

Mike Harris
Case Manager
National Infrastructure Directorate
The Planning Inspectorate
Temple Quay House
Temple Quay
Bristol
BS1 6PN

Your Ref
TR030001
Our Ref
ADW/Y059258
Date
4 October 2012

Dear Mike

**Able Marine Energy Park
Second response to examining Authority's 24 September Rule 17 request**

This is a response to the Rule 17 letter issued by the examining Authority on 24 September, for the items where a response was requested by 4 October.

(a) state what s.106 or other agreements with local authorities you consider necessary to deliver the proposed development;

The applicant considers that in addition to agreeing the requirements in Schedule 11 of the Development Consent Order with the relevant local authorities, a single s.106 agreement is necessary to deliver the development, entered into by the applicant, North Lincolnshire Council (NLC) and North East Lincolnshire Council (NELC). The two councils concerned agree with this.

(b) set out the progress of negotiations, and specify the date by which you intend to conclude these agreements.

A draft s.106 agreement has been drawn up by NLC in consultation with NELC and was sent to the applicant on 28 September. The applicant will publish the draft together with the other information it is publishing on 12 October to allow other parties to comment on the agreement. The applicant would then intend to conclude the agreement shortly after the deadline for making comments on the published material of 8 November and certainly by the end of the examination, and would submit a copy of the final agreement to the panel once this had happened.

(a) explain what safety case you consider necessary to meet jointly the requirements of both the International Safety and Port Security Code (ISPS) and Network Rail;

(b) how and when this is to be agreed.

50 Broadway, London T +44 (0)20 7227 7000
SW1H 0BL United Kingdom F +44 (0)20 7222 3480
DX 2317 Victoria www.bdb-law.co.uk



The applicant's consultants Tata Steel Projects has produced a paper in answer to these two questions, which is appended to this letter.

Yours sincerely

Angus Walker
Partner
Government and Infrastructure
For and on behalf of Bircham Dyson Bell LLP

Direct Line: +44 (0)20 7783 3441

Mobile: [REDACTED]

Direct Fax: +44 (0)20 7233 1351

Email: anguswalker@bdb-law.co.uk



Our ref: B90391-LET-TPL0001 P01
Your ref:

Neil Etherington,
Group Development Director,
Able UK Ltd.,
Able House,
Billingham Reach Industrial Estate,
Billingham,
Teesside.
TS23 1PX

04th October 2012

Tata Steel Projects

Meridian House
The Crescent
York
YO24 1AW

T +44 (0) 1904 454600

T +44 (0) 1904 454895(direct)

Howard.Pack@tatasteel.com

APPLICATION FOR DEVELOPMENT CONSENT BY AHPL FOR THE PROPOSED ABLE MARINE ENERGY PARK

Able Humber Ports Ltd (AHPL) has received the following query from the Planning Inspectorate: -

**THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010 – RULE 17
FURTHER INFORMATION**

The Examining Authority wishes to ask you for further information under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010.

Rail Safety

The Panel would be grateful if you would –

- (a) explain what safety case you consider necessary to meet jointly the requirements of both the International Safety and Port Security Code (ISPS) and Network Rail;
- (b) how and when this is to be agreed.

The Panel would be grateful to receive this information **by 4 October**.

Yours faithfully
Robert Upton
Lead member

Tata Steel UK Rail Consultancy Ltd. has been engaged by Able UK Ltd. on behalf of AHPL to prepare a response.



Background

A Network Rail owned branch line bisects from North to South the proposed Marine Energy Park. It is believed that the last commercial trains movements along the track took place in 2007.

The railway originally ran from Immingham to Goxhill, where it joined the Ulceby to Barton-on-Humber line. Passenger services on the line were withdrawn in June 1963. The route remained as a goods line, with the section between Killingholme and Goxhill Junction falling into disuse and eventually truncated at Killingholme. Network Rail still own the disused railway corridor from Killingholme to Goxhill Junction.

