443 38 80  
info@royalhaskoning.com  
www.royalhaskoning.com

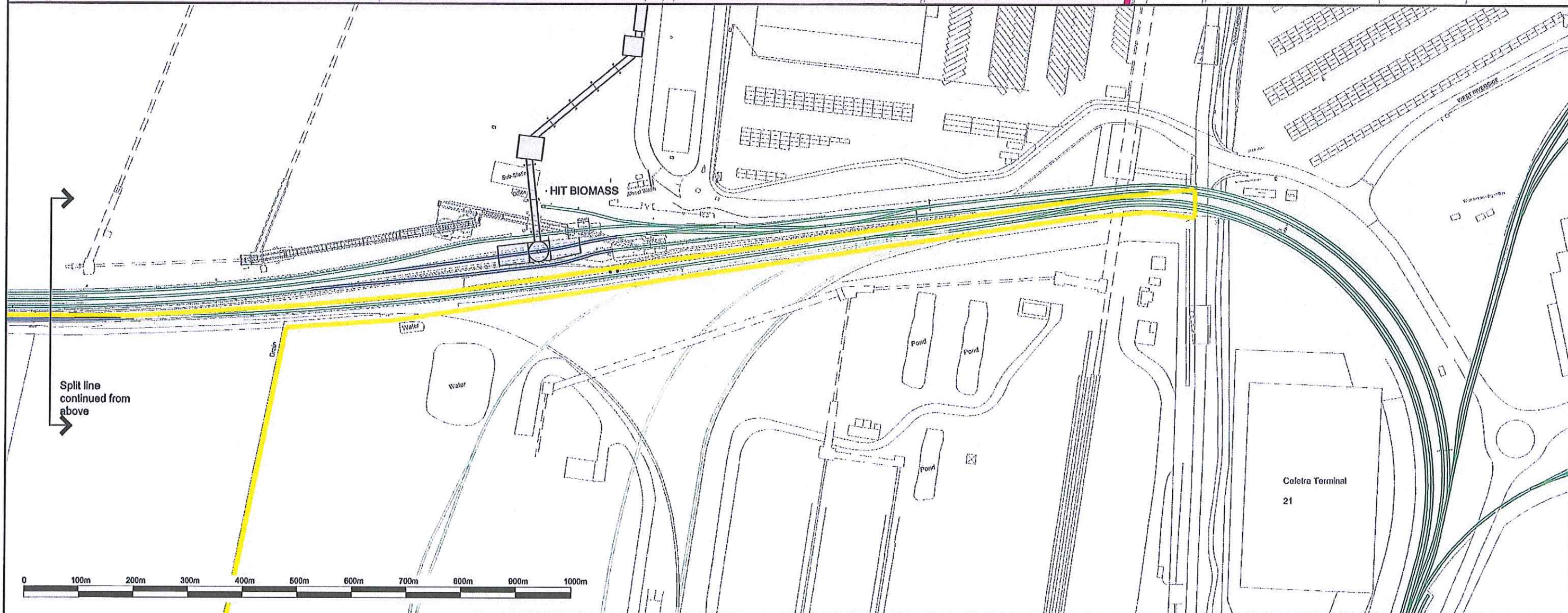
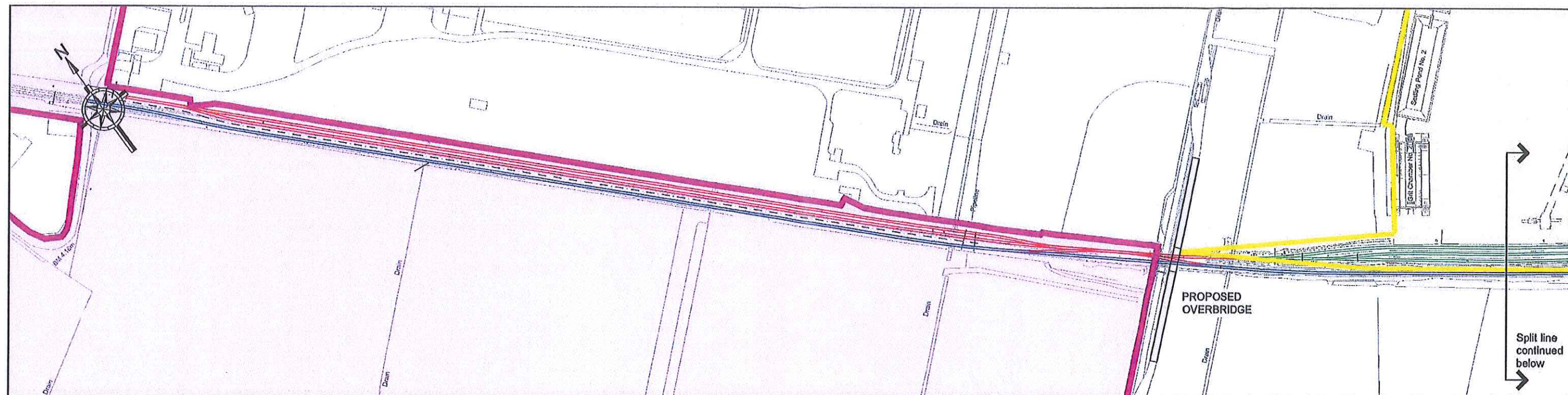


