
From: Nolan, Sarah [Contact details removed]
Sent: Monday, July 23, 2012 7:06 PM
To: Mike Harris
Cc: Able Marine Energy Park; [Contact details removed]
Subject: AMEP - Written summary of oral representation - C.RO Ports Killingholme Limited

Dear Sirs,

[Ref No. removed]

Please find attached the written summary of the oral representations of C.RO Ports Killingholme Limited at the Issue Specific Hearing on the draft Development Consent Order.

Kind Regards,

Sarah Nolan
Solicitor (New Zealand qualified)

DLA Piper UK LLP

[Contact details removed]

www.dlapiper.com

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C.RO Ports Killingholme Limited

The Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

The Able Marine Energy Park Development Consent Order

Planning Inspectorate Reference: TR030001

**Written summary of the oral representations of C.RO Ports Killingholme Limited at
the Issue Specific Hearing on the draft Development Consent Order**

Ref No. removed

23 July 2012

INTRODUCTION

1. This written summary ("WS 1") has been prepared on behalf of C.RO Ports Killingholme Limited ("C.RO"). It relates to the oral submissions made by C.RO at the Issue Specific Hearing ("ISH") on the draft Able Marine Energy Park ("AMEP") Development Consent Order ("DCO") held on Thursday 12 July 2012.
2. C.RO is the statutory harbour authority for, and operator of, C.RO Ports Killingholme ("CPK"). This document summarises the submissions made by C.RO at the ISH in relation to the DCO, using the agenda of the ISH as a framework.
3. Attached as Appendix 1 is a Paper of Amendments, setting out the amendments that C.RO considers should be made to the DCO.

MORNING SESSION: ISSUES OF PRINCIPLE

4. **Issues 1, 2 and 3: The definition and description of the proposed development and the extent to which the DCO restricts, or should restrict, the proposed development of the port to wind farm-associated development.**
 - 4.1 At the ISH the first three issues of principle were discussed in conjunction with each other.
 - 4.2 As submitted at the ISH, C.RO is concerned that the project is not adequately described in the DCO. There need to be greater restrictions on what Able is permitted to do in future, bearing in mind the lack of detail in the description of the project. The amount of flexibility currently permitted by the drafting in the DCO raises considerable concerns for C.RO because this flexibility would enable Able to construct a wide range of additional elements that are to date unspecified, and the environmental consequences of which have not been assessed. Such flexibility is not appropriate and is a concern for C.RO because of the potential for it to enable development that will adversely affect its port operations without appropriate controls including in respect of the local road network and the railway network. As stated at the ISH, C.RO considers that it is appropriate not only to limit the flexibility inherent in the draft DCO by amending individual provisions, but also to restrain the use of AMEP through a requirement. These amendments will go some way to removing uncertainty and risk. Proceeding without such provisions would not be lawful.
 - 4.3 C.RO also acknowledged at the ISH that it is clear that Able wishes to have flexibility. C.RO has not stated that Able should never be allowed to use AMEP for purposes other than those associated with the offshore energy industry. However, if it is currently contemplating other

uses, it should specify them and assess them in the normal way. If it is not, and such uses will be promoted/adopted in the future, Able must accept the usual position for any development, which is that the environmental effects of a project must be constrained (through requirements and by not including unnecessarily wide and inappropriate powers in the DCO) to those that have been assessed. The impacts of alternative uses (including of the construction activities of those uses) will be different.

5. Issue 5: The adequacy of provisions relating to the control of design

5.1 As stated at the ISH, C.RO's position is that the current draft of the DCO does not contain an adequate framework for the control of design. C.RO drew the Examining Authority's attention to the Rookery South (Resource Recovery Facility) Order, which provided that the authorised development must be carried out in accordance with the requirements of the plans listed by number in that order and the Design and Access Statement.