The route was originally operated by the Great Central Railway and upon nationalisation became owned by the British Transport Commission. Upon subsequent re-organisation it was divided up into two parts, the area around Immingham passing under the control of the British Transport Docks Board and the remaining part of the line (including the section passing through the proposed Marine Energy Park) passing under the control of the British Railways Board. The British Transport Docks Board was subsequently privatised and became Associated British Ports Ltd., wherein the section of line has remained today. The British Railways Board was privatised as Railtrack PLC which was subsequently wound up and the assets including the line from the ABP boundary at Immingham to Goxhill Junction passed to Network Rail.

Network Rail have subsequently assessed a scheme to re-instate the section of line from Killingholme to Goxhill, possibly with a new East to South chord line near Goxhill to link with the Ulceby line. The objective of the scheme was to provide an additional route for goods trains to access Immingham and ease congestion there. The scheme would have involved the passage of two trains an hour throughout the week. Network Rail have not to date progressed the scheme nor made any formal application for any consents.

The railway from Immingham to Goxhill Junction was opened in 1912 under the Barton and Immingham Light Railway Order 1908. This Order was made under the Light Railways Act 1896. This Act was subsequently amended in 1912. The Act was repealed in England by the Transport and Works Act 1992.

Section 12 of the Light Railways Act 1896: -

Orders under in the Light Railways Act 1896. The provisions of the general railways acts apply: -

Application of general Railway Acts. (1)The Clauses Act, as defined by this Act, and the enactments mentioned in the Second Schedule to this Act, shall not apply to a light railway authorised under this Act except so far as they are incorporated or applied by the order authorising the railway.



(2) Subject to the foregoing provisions of this Act and to any special provisions contained in the order authorising the railway, the general enactments relating to railways shall apply to a light railway under this Act in like manner as they apply to any other railway; and for the purposes of those enactments, and of the Clauses Acts so far as they are incorporated or applied by the order authorising the railway, the light railway company shall be deemed a railway company, and the order under this Act a special Act, and any provision thereof a special enactment.

Copies of the order and deposited plans should be held by Lincolnshire Reference Library and by the British Library. Network Rail's Liabilities department should also hold a copy for inspection.

Thus the railway has existing statutory powers under a Special Act entitling Network Rail to operate it, with permitted development rights and protection from nuisance, though reinstating track along the disused section of line, may need additional consents.

Marine Energy Park Requirements

The railway bisects the Marine Energy Park from North to South. AHPL wish to operate the proposed Marine Energy Park.

There is a need for vehicles to cross the railway: -

- Privately owned vehicles for staff and visitors;
- Delivery vehicles;
- Internal works circulation;
- Exceptional loads (up to 600 tonnes) on special transport vehicles.

Four crossing points have been identified (see drawing AME-02006A Indicative Masterplan). Two are for exceptional loads and two for other traffic. The exceptional loads crossings are 35 metres wide, the other crossings are 15 metres wide.

The exceptional loads will travel at a maximum speed of 1-2 km/h and will take approximately 3 minutes to cross the 16 metre wide railway corridor.

AHPL may require a private siding for the Marine Energy Park.

Able Humber Ports has proposed taking the railway from Station Road Level Crossing to the truncation of the line at Killingholme under its ownership. This is being objected to by Network Rail.



Three scenarios are possible that could affect railway safety: -

1. Network Rail continues to own and work the railway and act as Infrastructure Operator;
2. Network Rail leases the railway and the operating rights. Presumably this would be under the Railway Clauses Consolidation Act 1845 (part of the Clauses Acts), with the respective clauses incorporated in the Development Consent Order, in lieu of a further Special Act;
3. AHPL acquires the railway land and rights in land, by compulsory acquisition under the Development Consent Order and also obtains the operating rights under the Clauses Acts enacted by means of the Development Consent Order.

Initial Safety Requirements

1. Continued Network Rail ownership

Network Rail continue to own the railway land, the operating rights and act as Infrastructure Operator. The responsibility for the existing level crossings outside the proposed Marine Energy Park will continue to rest with Network Rail. To this will be added the requirement of AHPL to cross the railway at four locations. Consideration will also have to be given to the overall Marine Energy Park security under the International Shipping and Port Security Code (ISPS) and how this is affected by the existence of the railway line.

