

Nolan, Sarah

From: Dove-Seymour, Benjamin
Sent: 05 October 2012 17:59
To: WALKER Angus (AngusWALKER@bdb-law.co.uk)
Cc: RUBENS, Joost (CLDN) (Joost.RUBENS@cldn.com); Bassford, Howard
Subject: AMEP - C.RO
Attachments: 1926 Agreement.pdf; Drawing re 1926 Agreement.pdf; 1958 supplemental to 1928.pdf; 10 Oct 67 sidings agreement.pdf; ATT00001.txt; 45396820_1_UKMATTERS(AMEP - C.RO comments on navigation_dredging).pdf; 45396771_1_UKMATTERS(AMEP - C.RO paper of amendments - mark up).pdf

Dear Angus

Without prejudice

1. Attached to this letter is:

a. a paper of amendments proposed to the DCO;

b. a note on dredging and navigation issues, that responds to the sequence of correspondence on this points; and

c. connection agreements for C.RO. I am in the process of locating all the plans but I trust these are sufficient for the time being to demonstrate the existence/status of the connection, and the lack of any restrictions on use of the railway.

2. I have said I would prepare a summary of points that need resolution before C.RO can withdraw its objection. These fall into three areas: (i) dredging matters; (ii) navigation; and (iii) the Killingholme Branch Line ("Railway"). I deal with these below. As a general point, may I suggest that we now move to engagement on the drafting of protective provisions. This will enable both our clients to deal with the issues head-on, with some prospect of potentially resolving matters, if that is what Able wishes to achieve. I believe our requirements are fairly clear. I am not sure an additional list is required and this may only serve to delay dealing with the matters that need to be addressed in protective provisions.

3. For the purposes of progressing matters it would seem sensible to disaggregate dredging/navigation from the railway.

4. It may help to bear in mind that (as has been made clear several times both in person and in representations) that C.RO has no in-principle objection to AMEP. It simply wishes to ensure that its port - both in relation to its statutory harbour authority functions and commercial operations - is not prejudiced/detrimentally affected by AMEP and that it is protected in the normal way so as to allow current and future operations to continue unimpeded.

(i) dredging

3. What C.RO expects is that it is not put to any additional cost as a result of AMEP. This can easily be addressed in protective provisions. Whatever the position regarding possible beneficial effects at the berths, Able's own modelling shows the potential for additional sedimentation across the intertidal and the mouth of the Haven. This needs to be addressed.

4. You may also be aware that C.RO's HEO and HRO give protective provisions to HMH in relation to monitoring/remediation of the effects of C.RO's berths on the intertidal. C.RO would not want to be in a position whereby it was required to carry out works to discharge its obligations under those protective provisions and bear the cost when sedimentation is the result of AMEP. There needs to be an arrangement to deal with any overlap of obligations under protective provisions, either through monitoring/cost recovery or otherwise. It may be that the draft protective provisions need to address this further but we welcome a discussion.

5. We also need Able to set out how it proposes the proposed shared dredge is dealt with. This requires a detailed proposal as opposed to an assertion that it can be addressed. Please can you provide this so we can consider this. We also remain unclear as to what consideration has been given - if any - to the question/practicability of an overlap in marine licences. C.RO would not want to find that the MMO is unwilling to issue overlapping licences. The effect of this might be that C.RO has to rely on Able, or vice versa. We also note that the harbour master expects there to be agreement before he can be content with the suggestion of an overlap in dredging areas. Have you considered this further?

(ii) navigation

6. C.RO still has concerns about the impact of AMEP vessels turning in its approaches. A full response is provided in the attached table. Protective provisions also need to deal with the need for C.RO to move navigational aids as a result of AMEP. I have explained previously why C.RO considers that it should be able to approve tidal works that may affect its approaches/dredging.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I look forward to hearing from you. I am very happy to arrange a meeting to sit down to work through the protective provisions with a view to agreeing a draft, in the same way as I think Howard offered at the hearing, although plainly this has not yet taken place. Obviously as we engage with you some flexibility may be required in dealing with the practical and legal issues thrown up by the protective provisions. Therefore it is not possible to state that these are a definitive position just now. If there are any points you need clarified, please call or email me.

Have a good weekend.

Regards

Ben

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C.RO Ports Killingholme Limited ("C.RO")

Able Marine Energy Park ("AMEP")

Comments on navigational impacts and dredging

Issue	C.RO Comment (21 June 2012)	Able Response (8 August 2012)	C.RO Response
Navigational Impacts			
<p>Construction traffic (vessels)</p>	<p>Concerned regarding construction traffic interfaces. Note that a marine manager is proposed but no details provided.</p> <p>Reliance on VTS Humber proposed. This includes the Harbour Master Humber ("HMH") but does not deal with necessary liaison with C.RO.</p>	<p>Able has tried to discuss how to manage the liaison. Overriding principle will be that Able and C.RO submit to VTS Humber for control of vessel movements - the normal procedure.</p>	<p>HMH's position is that scheduled sailings will take priority over construction vessels. C.RO simply requires that its vessel movements take priority over vessels engaged in/connected with construction of AMEP in C.RO's approach channel. This principle must be set out in Protective Provisions ("PPs"). This is not a matter for discussion, save for potential liaison as to the detail of arrangements at the time of construction. See amended PPs.</p> <p>It is not appropriate to rely on VTS to ensure that construction traffic does not interfere with other vessel movements. VTS will not manage liaison between C.RO and those carrying out construction at AMEP. As such, direct arrangements between Able and C.RO are required. Able will need to consult with C.RO to ensure its construction traffic does not interfere with C.RO's scheduled arrivals and sailings. This must be secured by PPs. This point has been made a number of times.</p>
<p>In relation to the physical overlap in the approaches to AMEP and C.RO Ports Killingholme ("CPK"), C.RO is not satisfied that Able's operations require this level of incursion into the CPK approach area. This is discussed in greater detail below in relation to shared dredging</p>			