6. Issue 4: The nature and extent of provisions relating to the railway network

6.1 C.RO's starting position is that there should be no compulsory acquisition of the track and track bed of the Killingholme Branch Line (the "Railway"). Also, the regulated status of the Railway should not be altered. C.RO's submission is that there is also a significant lack of detail in the DCO in relation to the works proposed to the Railway. Regardless of whether compulsory acquisition goes ahead, if Able proposes works to the Railway (which in itself is unclear given the lack of any detail in the application and environmental statement as to the works proposed) these must be listed in Schedule 1 as part of the Authorised Development. Any works to the Railway must also be properly reflected in plans listed in the DCO and Able must be required to carry them out. These works must also be properly assessed. This has not yet taken place.

7. Issue 7: Need for/adequacy of provisions relating to a construction and environmental management plan

7.1 This issue is generally representative of the flaws in the DCO as a whole. As stated at the ISH, C.RO is concerned that the application and environmental statement contained inadequate detail to allow for a proper assessment of the impacts of the construction and operation of AMEP.

AFTERNOON SESSION: ISSUES OF DETAIL

8. Schedule 8: Deemed Marine Licence

8.1 C.RO submitted that it has concerns that the DCO as drafted does not reflect the fact that there is an overlap between the approach channels, and thus marine licences, of AMEP and CPK. This is an issue in respect of both dredging and navigation.

9. Schedule 9: Protective Provisions

9.1 In response to a question from the Examining Authority at the ISH, C.RO confirmed that it would be seeking protective provisions. C.RO has drafted the protective provisions that it considers are necessary and appropriate to avoid or mitigate any interference with C.RO's port operations at CPK. These are included in the attached Paper of Amendments, without prejudice to the need to amend, vary or augment them. The possible need to augment them derives from the lack of detail known about AMEP.

10. Section 106 agreement

10.1 C.RO is concerned about whether Able will be in a position to meet its obligations and liabilities. Any section 106 agreement must ensure that a parent company guarantee and/or other protection is put in place for interested parties who may be subject to loss as a result of compulsory acquisition of the Railway or injurious affection in particular, and/or the failure of Able to perform its obligations under the DCO, including as required by protective provisions.

10.2 As advised at the ISH, this approach was required for the section 106 agreement in relation to the Rookery South (Resource Recovery Facility) Order, to ensure that Covanta was able to draw on resources of its wider group to meet compensation and other liabilities, and to reassure the Infrastructure Planning Commission of the sufficiency of resources to meet those liabilities.

10.3 C.RO endorsed the submissions of ABP that drafts of the section 106 agreement should be made available. C.RO suggested that the approach of Covanta for the Rookery South Resource Recovery Facility examination to disclose the latest draft as part of each Written Representation was adopted by Able.

DLA Piper UK LLP on behalf of C.RO Ports Killingholme Limited

23 July 2012

THE PLANNING ACT 2008

THE PROPOSED ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER

**APPENDIX 1
PAPER OF AMENDMENTS TO DRAFT ORDER
PROPOSED BY C.RO PORTS KILLINGHOLME LIMITED**

Introduction

1. Able Humber Ports Limited ("Able") submitted a Revised Draft Development Consent Order as Appendix B to its Comments on the Relevant Representations in relation to the Able Marine Energy Park ("AMEP"). The following amendments are proposed by C.RO Ports Killingholme Limited ("C.RO") to that version of the draft Development Consent Order ("DCO") for consideration by the Examining Authority.
2. The amendments draw on the Written Representation of C.RO, and the submission made at the Issue Specific Hearing on the DCO. The amendments proposed here relate to the revised draft DCO published by Able on 29 June 2012. C.RO reserves the right to propose further amendments, or amend, vary or augment the amendments set out below, in response to or as a result of any further representations made during the examination by Able or other Interested Parties (including oral or written representations and responses to written questions, and as a result of the publication of any further draft of the DCO).
3. Schedule 1 does not set out an appropriate level of description for a project of this nature. This, combined with the lack of appropriate restrictions on design, layout, and use, as well as loopholes in the drafting of the DCO, means that AMEP is not appropriately constrained to those environmental impacts that have been assessed. As a result, and in conjunction with the current drafting of the DCO, Able has attempted to give itself an extremely and unjustifiably wide discretion to modify AMEP in future.
4. The design of AMEP is currently addressed in design drawings, which are for Work No. 1 only, and in a collection of drawings marked "planning application drawings" that do not appear to be referred to anywhere in the DCO or the requirements attached to it. Those planning application drawings include drawings that are confusingly labelled "indicative".