2. Lease of the Railway by AHPL

Network Rail lease the railway land and operating rights between Station Road and Killingholme as shown on the Land Plans in accordance with statute. AHPL will obtain a Network Licence from the Office of Rail Regulation (ORR). The railway will continue to form part of the national network and be subject to Railways and other Guided Transport Systems (Safety) Regulations 2005 (ROGS) and Railway Group Standards. AHPL will become the Infrastructure Operator and will have responsibility for the existing level crossings on the line outside the proposed Marine Energy Park. It will also have to grant access rights for trains to and from third party terminals on the line and be regulated by the ORR. To this will be added AHPL's requirement to cross the railway at four locations. Consideration will also have to be given to the overall Marine Energy Park security under the International Shipping and Port Security Code (ISPS) and how this is affected by the existence of the railway line.

3. Compulsory Purchase of Railway by AHPL

AHPL will obtain under the Development Consent Order, the railway land and rights in land and also under the Development Consent Order will need to obtain the operating rights under the Clauses Acts and the Special Act.



AHPL will need to obtain a Network Licence from the ORR. The railway will continue to form part of the national network and be subject to ROGS and Group Standards. AHPL will become the Infrastructure Operator and will have responsibility for the existing level crossings on the line outside the proposed Marine Energy Park. It will also have to grant access rights for trains to and from third party terminals on the line and be regulated by the ORR. To this will be added AHPL's requirement to cross the railway at four locations. Consideration will also have to be given to the overall Marine Energy Park security under the International Safety and Port Security Code (ISPS) and how this is affected by the existence of the railway line. The disposal of operational land by Network Rail is subject to separate regulatory processes (presumed) outside the Development Consent Order by the ORR. These processes can be protracted and difficult to reach agreement.

Network Licence

The railway is inside the scope of the Railways and other Guided Transport Systems (Safety) Regulations 2005 (ROGS). A Safety Authorisation under ROGS is required. Railway Group Standards will apply. If the railway is privately owned, insurance will be required. Connection contracts will be required for third party facilities and for the junction with the ABP railway, these are subject to regulation by the ORR.

Network Exemption

Under certain circumstances the ORR may grant a Network Exemption. This will allow the railway to be treated differently. However the safety requirements for level crossings will remain. It would not be sensible to rely on a Network Exemption being granted as the railway serves third parties and is currently part of the national network and has statutory powers and duties.

Under the Network Exemption the railway is not subject to a requirement to have Safety Authorisation under the Railways and other Guided Transport Systems (Safety) Regulations 2005 (ROGS).

The assumption is that the railway lies outside the "Harbour Area" under the meaning assigned to it under the regulation 2.(1) of the Dangerous Substances in Harbour Areas Regulations 1987.

The railway is considered to be a siding within a "Factory" under the meaning assigned to it under section 175 of the Factories Act 1961 and premises to which section 123(1) or (2) or 125(1) applies. As such the railway is outside the scope of the Railways and other Guided Transport Systems (Safety) Regulations 2005 (ROGS). The railway is subject to the Management of Health and Safety at Work Regulations 1999 and as such will be covered by a Safety Management System.



Safety Management System Overview – Scenario 1

In this case Network Rail remain the Infrastructure Operator and hold the responsibility for safety on the railway. AHPL's requirement to cross the railway at four locations would be dealt with by Network Rail.

Consideration will also have to be given to the overall Marine Energy Park security under the International Safety and Port Security Code (ISPS) and how this is affected by the existence of the railway line.

The issue of new crossings of the railway would be dealt with under the Common Safety Method as it appears to involve significant change. The six criteria for this are summarised in a flow chart by the ORR. (see Appendix A)

The key issue is the movement of exceptionally heavy loads on self propelled modular transporters (SPMTs) at very low speeds (1-2 km/h) over new level crossings.