PLAN 3





# PLAN 4



KEY :-			
NEW WORK		ABP BOUNDARY	
EXISTING TRACK SLUED		ABLE BOUNDARY	
EXISTING TRACK			
PROPOSED BOUNDARY FENCE LINE			

NOTES:

**ABP ASSOCIATED BRITISH PORTS**  
HUMBER Engineering Department

Location: PORT OF IMMINGHAM

Rev	Description	Date	Dr/Cr
Bkba.			



## Edmondson, Jack

---

**From:** Richards Gareth <Gareth.Richards@networkrail.co.uk>  
**Sent:** 21 June 2012 15:31  
**To:** MAES, Florent; DHOLLANDER, Iris  
**Cc:** McCormick John (SCSS York)  
**Subject:** New Killingholme branch connection

Florent, Iris

It was good to meet with you both today. I've summarised our discussion below.

1. CGEN have previously met with John McCormick and are awaiting receipt of the Basic Services Agreement in advance of entering the GRIP process
2. In addition, CGEN are awaiting an answer from Rob Turnbull regarding crossing easement costings (John – is this something you have been involved with and could nudge Rob?)
3. Your requirement is for a new connection on the Killingholme branch slightly to the west of Yorkshire Tar crossing. The new connection will be on the south side of the Killingholme branch. I advised it was sensible (and cheaper) to have just one connection to Network Rail infrastructure. Trains could access the site, the loco would uncouple from the train, a shunting loco would couple to the train and haul it through the coal unloading area. The main loco would then move onto the back end of the train (now the front) and take the train back out the site. This would require a headshunt capable of fitting a locomotive (usually c. 60ft in length) and no 2<sup>nd</sup> connection would be required onto the network.
4. CGEN advised that you have completed pre-application consultation and will next be looking for development consent by the end of this year. Following this you will be applying for NSIP. The applications are for a coal plant with CO2 capture and storage with possible phased implementation. The plant would likely be developed for end of 2016/early 2017.
5. CGEN's requirement is for a new connection on the Killingholme branch slightly to the west of Yorkshire Tar crossing. The new connection will be on the south side of the Killingholme branch. I advised it was sensible (and cheaper) to have just one connection to Network Rail infrastructure. Trains could access the site, the loco would uncouple from the train, a shunting loco would couple to the train and haul it through the coal unloading area. The main loco would then move onto the back end of the train (now the front) and take the train back out the site. This would require a headshunt capable of fitting a locomotive (usually c. 60ft in length) and no 2<sup>nd</sup> connection would be required onto the network.
6. CGEN will be looking to import coal to the site either by barge or rail. If rail, no decision have been made yet regarding where the coal will be delivered from (it could be domestic coalfields or ABP imported coal at Immingham) nor have a preferred freight haulier.
7. The requirement would be for 5-6 trains per day into the site with the same number of empty paths required to leave the site. We assume trains will be c. 450 metres as per existing coal services.
8. I advised the connection agreement would likely to be completed towards the end of the process – this is because accurate costings could not be given until final design was complete as costings are based on amount and type of track, sleepers, pointwork and signalling. The annual connection agreement charge once the connection goes live can be one of two possibilities – firstly, a maintenance only agreement so you will pay for the annual maintenance of the equipment which connects you to the network and secondly, a maintenance and renewals agreement where you would pay for maintenance plus an additional charge for any future Network Rail renewals work. If you have a maintenance only agreement, Network Rail would look for a contribution for any renewals scheme that involved the Killingholme branch should any renewals be required. I advised that due to the area being re-signalled in 2016 that a maintenance only agreement would be more sensible. CGEN enquired whether a connection agreement could be signed prior to the new connection being physically in the ground. Post meeting, I have asked that question of one of our connections experts and will advise the answer in separate correspondence.
9. I advised that currently the Immingham area can cater for 3-4 freight trains per hour in one direction plus the same in the other direction. The 2016 re-signalling and enhancements scheme in the area is looking at improving the headway between trains and increasing capacity. This will give increased linespeeds and the ability to run 7 trains per hour in one direction and 7 in the other. I advised that I felt there was sufficient capacity for CGEN's requirements and would feed the requirement to our Network Planning team who would incorporate into their future traffic projections for the area (already completed this action). CGEN raised concerns regarding