	<p>Request for clarity over how priority will be given to scheduled sailings. No interference with C.RO's fixed sailings should be permitted without C.RO first approving it.</p>	<p>Able willing to liaise with C.RO regarding fixed sailing times but priority of sailings is not for Able to decide - Able will submit to the control of VTS Humber - the normal procedure.</p>	<p>arrangements.</p> <p>The byelaws provide that before a vessel breaks from the quay it must call VTS to seek permission to do so, and before a vessel enters the Humber it must notify VTS of its impending arrival and at which berth. At present C.RO provides VTS with its weekly berthing program. VTS do not interfere with the manoeuvring of vessels e.g. the order in which they move. VTS will not, therefore, address construction traffic movements where there is a local impact on C.RO or a potential for interference between vessel movements.</p> <p>The provisions of paragraph 45 of the amended PPs address this . If they are not accepted by Able, a further rationale must be given since its proposed solution is not workable.</p>
<p>Operational traffic</p>	<p>Concern about conflict with Very Large Ship ("VLS") movements and C.RO's scheduled arrivals/sailings.</p>	<p>Able not suggesting which vessel has priority. Decision to be managed by the Harbour Master, Humber.</p>	<p>See comment above. Reliance on VTS is not sufficient or appropriate to manage the effect on operations at C.RO's statutory harbour or vessels transiting to/from it.</p> <p>VLS movements will certainly have the capacity to interfere with C.RO's fixed sailings, particularly given their manoeuvring limitations and the fact that they can only sail on High Water, which in turn is important to C.RO's operations. This restriction may adversely affect C.RO's operations, bearing in mind the overlap of the AMEP turning area/approach channels with approach channel.</p> <p>PPs are required to ensure that C.RO is involved in the management arrangements for vessel movements. See paragraph 56 of the amended PPs. Able will need to</p>

				respond with reasons if it seeks amendments.
	C.RO expects to be part of liaison/management arrangements.	Able confirm willingness to meet to discuss.		Please confirm if the principle is now agreed. This should be secured by PPs. What are Able's detailed proposals in this regard? C.RO has asked for clarity a number of times, including by its letter dated 21 June 2012 and at meetings (for example on 15 June 2012).
	Arrangements relating to vessel movements for construction and/or operation should be secured by PPs.	Movements will be agreed with the Harbour Master in accordance with normal river practice. It is not for Able or C.RO to decide in advance which vessels should have priority.		See comments above. PPs are required to protect C.RO and to ensure that C.RO is included and involved in the management arrangements for vessel movements which may affect traffic to/from its statutory harbour. Amended PPs have been provided - see paragraph 46.
	C.RO requested clarification regarding proposal to mark swinging area with lights where there is an overlap with C.RO's approach channel.	One navigation light proposed, plan provided.		This is agreed, but now must be secured. However, C.RO is concerned that if a vessel is moored to the upstream end of the AMEP quay, or a large high structure is stored on the quay in a similar area, this will shield the IsoGWR.4 s sector light positioned at the entrance of North Killingholme Haven at CPK. The PPs have been amended to address any potential interference with this Sector Light (see paragraph 44).
Dredging				
Additional dredging at C.RO's Harbour	C.RO requested PPs to protect C.RO from the need to carry out additional dredging in its harbour as a result of AMEP.	Refer to previous draft legal agreement provided.		C.RO has already commented that a legal agreement is not acceptable or appropriate. C.RO requires PPs to deal with this matter. C.RO also notes that contrary to Able's comment that there will be a decrease in dredging required at C.RO quays, the <i>Supplementary Report - Modelling of Final Quay Design</i>

			<p>submitted on 29 June 2012 shows an expected increase in annual maintenance dredge rates of 5,000 - 8,000m³ in Table ES1 (Relevant Receptors) in the Executive Summary.</p> <p>Able will be also aware that whilst modelling is helpful, it cannot accurately predict the actual outcome/effects of a project of this nature. If Able is certain that there will be no accumulations at CPK, there should not be a problem with agreeing to PPs. However, C.RO cannot be expected to rely on modelling alone. It requires comfort that should there be accumulation this will be addressed, particularly where there is a risk of accumulation in the intertidal zone that may affect Berth 6 at CPK, and the entrance to the Haven. This needs to be addressed as well.</p> <p>C.RO is concerned that having stated at the meeting on 15 June that dredging would be dealt with by PPs, Able is now referring once again to an agreement. It should be remembered that Able is proposing a new development that may affect an existing statutory harbour authority. It is normal and appropriate for any potential impacts to be dealt with through PPs.</p> <p>This is neither acceptable nor appropriate nor precedented in respect of harbours anywhere. Able would have to carry out dredging anyway. C.RO does not accept that it should have to pay Able for any reduction in dredging requirements at CPK.</p> <p>It should be remembered that Able is proposing a new development that may affect an existing, statutory harbour authority. It is normal and appropriate for any potential impacts to be dealt with through PPs for the benefit of</p>
<p>C.RO does not agree to pay Able if C.RO needs to dredge less as a result of AMEP.</p>	<p>Able should receive benefit of reduced dredging to C.RO.</p>	<p>This is neither acceptable nor appropriate nor precedented in respect of harbours anywhere. Able would have to carry out dredging anyway. C.RO does not accept that it should have to pay Able for any reduction in dredging requirements at CPK.</p> <p>It should be remembered that Able is proposing a new development that may affect an existing, statutory harbour authority. It is normal and appropriate for any potential impacts to be dealt with through PPs for the benefit of</p>	