Safety Management System Overview – Scenarios 2 & 3

This is applicable under scenarios where AHPL either leases or purchases the railway between Station Road and Killingholme as shown on the Land Plans. A Railway Operations Plan for AHPL's Railway, ('the railway'), will form part of the AHPL's Health and Safety Management System.

This statement is an overview and may be revised during the development of the project.

The Health and Safety policy defines the manner in which AHPL, ('the company'), will develop and implement a health and safety system. This is to ensure the company's policy; objectives and commitment to health and safety are consistently achieved.

As part of this process the company has adopted OHSAS 18001:2007 as a management systems model and interpreted its requirements to meet its needs.

OHSAS 18001:2007 is being developed as a British Standard but and is compatible with ISO9001:2008 (Quality), ISO14001:2004 (Environmental) Management Systems Standards.

The company will give effect to arrangements for the planning, organisation, control, monitoring and review of the Health & Safety Management System.

The requirement of OHSAS 18001:2007 will allow the company to develop a recognised Health and



Safety Management System with the aim of controlling risks and improving performance.

Within the Railway Operations Plan the company will take into account the effects of the operations of railway Transport Undertakings: -

- The company will undertake a “HAZOP” review with those undertakings, of the company’s railway operations and its effect on the wider railway network.
- The Company will provide details to those Transport Undertakings of the Method of Working of Able Humber Port Ltd’s railway, Duties of the Person in charge, Normal and Emergency Contacts;
- The Company will obtain from the Transport Undertakings relevant details of their Safety Authorisation, including their validity.

Control of All Categories of Risk and Risks Arising from Activities by Other Persons

The Railway Operations Plan forms part of the company’s Health and Safety Management System. Control of risk is an integral part of this Safety Management System.

Within the railway environment certain activities have been identified with appropriate control measures.

- The railway is designated as a “Safety Critical” area of work;
- Access to the railway will be prohibited except to specially authorised staff;
- Appropriate safety warning signs will be supplied at all access points;
- Maintenance and renewal of the railway, including access by contractors, will be carried out under the Company’s Permit to Work system.
- All train movements will be under the control of a competent Person-in-Charge with “Safety Critical” accreditation;
- Loading of rail wagons will be undertaken by trained staff, final inspection will be undertaken by a competent person, with check-weighing for out of trim wagons.
- The Level Crossings will be under the control of a competent person with “Safety Critical” accreditation.

The Company will set targets for the safety of its railway operations including the operations of Transport Undertakings on its infrastructure.

Arrangements For Transport Undertakings To Operate Safely On The



Infrastructure

The company will comply with Railway Group Standards, where applicable, for the construction and maintenance of its infrastructure.

The company will authorise Transport Undertakings to operate on its infrastructure and will advise and consult with them over operational and safety matters, including their own requirements under their Safety Management Systems at regular biennial liaison meetings.

Where appropriate the company will meet agreed standards from the Transport Undertakings for the maintenance of the Railway.

The company will advise and consult with Transport Undertakings over changes to the railway infrastructure and Railway Operations Plan. In the event of disputes, both parties will seek arbitration.

All train movements on the railway shall be under the control of the Person-in-Charge.

The company will agree provisions with the Transport Undertakings for cessation or reduction of work during extreme weather conditions.

The company will agree contingency plans with ABP, Network Rail and the Transport Undertakings for the following scenarios: -

- Train on Network Rail line or ABP line at Immingham unable to enter AHPL's line;
- Locomotive failure on a train on AHPL's line;
- Late departure due to either late inwards train or operational delays on AHPL's line.

Control of New Risks

The company will identify changes in infrastructure or operations which could give rise to new risks. These will be graded as to major or minor, temporary or permanent and an appropriate risk assessment undertaken as laid down in the company's Health and Safety Management System.

The company will maintain and renew the Railway in accordance with Railway Group Standards using competent staff and contractors with validated designs. Where appropriate, the Company will use a nominated consultant to produce new or amended designs.

Where appropriate the company will meet agreed standards from the Transport Undertakings for the



maintenance of the Railway.

Training and Maintenance of Competence

The company's Health and Safety Management System will have a Competence Management System. This will apply to Railway Operations.