reserving network capacity and developing a new connection but not being able to run trains. Again, post meeting I have taken advice on this and will respond in separate correspondence once I have an answer.

Regards  
Gareth

**Gareth Richards**  
Senior Route Freight Manager (London North Eastern Route)

Floor 4A  
George Stephenson House  
York  
YO1 6HP

Tel: 08533186 / 01904 383186  
Mob: 07917 857912  
Fax: 01904 384041  
[Gareth.Richards@networkrail.co.uk](mailto:Gareth.Richards@networkrail.co.uk)

\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*

The content of this email (and any attachment) is confidential. It may also be legally privileged or otherwise protected from disclosure.

This email should not be used by anyone who is not an original intended recipient, nor may it be copied or disclosed to anyone who is not an original intended recipient.

If you have received this email by mistake please notify us by emailing the sender, and then delete the email and any copies from your system.

Liability cannot be accepted for statements made which are clearly the senders own and not made on behalf of Network Rail.

Network Rail Infrastructure Limited registered in England and Wales No. 2904587, registered office Kings Place, 90 York Way London N1 9AG

\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*

## Edmondson, Jack

---

**From:** Richards Gareth <Gareth.Richards@networkrail.co.uk>  
**Sent:** 21 June 2012 15:56  
**To:** MAES, Florent; DHOLLANDER, Iris  
**Subject:** RE: New Killingholme branch connection

Florent, Iris

I've now had feedback on the two points you queried.

**Connection agreement** – can it be signed before the physical connection is in place?

Yes, we have had scenarios before where a connection has been in situ but not in use and the Connection Agreement had been signed. However, the requirement is that Network Rail will charge for the connection once the Agreement has been signed up to even if it is not in use.

### **Freight capacity**

As part of the GRIP process, a timetabling study can be undertaken to confirm capacity for paths. In addition, our Network Planning team have been made aware of your proposal and are including it in any future studies they undertake for the area.

Regards  
Gareth

### **Gareth Richards**

Senior Route Freight Manager (London North Eastern Route)

Floor 4A  
George Stephenson House  
York  
YO1 6HP

Tel: 08533186 / 01904 383186  
Mob: [REDACTED]  
Fax: 01904 384041  
[Gareth.Richards@networkrail.co.uk](mailto:Gareth.Richards@networkrail.co.uk)

---

**From:** Richards Gareth  
**Sent:** 21 June 2012 13:41  
**To:** 'MAES, Florent'; 'DHOLLANDER, Iris'  
**Cc:** McCormick John (SCSS York)  
**Subject:** New Killingholme branch connection

Florent, Iris

It was good to meet with you both today. I've summarised our discussion below.