C.R.O.			<p>The list of vessels is considerably larger than that initially received via email from Able's Peter Stephenson on 18/06/12. C.R.O understand that it will receive the hydrodynamic modelling including the effects of large beam vessels berthed at the quay included in this list, and the presence of C.R.O berths, on 12 October 2012.</p> <p>The indicated frequency of vessel arrivals does not give an indication of the number of vessels, only the frequency of each vessel type. Can Able please clarify how many of each vessel type would be expected to arrive each day?</p> <p>C.R.O has reviewed the overlap in the approaches and is not satisfied that Able's operations require the indicated level of incursion into the C.R.O approach area. Can Able clarify why it considers that it needs to use the C.R.O approach as part of its turning area? If Able's turning area can be located outside C.R.O's approach, then it will not be necessary to carry out shared dredging in this area, thereby removing this potentially complex interface. This could be dealt with by simply moving the turning area eastwards/down estuary.</p> <p>C.R.O does not consider that an agreement covering shared dredging arrangements is appropriate. Regardless of whether AMEP's turning area is relocated so that it does not overlap, C.R.O must be given appropriate protection from interference with its approach channel in the DCO through PPs. This is supported by the Harbour Master, Humber, who states at paragraph 16 of his Comments on Responses to the first Written Questions that there is a need, for his own protection, that appropriate provisions for C.R.O dealing with the approach channel are included</p>
Shared Dredge	<p>Request for information regarding the frequency of vessels arriving at/sailing from AMEP.</p> <p>Request for detailed proposals for shared dredging.</p>	<p>Information provided.</p> <p>Able and C.R.O need to liaise to produce an appropriate agreement.</p>	

			in the DCO.
			C.RO also notes that the Harbour Master Humber does not currently make decisions on the timings of C.RO's dredging activities. This is controlled by C.RO in conjunction with known vessel movements of other river users. C.RO would consult with Able as part of this process.
	Harbour Master will need to be consulted once C.RO has reviewed Able's proposals for shared dredging arrangements.	Agreed.	See paragraphs above regarding the necessity of shared dredging arrangements for AMEP's turning area. C.RO still needs to understand Able's proposals before agreement can be reached and recorded. It has not provided these. In the absence of any detail C.RO will seek PPs to prevent Able dredging in C.RO's approaches.

DLA Piper UK LLP

5 October 2012

THE PLANNING ACT 2008

THE PROPOSED ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER

C.RO Ports Killingholme Limited

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

5 October 2012

Introduction

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

Amendments

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

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

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

3.3 Inserting a definition of "sections".

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

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

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

5. Amend Article 7 by:

5.1 Amending sub-paragraph (5)(a) by inserting after AB Ports ", C.RO Ports Killingholme Limited";

5.2 Amending sub-paragraph (11) by inserting the words "and Part 6 of Schedule 9 (for the protection of C.RO Ports Killingholme Limited)".

~~6. Amend Article 9 by deleting the words "and within the limits of the harbour, from time to time enlarge, relay or extend temporarily or permanently the authorised development,".~~

7. Amend Article 10 by:

7.1 Amending 10(1) by:

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

7.1.2 Deleting the words "railway lines".

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

~~7.3 Amending 10(3) by inserting the words "Subject to paragraph (4) below," at the beginning of the paragraph.~~

~~7.4 Inserting a new sub-paragraph 4 as follows:-~~

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

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

(4) No works permitted by this Article shall allow the closure of or impeding access via any of the streets specified in Schedule 2 to or from any premises on such street, unless a suitable

and commodious alternative is provided prior to and for the duration of any works permitted by this Article.

9. Amend Article 14 by:

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

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

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

~~10. Amend Article 20 by deleting the phrase "or which may be affected by the authorised development" in sub-paragraph (1).~~

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

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

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

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

(6) Nothing in this Article shall

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

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

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

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

15. Unless an agreement or other arrangement is reached between Able and C.RO. Amend the land plans to remove the pink wash from the parcels numbered 02008, 03013, 03014, 03015, 04004, 04014, 04024, 04025, 05023, 05024, 05025, 05026, 05027, 05028, 07001.
16. Delete Article 47.
17. ~~Amend Article 59 by deleting it in its entirety, and replacing it with the following provision:-~~
- ~~59.—(1) The provisions of section 72 of the 1990 Act shall apply so that the requirements shall be deemed to be imposed as and as if they were conditions imposed upon the grant of planning permission pursuant to section 72 of the 1990 Act and the development consent granted by this Order was a planning permission granted under the 1990 Act.~~
- ~~(2) Sub section (1) of section 78 of the 1990 Act shall apply to the development consent granted by this Order and to the requirements save that it shall be modified so as to read for the purposes of this Order only as if there were inserted after subsection (b) the following—~~
- ~~"(bb) refuse an application for any consent, agreement or approval of that authority required by a requirement imposed on a grant of development consent or contained in a development consent order, or a grant it subject to conditions; or"~~
- ~~(3) Sections 78 and 79 of the 1990 Act shall have effect in relation to any appeal under the terms of this article save that the Secretary of State in question shall be the Secretary of State who would be responsible for determining an application for development consent with the subject matter of this Order if section 103(1) of the 2008 Act applied.~~
- ~~(4) The terms of any development order, and other rules and regulations, including without limitation regulations requiring environmental impact assessment, and which apply to applications pursuant to conditions or the subject matter of section 78 of the 1990 Act shall apply to any application or appeal made under the requirements or terms of this article.~~
- ~~(5) Nothing in this article shall alter the effect of section 161 of the 2008 Act.~~
18. Amend Schedule 1 by:
- 18.1 Inserting the words "Work No. 3 - " at the beginning of sub-paragraph (3)(b);
- 18.2 Unless an agreement or other arrangement is reached between Able and C.RO, inserting the following sub paragraphs and renumbering the remaining sub-paragraphs accordingly:
- (d) Work No. 4 - [works to the Killingholme Branch Line];
- (e) Work No. 5 - [construction of level crossings];
19. Amend Schedule 8 Deemed Marine Licence by inserting the following sub-paragraph into (11)(2) and renumbering the remaining sub-paragraphs accordingly:
- (c) maintaining access to C.RO Ports Killingholme.
20. Amend Schedule 11 Requirements by:
- 20.1 Unless an appropriately worded restriction on the use of AMEP is agreed between Able and C.RO, Amending the definition of "authorised development" by deleting the words "and any other development authorised by this Order""