The railway will be under the control of a Person-in-Charge who will be a "Safety Critical" employee. Relief staff will also be "Safety Critical" employees.

The Person-in-Charge will have the defined Proficiencies in accordance with the Competence Management System:

- All competencies and assessments of each individual will be recorded;
- Signatures of competence will be recorded;
- Medical fitness will be recorded;
- Working time limits recorded.

The company has procedures for maintaining and refreshing competencies. The company will use competent trainers and assessors for staff. Supervisors and Managers of Safety Critical Staff will have also have suitable training.

The company will institute a Drugs and Alcohol Policy for Safety Critical staff, carrying out and keeping a record of spot checks on those staff. Safety Critical Staff will be required to report to a Supervisor in person at the commencement of duty.

Safety Information

The company will produce Work Instructions for: -

- Company Staff
- Transport Undertaking's Staff
- ABP and Network Rail Staff

Who are required to work on or about the company's Railway.

This will include the procedures for the documentation of safety information and the procedures for changes to that information.



This will include the procedures for communicating with outside parties such as ABP, Network Rail and Transport Undertakings such as the Freight Operating Companies.

This will include:

- Notified faults and defect reporting;
- Urgent safety issues;
- Mishap reports and incident investigations;
- Contingency plans;
- Emergency plans

Accidents, Incidents, Near Misses And Other Dangerous Occurrences

The company has existing procedures to ensure that accidents, incidents, near misses and other dangerous occurrences are reported, investigated and analysed and that necessary preventative measures are taken. Where necessary the company shall liaise with Network Rail and other Transport Undertakings and instigate a joint inquiry.

Emergency Planning For Infrastructure Managers

The company has existing plans for action, alerts and information, in the case of an emergency, which are agreed with any public body, including the emergency services that may be involved in such an emergency.

The company will notify ABP, Network Rail and the Transport Undertakings authorised to use the railway of the plans and co-ordinate procedures with them as necessary.

Audit

The Rail Safety Plan is part of the company's Health and Safety Management System, compliant to OSAS 18001 and is audited accordingly. The Rail Safety Plan is reviewed following audit as part of a process of continuous improvement.

Procedures: Technical Specifications and Operations and Maintenance

The company will observe Railway Group Standards for the maintenance of the company's Railway.

The company will base its procedures on agreed standards from the Transport Undertakings and



Network Rail for the maintenance of the Railway.

The procedures will cover routine maintenance schedules and audits for the permanent way and other works and inspection routines and audits for level crossings.

All Scenarios – Interface between the Marine Energy Park and the Railway

Sidings

AHPL may require a private siding for the Marine Energy Park. The risks entailed in this will be dealt with under a connection contract with the Infrastructure Operator.

Level Crossing Risk

The proposal for new level crossings should be risk assessed. Only in exceptional circumstances are new level crossings allowed. There are precedents on Network Rail for level crossings where exceptional loads need to cross the track.

There are 9 level crossings currently within the Marine Energy Park boundaries: -

Mileage	ID Number	Name	Note
1m 4ch	KIL2/10	Regent Oil	Occupation Crossing on Station Road
1m 16ch	KIL2/11A	-	Accommodation crossing (Tagged out of use)
1m 29ch	KIL2/11B	-	Accommodation crossing
1m 38ch	KIL2/12	-	Accommodation Crossing
1m 39ch	KIL2/13	-	Occupation Crossing
1m 54ch	KIL2/14	-	Accommodation Crossing
1m 62ch	KIL2/15		Accommodation Crossing
1m 64ch	KIL2/16	CEGB	Occupation Crossing – closed by severance of ownership
1m 73ch	KIL2/17	-	Accommodation Crossing

Crossing rights still exist on many of these crossings and whilst the extent of those rights are not known specifically, there would clearly be a net safety benefit if those crossings were extinguished and replaced by one or two overbridges for general traffic and two level crossings for exceptional loads.