1. CGEN have previously met with John McCormick and are awaiting receipt of the Basic Services Agreement in advance of entering the GRIP process
2. In addition, CGEN are awaiting an answer from Rob Turnbull regarding crossing easement costings (John – is this something you have been involved with and could nudge Rob?)
3. Your requirement is for a new connection on the Killingholme branch slightly to the west of Yorkshire Tar crossing. The new connection will be on the south side of the Killingholme branch. I advised it was sensible (and cheaper) to have just one connection to Network Rail infrastructure. Trains could access the site, the loco would uncouple from the train, a shunting loco would couple to the train and haul it through the coal unloading area. The main loco would then move onto the back end of the train (now the front) and take the train back out the site. This would require a headshunt capable of fitting a locomotive (usually c. 60ft in length) and no 2<sup>nd</sup> connection would be required onto the network.



4. CGEN advised that you have completed pre-application consultation and will next be looking for development consent by the end of this year. Following this you will be applying for NSIP. The applications are for a coal plant with CO2 capture and storage with possible phased implementation. The plant would likely be developed for end of 2016/early 2017.
5. CGEN's requirement is for a new connection on the Killingholme branch slightly to the west of Yorkshire Tar crossing. The new connection will be on the south side of the Killingholme branch. I advised it was sensible (and cheaper) to have just one connection to Network Rail infrastructure. Trains could access the site, the loco would uncouple from the train, a shunting loco would couple to the train and haul it through the coal unloading area. The main loco would then move onto the back end of the train (now the front) and take the train back out the site. This would require a headshunt capable of fitting a locomotive (usually c. 60ft in length) and no 2<sup>nd</sup> connection would be required onto the network.
6. CGEN will be looking to import coal to the site either by barge or rail. If rail, no decision have been made yet regarding where the coal will be delivered from (it could be domestic coalfields or ABP imported coal at Immingham) nor have a preferred freight haulier.
7. The requirement would be for 5-6 trains per day into the site with the same number of empty paths required to leave the site. We assume trains will be c. 450 metres as per existing coal services.
8. I advised the connection agreement would likely to be completed towards the end of the process – this is because accurate costings could not be given until final design was complete as costings are based on amount and type of track, sleepers, pointwork and signalling. The annual connection agreement charge once the connection goes live can be one of two possibilities – firstly, a maintenance only agreement so you will pay for the annual maintenance of the equipment which connects you to the network and secondly, a maintenance and renewals agreement where you would pay for maintenance plus an additional charge for any future Network Rail renewals work. If you have a maintenance only agreement, Network Rail would look for a contribution for any renewals scheme that involved the Killingholme branch should any renewals be required. I advised that due to the area being re-signalled in 2016 that a maintenance only agreement would be more sensible. CGEN enquired whether a connection agreement could be signed prior to the new connection being physically in the ground. Post meeting, I have asked that question of one of our connections experts and will advise the answer in separate correspondence.
9. I advised that currently the Immingham area can cater for 3-4 freight trains per hour in one direction plus the same in the other direction. The 2016 re-signalling and enhancements scheme in the area is looking at improving the headway between trains and increasing capacity. This will give increased linespeeds and the ability to run 7 trains per hour in one direction and 7 in the other. I advised that I felt there was sufficient capacity for CGEN's requirements and would feed the requirement to our Network Planning team who would incorporate into their future traffic projections for the area (already completed this action). CGEN raised concerns regarding reserving network capacity and developing a new connection but not being able to run trains. Again, post meeting I have taken advice on this and will respond in separate correspondence once I have an answer.

Regards  
Gareth

**Gareth Richards**  
Senior Route Freight Manager (London North Eastern Route)

Floor 4A  
George Stephenson House  
York  
YO1 6HP

Tel: 08533186 / 01904 383186  
Mob: [REDACTED]  
Fax: 01904 384041  
[Gareth.Richards@networkrail.co.uk](mailto:Gareth.Richards@networkrail.co.uk)

\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*

The content of this email (and any attachment) is confidential. It may also be legally privileged or otherwise protected from disclosure.

This email should not be used by anyone who is not an original intended

recipient, nor may it be copied or disclosed to anyone who is not an original intended recipient.

If you have received this email by mistake please notify us by emailing the sender, and then delete the email and any copies from your system.

Liability cannot be accepted for statements made which are clearly the senders own and not made on behalf of Network Rail.

Network Rail Infrastructure Limited registered in England and Wales No. 2904587, registered office Kings Place, 90 York Way London N1 9AG

\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*