- 20.2 Inserting an additional Requirement after Requirement 2 and renumbering the remaining provisions accordingly:

Restriction of operations

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

- ~~20.3 Amending Requirement 4 by deleting the text in its entirety and replacing it with the following Requirement:-~~

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

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

~~[Insert list of detailed drawings]~~

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

21. Insert Protective Provisions into Schedule 8.

[Drafting note: Able has confirmed it is supplying a further draft of Protective Provisions for C.RO's comment. Below is a draft of Part 6 containing the protection that C.RO wants to see. C.RO will, however, review any further draft supplied by Able].

PART 6

FOR THE PROTECTION OF C.RO PORTS KILLINGHOLME LIMITED

General

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

35. In this Part of this Schedule-

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

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

"C.RO" means C.RO Ports Killingholme Limited, the statutory harbour authority for, and operator of, CPK;

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

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

"the Able Harbour Authority" means Able Humber Ports Ltd in its role as harbour authority for the Able Marine Energy Park; and

"the river" means the River Humber.

36. For the purposes of this Part, the definition of "tidal work" shall be taken to include—

- (a) any projection over the river outside the area of jurisdiction by booms, cranes and similar plant or machinery within 500 metres of CPK;
- (b) any authorised development which affects or may affect the river within 500 metres of CPK or any functions of C.RO, whether or not that authorised work is within the area of jurisdiction of CPK.

Tidal Works: approval of detailed design

37. (1) Before—

- (a) submitting any plans and sections for any tidal work within ~~500~~ 1000 metres of CPK to the Secretary of State for approval under Article 22 of this Order (tidal works not to be constructed without approval of the Secretary of State);
- (b) commencing any operation for the construction of a tidal work within 500 metres of CPK where approval of the Secretary of State under Article 22 is not required;
- (c) submitting any works schedules to the Marine Management Organisation in accordance with paragraphs 6, 16, 19, 22 and 25 of Schedule 8;
- (d) submitting any written scheme or proposed alteration in the design drawings to the relevant planning authority in accordance with paragraph 3 or 4 of Schedule 11; or
- (e) commencing any operation for the maintenance of a tidal work within 500 metres of CPK,

the Able Harbour Authority shall submit to C.RO plans and sections of the tidal work or operation and such further particulars as C.RO may, within 28 days from the day on which plans and sections are submitted under this sub-paragraph, reasonably require.

(2) No application for the Secretary of State's approval under Article 22 shall be made in respect of a tidal work until plans and sections in respect of that tidal work submitted under sub-paragraph (1) have been approved by C.RO.

(3) No works schedule referred to in sub-paragraph (1)(c) shall be submitted to the Marine Management Organisation for agreement until the work schedule has been approved by C.RO;

(4) No written scheme or proposed alteration referred to in sub-paragraph (1)(d) shall be submitted to the relevant planning authority for approval until the scheme or alteration has been approved by C.RO.

(5) Any tidal work not requiring the Secretary of State's approval under Article 22 shall not be constructed, and no tidal work shall be maintained, except in accordance with such plans as may be approved in writing by C.RO or determined under paragraph 43.

(6) Any approval of C.RO required under this paragraph shall not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as C.RO may make for the protection of the use of its undertaking, its operational land, the river or any structure for the purposes of performing its functions.

(7) Requirements made under sub-paragraph (4) may include conditions as to—

- (a) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the tidal work; and
- (b) the expiry of the approval if the Able Harbour Authority does not commence construction of the tidal work approved within a prescribed period.

(8) Subject to sub-paragraphs (8) and (9), any such approval shall be deemed to have been refused if it is neither given nor refused within 42 days of the specified day.

(9) In this paragraph "the specified day" means, in relation to any tidal work—

- (a) the day on which plans of that work are submitted to C.RO under sub-paragraph (1); or
- (b) the day on which the Able Harbour Authority provides C.RO with all such particulars of the work as have been reasonably requested by C.RO under that sub-paragraph;

whichever is the later.

38. Any operations for the construction of any tidal work approved in accordance with this Order shall, once commenced, be carried out by the Able Harbour Authority with all reasonable dispatch and to the reasonable satisfaction of C.RO so that the exercise of C.RO shall not suffer more interference than is reasonably practicable, and C.RO shall be entitled by its officer or other appointed person at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

Protective action

39. After the purpose of any temporary tidal work within 500 metres of CPK or within its the approach channel has been accomplished or after a reasonable period of notice in writing from C.RO requiring it do so, the undertaker shall with all reasonable dispatch, remove that work or any materials relating thereto which may have been placed below the level of high water by or on behalf of the undertaker and, on its failing so to do within a reasonable period after receiving such notice, C.RO may remove the same and charge the undertaker with the reasonable expense of doing so, which expense the undertaker shall repay to C.RO.

40. If any tidal work is abandoned or falls into decay and is in such a condition so as to interfere or cause reasonable apprehension that it may interfere with navigation in the river so

that it may affect CPK or access to CPK in any way, C.RO may by notice in writing require the undertaker either to repair or to restore the specified work, or any part of it, or to remove the work and restore the site of that work to its condition prior to the construction of the specified work, to such an extent and to such limits as C.RO thinks proper acting reasonably.