This includes an Indicative Masterplan drawing, the purpose of which is unclear. Notwithstanding its name, it appears to show a layout for the landside elements of AMEP, including three level crossings. How this will be delivered or secured - if at all - is not certain.

5. This attempt at unfettered flexibility raises considerable concerns about the potential impact of AMEP on C.RO's port operations. Therefore, C.RO proposes the amendments set out below. A number of amendments to the DCO are required to constrain AMEP so that it can only be operated as a facility for the manufacture of marine energy components. This will ensure that the environmental effects of AMEP are limited to those assessed. It is not C.RO's position that AMEP should never be used for any other purpose, only that these other uses must be properly assessed. If Able considers that other works may be required, or other uses of AMEP are contemplated, Able should specify these now so that they can be subject to environmental assessment.
6. C.RO acknowledges that a number of the provisions for which it seeks amendments, and in particular Article 10, are included in the Infrastructure Planning (Model Provisions) England and Wales) Order 2009 ("Model Provisions"). However C.RO submits that a blanket reliance on the Model Provisions is not appropriate here, given the DCO's lack of specificity as to the authorised development.

Amendments

7. Amend Article 2 by:
 - 7.1 Deleting the words "and any other development authorised by this Order" from the definition of "Authorised Development";
 - 7.2 Amending the definition of "Order Limits".

[Drafting note: in the works plans the limits are delineated with a dashed blue line and described as "limits 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.]
8. Amend Article 7 by:
 - 8.1 Amending sub-paragraph (5)(a) by inserting after AB Ports ", C.RO Ports Killingholme Limited";
 - 8.2 Amending sub-paragraph (11) by inserting the words "and Part 6 of Schedule 9 (for the protection of C.RO Ports Killingholme Limited)".
9. 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,".

10. Amend Article 10 by:
 - 10.1 Amending 10(1) by:
 - 10.1.1 Inserting at the beginning of the paragraph the words "Subject to paragraph (3) and (4)"; and
 - 10.1.2 Deleting the words "railway lines".
 - 10.2 Amending 10(2) by deleting sub-paragraph (c).
 - 10.3 Amending 10(3) by inserting the words "Subject to paragraph (4) below," at the beginning of the paragraph.
 - 10.4 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.
11. 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.
12. Amend Article 14 by:
 - 12.1 Amending 14(1)(b) by inserting "and (3)" after the words "subject to paragraph (2)"
 - 12.2 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.
13. Amend Article 20 by deleting the phrase "or which may be affected by the authorised development" in sub-paragraph (1).
14. Amend Article 22 by deleting the phrase "reconstructed, extended, enlarged, replaced or relaid" in sub-paragraphs (1) and (2).
15. 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.

16. 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.

17. 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.

18. 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.

19. Delete Article 47.

20. 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.

21. Amend Schedule 1 by:
 - 21.1 Inserting the words "Work No. 3 - " at the beginning of sub-paragraph (3)(b);
 - 21.2 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];
22. 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.
23. Amend Schedule 11 Requirements by:
 - 23.1 Amending the definition of "authorised development" by deleting the words "and any other development authorised by this Order""
 - 23.2 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.

- 23.3 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.

24. Insert the following Part into Schedule 8 Protective Provisions:

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 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;

(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. 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 and shall operate the harbour only in accordance with such procedure as approved, including any approved alteration made from time to time.

Railway

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

47. (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

48. 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.

49. (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

50. 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

51. (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

52. 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.

53. 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

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

Disputes

55. 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).