The risk hierarchy should be: -

- Can the crossings be replaced by bridges;
- Can the number of crossing points be reduced;
- What is the appropriate level of protection for the crossings;
- What remaining risks can be mitigated.

The two crossings for general traffic could be replaced by over-bridges. However it is not reasonably practicable to replace the other two crossings for exceptionally heavy loads transported by SPMT with over-bridges, due to the nature and weight of the loads conveyed.

Mammoet, a suitably qualified and experienced contractor, has provided the following advice regarding SPMT movements and speeds: -

- The maximum speed of an SPMT is 6 km/hr. It can only achieve this speed when not carrying any loads.
- When laden (irrespective of the size of component it carries) it will move at a steady walking pace of between 1km and 2 km/hr.
- On a large site such as the Marine Energy Park which is relatively open (no tight bends or turning circles) it is safe to presume a 2 km/h maximum speed for an SPMT carrying heavy components such as below: -
 - Nacelle 600t 8.5m width, 22.5m length (with spinner attached)
 - Tower section 200t , 45m length, 6.5m diameter

The width of the railway corridor is 16m wide – that is the distance it will have to cross to get over the railway.

The width of the railway crossing entrance and exit (the gate) will be 35m wide – that is the maximum width of the crossing.

Special arrangements will be needed to protect a crossing of this width (35m). The crossing downtime will be substantial (3 minutes) owing to the nature of the loads using it. This will imply a manned crossing. A hazard workshop will be required to identify the risks.

Network Change procedures will be required to implement the new level crossings.

The weight of the vehicles crossing may also affect the stability of the track and formation and the structural requirements for the crossing will need to be assessed.



International Shipping and Port Security Code (ISPS)

Able UK Ltd (AHPL's asset management company) is competent and experienced in managing a multi-purpose port facility which includes the required stringent security measures.

Able UK Ltd own and operate a similar port facility in Teesside. Able Seaton Port, Tees Road, Hartlepool that is approved by the Department of Transport (DfT) under International Ship and Port Security Regulations (ISPS). The company employs trained and certified Port Facility Security Managers to ensure the regulations are complied with to a very high standard. The Port has been certified for over three years and has been audited and inspected by the D of T (formerly TRANSEC) on a regular basis.

Able UK Ltd works closely with its neighbours on the River Tees to ensure security levels are to the required standards for all businesses on the river.

The Marine Energy Park will be secured to the same high levels. The company will work with the Department for Transport to develop the required procedures under the ISPS Regulations. Increased and varying security levels will be implemented and restricted areas deployed around the Quay areas; all procedures will be documented into a Port Facility Security Plan and the Port approved and certified by the DfT.

The levels of security will vary throughout different areas on site. The ISPS Regulations relate mainly to port and shipping and may not apply to other areas of the site. Areas that are deemed outside the ISPS requirements will be secured as necessary.

The train movements on the railway will be outside the area covered by the ISPS restricted area and will not be affected by it. The railway will be protected by security fencing as deemed appropriate to the risk.

Conclusions

If the Infrastructure Operator is Network Rail, then the safety management system will be under their existing Network Licence. This will then be applied to meet AHPL's specific requirements.

If the Infrastructure Operator is AHPL, then the safety management system will need to be agreed with the ORR as part of the conditions for the Network Licence. If AHPL are able to secure a Network Exemption then the Safety Management System is still required, but it must be available for inspection by the Health and Safety Executive.



The safety management system must be agreed before the Marine Energy Park can commence operations that involve the railway line.

The key safety issue is agreeing how the proposed new level crossings will be operated.

The ISPS requirements for a Security Plan are unlikely to involve the railway corridor as it is almost certainly outside the restricted area around the quay.

We trust this meets with your requirements, but should you require any further information please do not hesitate to contact me.

Yours sincerely,

Howard Pack
Principal Consultant

Attached below: -

Appendix A
Flowchart Common Safety Method

Tata Steel Projects
is a trading name of Tata Steel UK Rail Consultancy Ltd
Registered Office:
Meridian House, The Crescent, York YO24 1AW
Registered in England No 3033290

Flowchart illustrating proposed application of the criteria