41. (1) If any tidal work—

- (a) is constructed otherwise than in accordance with the requirements of this Schedule or with any condition in an approval given pursuant to paragraph 37(6); or
- (b) during construction gives rise to sedimentation, scouring, currents or wave action detrimental to the floor or regime of, the river within 500 metres of CPK or to traffic to or from CPK in any location;

then C.RO may by notice in writing require the Able Harbour Authority at the Able Harbour Authority's own expense to comply with the remedial requirements specified in the notice.

(2) The requirements that may be specified in a notice given under sub-paragraph (1) are—

- (a) in the case of a tidal work to which sub-paragraph (1)(a) applies, such requirements as may be specified in the notice for the purpose of giving effect to the requirements of
 - (i) this Schedule; or
 - (ii) the condition that has been breached; or
- (b) in the case within sub-paragraph (b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river within 500 metres of CPK.

(3) If the Able Harbour Authority does not comply with a notice under sub-paragraph (1), or is unable to do so then C.RO may in writing require the Able Harbour Authority to—

- (a) remove, alter or pull down the tidal work, and where the tidal work is removed to restore the site of that work (to such extent as C.RO reasonably requires) to its former condition; or
- (b) take such other action as C.RO may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

(4) If a tidal work gives rise to environmental impacts over and above those anticipated by any environmental document, the Able Harbour Authority shall, in compliance with its duties under any enactment and, in particular, under section 48A of the 1964 Act, take such action as is necessary to prevent or mitigate those environmental impacts and in so doing shall consult and seek to agree the necessary measures with C.RO.

(5) If C.RO becomes aware that any tidal work is causing an environmental impact over and above those anticipated by any environmental document which may affect CPK or C.RO, C.RO may notify the Able Harbour Authority of that environmental impact, the reasons why C.RO believes that the environmental impact is being caused by the tidal work and of measures that C.RO reasonably believes are necessary to counter or mitigate that

environmental impact. The Able Harbour Authority shall implement the measures that C.RO has notified to the Able Harbour Authority or shall implement such other measures as the Able Harbour Authority believes are necessary to counter the environmental impact identified, giving reasons to C.RO as to why it has implemented such other measures.

Facilities for navigation

42. The Able Harbour Authority shall not in the exercise of the powers granted by this Order interfere with any marks, lights or other navigational aids in the river relating to CPK without the agreement of C.RO and shall ensure that access to such aids remains available during and following construction of any tidal works.

43. The Able Harbour Authority shall, at or near every tidal work exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation relating to CPK as C.RO may from time to time reasonably require.

44. The undertaker shall—

(1) pay to C.RO the reasonable costs incurred by C.RO of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of a tidal work or the use of the authorised development, including but without limitation, paying the reasonable costs of C.RO incurred in raising the height of the IsoGWR.4 s sector light positioned at the entrance of North Killingholme Haven at CPK, in the event that activities related to the construction or operation of the authorised development obscure or obstruct the visibility of this sector light to vessels approaching CPK and in its approach channels.

(2) provide and maintain on any tidal works such fog signalling apparatus as may be reasonably required by C.RO and shall properly operate such apparatus during periods of restricted visibility for the purpose of warning vessels of the existence of the relevant works; and

(3) afford to C.RO such facilities as C.RO may reasonably require for the placing and maintenance on any tidal works of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

Operating Procedures

45. (1) The undertaker shall not allow vessels associated with the construction of the authorised development to obstruct or remain in the approach channel when vessels are arriving at, and sailing from CPK.

(2) C.RO shall provide the undertaker with a schedule of movements to which paragraph 45(1) applies.

46. Before commencing harbour operations the Able Harbour Authority shall submit to C.RO for approval a written statement of proposed safe operating procedures for access to and egress from the harbour, including the management arrangements for vessel movements within the approach channel to CPK, and shall operate the harbour only in accordance with such procedure as approved, including any approved alteration made from time to time.

Dredging

47. (1) The undertaker shall not dredge in the approach channel to CPK without prior approval.

(2) Any dredging that is carried out with C.RO's approval must be carried out in accordance with any conditions attached thereto.

Railway

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

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

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

Rosper Road

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

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

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

Recovery of expenses

52. C.RO may recover from the undertaker any reasonable expenses howsoever caused (including a proper portion of the overhead charges of C.RO) which C.RO incur—

(1) arising from the approval of plans and the inspection of the construction or carrying out of any tidal work;

(2) by reason of any act or omission of the undertaker, or of any person in their employ, or of their contractors or workmen whilst engaged upon any tidal work or the construction and operation of the authorised development;

(3) in dredging away any accumulation consequent upon the execution or maintenance of a tidal work;

(4) in obtaining and depositing in the river such material as is necessary in the reasonable opinion of C.RO to protect C.RO's operations from the effects of scouring of the river bed consequent upon the execution or maintenance of a tidal work;

(5) in altering any mooring in any way which in the reasonable opinion of C.RO may be rendered necessary by reason of the execution or maintenance of a tidal work;

(6) in carrying out reasonable surveys, inspections, tests and sampling within and of the river (including the bed and banks of the river) —

(a) to establish the marine conditions prevailing prior to the construction of a tidal work in such area of the river as C.RO have reasonable cause to believe may subsequently be affected by any siltation, scouring or other alteration which the undertaker is liable to remedy under this article; and

(b) where C.RO have reasonable cause to believe that the construction of a tidal work is causing or has caused any siltation, scouring or other alteration as aforesaid.

(7) arising from the carrying out of construction of a tidal work or the failure of a tidal work or the undertaking by C.RO of works or measures to prevent or remedy danger or impediment to navigation or damage to any property arising from such carrying out of construction, exercise or failure;

and subject to the provisions set out above the undertaker shall indemnify C.RO from and against all claims and demands arising out of such construction, or carrying out, failure or act or omission of the undertaker, or operation of the authorised development; but C.RO shall as soon as reasonably practicable give to the undertaker notice of any claim or demand which is one for which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the undertaker.

Indemnity

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

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

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

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

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

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

Liability

54. C.RO shall not be liable, in the absence of negligence or breach of any duty hereunder or otherwise, for any damage or injury howsoever caused to any of the authorised works (whether temporary or permanent) resulting from the dredging operations of C.RO or the carrying out by them in the execution of their statutory powers and duties of any operations in the river or works for the improvement or maintenance thereof.

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

Drainage

56. Article 4(2) of this Order shall not apply to any watercourse which is used for the drainage of CPK.

Disputes

57. Unless otherwise agreed in writing, any dispute arising between the undertaker or Able Harbour Authority and C.RO under this Schedule shall be determined by arbitration as provided in article 66 (arbitration).

C.RO Ports Killingholme Limited ("C.RO")

Able Marine Energy Park ("AMEP")

Comments on DCO version 3, 3 August 2012

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

<p>Art. 7</p>	<p>Add C.RO to the list of parties in Article 7(5) in relation to the notice provisions regarding potential conflict in Art. 7(4).</p>	<p>No change. Art. 7 deals with overlap between HMH and Able's jurisdiction.</p>	<p>Requirements. This needs to be rectified. Article 5A should also be subject to the Requirements.</p> <p>C.RO has set out several times its concerns about navigation conflicts in the proposed area of overlap. Able should modify its turning area so that there is no overlap, agree for C.RO to have protective provisions ("PPs") to deal with how conflicts are managed in the overlap, and/or include C.RO within this Article so that it is adequately protected and given notice of an anticipated or actual conflict between functions/vessel movements.</p> <p>See comments elsewhere on PPs. It is not sufficient simply to assert that conflicts will be dealt with by a working group. There needs to be provision in the DCO for how this will be managed. C.RO has proposed PPs, which have been ignored. C.RO requires that given the overlap the functions of the harbour master AMEP should be carried out subject to C.RO's PPs.</p>
<p>Art. 9</p>	<p>Delete "enlarge and extend"</p>	<p>Amended.</p>	<p>Agreed.</p>
<p>Art. 10 (1)</p>	<p>Delete "railway lines", make railway works a separate work.</p>	<p>A passing loop will be added as a Work. It is not known what sidings any tenant may require.</p>	<p>The addition of a passing loop as a Work is noted. C.RO awaits a plan showing this.</p> <p>The request to delete "railway lines" arises from a concern: to understand what works Able proposes; to ensure that there is a control on the nature of works to the Railway; and to ensure that any works necessary for the operation of the Railway are indeed carried out. Indeed the comment that the sidings requirements are unknown emphasises this uncertainty.</p> <p>C.RO has set out a number of times that Able has not stated what works it proposes to carry out to the Railway.</p>

<p>These include those necessary in order to bring it up to operational standard, and those required in order to install level crossings, including the number and location of level crossings.</p>	<p>C.RO would expect these to be included as Works in the DCO - see comments on Schedule 1. C.RO will still require certainty on these elements even if Able does not propose to deal with them in the DCO, for example as part of any arrangements that may be agreed between C.RO and Able and other parties.</p>	<p>This will, therefore, need to be addressed by Able, in the DCO or elsewhere. C.RO's point therefore requires a response from Able.</p>	<p>C.RO also notes the suggestion that tenants at AMEP may require their own sidings. That would clearly have an impact on the capacity and operation of the Railway, which will need to be regulated. In relation to this C.RO will require protection in the DCO/as part of any arrangements regarding the Railway. In any case, such potential use has not been assessed and should not, therefore, be empowered by this DCO in the absence of any assessment under the principles of the Rochdale Envelope.</p>	<p>C.RO does not require Able not to be able to carry out landscaping, or other mitigation, that is required and set out in the ES and specified/secured elsewhere.</p> <p>However, the works "other works to mitigate any adverse effects of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of</p>
				<p>No change.</p>
<p>Art. 10(2)(c)</p>	<p>Delete (c)</p>			

<p>the works", is wide. Able may wish to explain to C.RO what works it envisages. At present, this provision could allow the construction of any works that may fall within this sub Article notwithstanding that they may affect C.RO. C.RO requires that PPs control such works so that C.RO is (a) consulted and (b) not detrimentally affected, bearing in mind its functions as a statutory harbour authority, and the operational requirements of its port undertaking (including the Railway).</p>			<p>the works", is wide. Able may wish to explain to C.RO what works it envisages. At present, this provision could allow the construction of any works that may fall within this sub Article notwithstanding that they may affect C.RO. C.RO requires that PPs control such works so that C.RO is (a) consulted and (b) not detrimentally affected, bearing in mind its functions as a statutory harbour authority, and the operational requirements of its port undertaking (including the Railway).</p>
<p>Art. 10(3) and (4)</p>	<p>Amendments to remove the scope of Part 11 of GPDO.</p>	<p>Removal of reference to "Part 11" from Art (3).</p>	<p>Agreed.</p> <p>For the avoidance of doubt the words "Subject to paragraph (3) below" should be added to the beginning of paragraph 10(1).</p>
<p>Art 13</p>	<p>Insert a new paragraph (4) to require that Able does not close/impece access on the Streets in Schedule 2 without a suitable alternative being provided.</p>	<p>No change.</p>	<p>Able proposes to carry out works to Rosper Road, specified as Work No.2 and additional works comprising associated development - C.RO understands these to comprise road widening but it is not clear from the description.</p> <p>Rosper Road is the main access to CPK. C.RO requires that its access is maintained. It is not appropriate to expect C.RO - a statutory undertaker - to rely on the licensing authority. It is also normal for a promoter to address such needs directly. If Able does not propose to impede/obstruct C.RO's use of Rosper Road, there is presumably no reason why the additional drafting and/or PPs should be a problem.</p> <p>The drafting of this paragraph is based on wording in the River Mersey (Mersey Gateway Bridge) Order 2011. It is established that a street works provision can include words to this effect in order to ensure that any street works are</p>

<p>carried out in a manner to ensure that access to premises is retained. This requires the promoter, and the licensing authority, to carry out and authorise works respectively in accordance with this principle.</p> <p>It is, therefore, not acceptable to seek to carry out street works to Rosper road that might prevent or impede access to C.RO, without agreeing to adequate mitigation and protection for C.RO.</p>			
<p>As for Art. 13.</p> <p>The words "where reasonably practicable" do not deal with C.RO's concerns. It is not appropriate to only seek to maintain access "where reasonably practicable" given that Rosper Road is the access road for C.RO.</p> <p>It is, therefore, not acceptable to seek to temporarily stop up Rosper Road - and therefore prevent or impede access to C.RO - without agreeing to adequate mitigation and protection for C.RO.</p>	<p>Insert "where reasonably practicable".</p>	<p>Insert a new paragraph (3) to provide for alternative routes.</p>	<p>Art. 14</p>
<p>Agreed.</p>	<p>Deleted.</p>	<p>Deletion of words "which may be affected by the authorised development"</p>	<p>Art 20(1)</p>
<p>The same considerations apply here as are relevant for Article 9. If Able agrees to the removal of "extended or enlarged" in Article 9, it is appropriate to remove the same words here as Able would not be permitted to enlarge or extend any works in any event.</p> <p>Approval of the SoS for reconstruction after 5 years can still be provided for.</p>	<p>No change.</p>	<p>Deletion of "reconstructed, extended, enlarged, replaced or relaid"</p>	<p>Art 22(1)</p>

Art 29	Removal of Railway from scope of land subject to compulsory purchase powers.	No change.	C.RO's position remains that the Railway should be removed from the scope of this Article (by amendment of the BoR and land plan or otherwise) unless a satisfactory arrangement is concluded in respect of the Railway. Given that no agreement has been reached, C.RO still requires this provision to be inserted.
Art 30 (power to easements) and Article 34 (private rights of way)	Insert wording to expressly provide for no acquisition of any easements or other rights, or overriding of any agreements between C.RO and Network Rail regarding access to and use of the Railway	No change. This will be addressed by amending the BoR or land plan. Able is not aware of any existing easements.	C.RO has easements in/over Network Rail's land, and subsisting agreements regarding connection to and use of the Railway. The BoR does not include reference to those easements and should not be amended without complying with the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 . C.RO assumes that even if Able does acquire the Railway, it will not seek to acquire those easements. In which case it should not be a concern for Able to include specific provision, in these Articles or in PPs to not acquire any such rights. As no agreement currently exists regarding the Railway, Able should agree to the inclusion of this wording in the event that agreement is not reached. If no agreement is reached, C.RO requires the inclusion of this wording in any case, and the amendment of the land plans to remove the pink wash from the parcels that comprise the Railway/land owned by Network Rail.
Art. 47	Delete.	Delete Art. 47(1) (minor modifications). Art. 47(2) and (3) remain.	Deletion of Art. 47(1) agreed. In respect of Art 47(2) (power to operate and use the Railway as a system for carriage of goods) comments made above apply equally here. In particular: it is not clear what works (if any) Able proposes to enable it to use the

<p>Railway for this purpose. These should be specified; Able has not set out, or assessed, the manner of operation or the consequences of use of the Railway for the carriage of goods; as matters stand, any proposed operating regime or use does not adequately guarantee C.RO's existing rights to use it, or future requirements to do so.</p>			<p>Unless there is an agreement dealing with the operation and use of the Railway (which will include confirmation of how Able proposes to use the Railway, what works it will carry out in order to do so (including the level crossings), and how C.RO's rights will not be affected) it should not be empowered to acquire the Railway, and this provision should be deleted. Use of the Railway would be subject to the Railways Act 1995 (as amended).</p>
<p>As regards Art. 47(3) in the absence of a need to use the Railway, there is no need for a power to enter into agreements. It is not clear what the purpose of this provision is in any case. The DCO does not need to authorise Able to enter into a connection agreement, for example. It is otiose.</p>	<p>No change. Not in the nature of a single engineering construction.</p>	<p>Specification of onshore development as Works; Works to Railway including Level Crossings</p>	<p>As regards Art. 47(3) in the absence of a need to use the Railway, there is no need for a power to enter into agreements. It is not clear what the purpose of this provision is in any case. The DCO does not need to authorise Able to enter into a connection agreement, for example. It is otiose.</p>
<p>C.RO's concern in relation to the onshore Works relates to their disposition and the effect of this on the operation of the Railway. The relationship of the two parts of AMEP bisected by the Railway is fundamental to understanding the potential effect on the operation of the Railway, in particular in relation to the number and location of crossing points. This is intrinsic to the concern about a lack of specificity relating to works to the Railway, including level crossings.</p>			<p>C.RO considers that Able should agree to restrict the number of crossings, and specify their location (if an</p>

			<p>agreement is to be reached). This may be done by reference to drawing AME-02006. However, the interfaces with the Railway in that drawing are unclear as is the nature of the level crossings. That would address the concern about the wide discretion as to the layout of the onshore works. It is understood that Able wishes to have flexibility but if it expects to be able to conclude any arrangements regarding the Railway it should agree to limit the impact of the development on the Railway by accepting some restrictions on that flexibility.</p> <p>See also comments above on Art. 10(1).</p>
Schedule 8	Add "maintaining access" to C.RO	Change made but only to refer to neighbouring developments	C.RO must be referred to specifically/back-to-back protection provided in PPs.
Schedule 9	C.RO requested PPs and provided a draft.	Limited provisions offered in Draft 3 of DCO.	<p>C.RO has no objection to the PPs offered in Part 6 of Schedule 9. They are not, however, sufficient on their own.</p> <p>It is not clear why the draft provides for PPs for C.RO and C.GEN in the same schedule. Although the two companies may have similar concerns, C.RO requires its own set of PPs. It is a statutory harbour authority and is afforded special protection as a result. It is entirely appropriate for its functions to be protected in this manner; there is ample precedent.</p> <p>C.RO notes Able's comment that some provisions may be similar to those for HMH. C.RO is not seeking provisions to replace or duplicate the functions/responsibilities of HMH or other bodies. However, given that Able proposes an overlap with C.RO's approach channel (comprising Able's approach channel and its turning area) and is seeking powers to carry out tidal works (now or in future)</p>

it is appropriate for C.RO to be consulted about tidal works that may affect C.RO and its approach channels. C.RO is a statutory harbour authority. Note that paragraph 37(6) provides for approval not to be unreasonably withheld. If Able considers that C.RO should not be protected in this way, it will need to explain the reasons in detail.

Overlap with C.RO approach channel

Able will note HMM's representations that C.RO should be given protection in respect of the overlap - see paragraph 16 of HMM's comments on responses to the first Written Questions (27 July 2012). Given that the Harbour Master has said this on a number of occasions, and C.RO has asked for such protection, it is surprising that Able will not engage on the agreement of suitable PPs to cover this issue.

Able has decided to design its scheme in such a way that its approach channel and turning area overlap with C.RO's existing approach channel. It is therefore appropriate that Able agrees to PPs that protect C.RO, and ensure that C.RO's functions/operations are not detrimentally affected. It is surprising that the PPs that Able has proposed do not deal with this at all.

Dredging

As recorded in DLA Piper's letter of 21 June 2012, at the meeting on 15 June 2012 it was understood that Able had agreed that protection for C.RO in respect of dredging (accumulation and scour) would be dealt with through PPs. That position appears to have changed. It must explain why, if it has. C.RO does not agree that the

protection it requires in respect of accumulation of sediment/dredging is dealt with in an agreement. It is not and no agreement exists even in draft. It requires (reasonably) that this is addressed through PPs.

Other issues - general

Paragraph 74 of the explanation of changes refers to the points made in response to C.GEN. Aside from the fact that the considerations are different, the response to C.RO does not deal with all of the detail of the PPs that have not been addressed.

Rosper Road

In relation to Rosper Road, please see the points made above. It is appropriate for Able to agree to provisions to ensure that C.RO's use of Rosper Road is not impeded. It is difficult to see why this should be a problem.

Railway

Refer above as regards the Railway. In the absence of an agreement, C.RO requires this protection.

Indemnity

It is not acceptable to refuse to give C.RO an indemnity, or to state that C.RO should rely on seeking redress through the Courts. C.RO is a statutory undertaker with existing operations and responsibilities, and is as a result afforded special protection. It is normal to indemnify statutory undertakers. If Able considers that there is a distinction to be made between C.RO and other port authorities afforded such protection here or elsewhere, it will need to explain this, including why its project should be different from any

<p>Schedule 11</p>	<p>Insertion of a new Requirement 3[A] to restrict the use of the Authorised Development.</p>	<p>Change made.</p>	<p>other.</p>
<p>Some words appear to be missing from the drafting in Requirement 3A(1). It would need amendment to read clearly.</p> <p>It is not clear, however, why the restriction should apply only to what cargoes can be handled across the quay. The lack of assessment of alternative uses of AMEP applies equally to the authorised development/rest of the site as to the quay wall. For example, if the onshore area were to be used for logistics or storage, the impacts would be different to those assessed, including on the local road network and potentially the Railway. Able should not have a concern with a restriction on use of the whole site, unless it intends to use other parts of the development for other purposes, which it could not do in any case given the lack of assessment. If Able is content to offer a restriction, that restriction should be effective for the issue that it is designed to address.</p> <p>Leaving aside C.RO's view that Requirement 3A(1) is not adequate, the purpose of Requirement 3A(2) is not fully understood. It appears to seek to avoid the need to amend the DCO in future by providing that any consent that allowed other types of cargo to be handled would not constitute a breach of Requirement 3A(1).</p> <p>This is an unusual approach. C.RO does not agree or believe that there is a precedent in the Associated British Ports (Hull) Harbour Revision Order 2006, Paragraph 2(4) of Schedule 1 to that Order deems subsequent provisions to be conditions imposed on a planning permission. As a result, they are enforceable by the local planning authority. It does not provide a mechanism for amending them (in</p>			

			<p>fact no provision in the Order achieves that). Neither does it provide that any future permission that might allow a breach of any of the specified conditions would not constitute such a breach.</p> <p>C.RO considers that in any case a Requirement cannot achieve what Able is seeking to do here. There is also no precedent for providing in a DCO that amendment of a DCO can be achieved by other means. We assume that PINS has not given a view on such an approach. Bearing in mind that there are specific procedures in the Planning Act 2008 and the Infrastructure Planning (Changes, to, and Revocation of, Development Consent Orders) Regulations 2011 for amending a DCO, this Requirement is not acceptable in principle. It is also ineffective. It should be deleted.</p>
	<p>Amend Requirement 4, include list of plans.</p>	<p>Change made to refer to a list of plans.</p>	<p>C.RO welcomes the inclusion of a list of plans but remains concerned that none of these plans deal with works to, or interfaces with the Railway. C.RO is also concerned that some of the plans are marked as "Indicative" or "Preliminary".</p>

DLA Piper UK LLP

5 October 2012