

14 December 2021

**APPLICATION OF ABLE HUMBER PORTS LIMITED
FOR A MATERIAL CHANGE
TO
THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER 2014
S.I. 2014 NO. 2935**

WRITTEN REPRESENTATION

OF

C.RO PORTS KILLINGHOLME LIMITED

(To be submitted electronically for Deadline 1)

OUR REF: JPRK/TWHI/2040148.1

YOUR REF: TR030006



WRITTEN REPRESENTATION OF C.RO PORTS KILLINGHOLME LIMITED

1 INTRODUCTION

1.1 This Written Representation is made on behalf of C.RO Ports Killingholme Limited ("**C.RO**") in connection with the Examination of an application made by Able Humber Ports Limited ("**AHPL**") for a Material Change to the Able Marine Energy Park Development Consent Order granted on 13 January 2014 (the "**DCO**") (the "**Proposed Material Change**").

1.2 This Written Representation is made further to matters stated in C.RO's Relevant Representation (received by the Planning Inspectorate on 7 September 2021) and to C.RO's participation in the Preliminary Meeting held on 16 November 2021. It also reflects further (and ongoing) engagement with AHPL since the Preliminary Meeting.

2 OVERVIEW OF C.RO'S CURRENT OPERATIONS

2.1 C.RO is the statutory harbour authority for, and owner and operator of, C.RO Ports Killingholme ("**CPK**"). CPK was formerly known as Humber Sea Terminals.

2.2 CPK is a six-berth 'ro-ro' facility located to the west, and upriver, of the Able Marine Energy Park ("**AMEP**"). C.RO operates 24 hours seven days a week servicing scheduled 'ro-ro' ferry sailings from the northern continental ferry ports. These sailings operate to a strict schedule. CPK is a strategically important facility for the import and export of goods into and out of the UK by sea.

2.3 CPK also includes a land-side pre-delivery and inspection centre (and other related facilities) for the automotive sector. These facilities enable all necessary activities to be carried out for the life of the onward transport and sale of cars.

2.4 C.RO has the benefit of an existing connection to Network Rail's network. The flexibility this provides is of vital importance to C.RO. It enables C.RO to respond to changes in the market, and the move towards increasing the rail-share of freight.

3 C.RO'S CURRENT POSITION

3.1 Overview

3.1.1 C.RO does not have an in-principle objection to the Proposed Material Change.

3.1.2 C.RO does, however, remain concerned to ensure that the Proposed Material Change does not adversely impact on its ability to discharge its existing statutory functions or to carry out its established commercial operations.

3.1.3 These issues were considered at length during the Examination for the DCO itself, culminating in a suite of protective provisions authorised to be included for C.RO's benefit at Schedule 9, Part 6 to the DCO (the "**Protective Provisions**"). C.RO's primary concern is to ensure that those Protective Provisions remain fit for purpose, taking account of the operational and other effects anticipated to arise from the Proposed Material Change.

3.1.4 Whilst C.RO welcomes the positive engagement with AHPL to date, there are still certain matters (summarised below) which are not yet agreed between the parties.

From C.RO's perspective, it is imperative that these matters are addressed as soon as possible.

- 3.1.5 C.RO remains committed to collaborating with AHPL to identify and appropriately mitigate any such impacts at the earliest opportunity.

3.2 **Construction Sequencing Changes**

- 3.2.1 It is acknowledged that the authorised development must be carried out in accordance with the design drawings listed in Paragraph 6(b) of Schedule 11 (Requirements) to the DCO. The draft DCO Amendment Order already seeks to substitute and/or remove the majority of these drawings. This is understood to reflect the fact that works are now proposed to commence at the southern end of the quay and to progress northwards in order to facilitate the early handover of an operational section of quay.

- 3.2.2 An additional submission has since been made by AHPL in respect of the draft DCO Amendment Order to further amend two of the construction sequencing design drawings (with reference to new drawing references AME-036-10009 (Rev D)) and AME-036-10010 (Rev D).

- 3.2.3 Whilst AHPL has provided a comprehensive explanation as to the rationale underpinning this additional submission and has shown the abovementioned drawings to C.RO on a without prejudice basis, neither of the drawings referenced in that submission have yet been made publically available for detailed inspection.

- 3.2.4 Although C.RO does not have any in-principle concerns at this stage in terms of the proposed variation to the construction sequencing, C.RO reserves the right to make further representations to the Examining Body once the relevant drawings have been published.

3.3 **Interaction with Other Development**

- 3.3.1 C.RO has previously expressed concerns regarding the assessment of environmental effects undertaken by AHPL in light of the interaction between certain extant planning permissions for uses and development wholly unrelated to AMEP and the development authorised by the DCO (as proposed to be amended by the draft DCO Amendment Order and including the associated development comprising the onshore facilities for manufacturing, assembly and storage).

- 3.3.2 Although certain alternative use permissions have recently expired, C.RO is aware that AHPL has previously taken steps to renew such temporary change of use permissions where they have lapsed. C.RO is of the view that there is no reason to suggest this would not or could not happen again. Indeed, whilst other permissions remain extant, C.RO notes the potential future permanence in respect of alternative uses within the Order Limits which are currently authorised for a temporary period only.

- 3.3.3 Therefore, and based on information made available by AHPL to date, it is not improbable so far as C.RO is concerned that the implementation of later stages of the AMEP will be prevented by other permanent uses of areas of land within the Order Limits.

- 3.3.4 Taking this into account, C.RO queries whether it would help the Examination if AHPL could provide an updated masterplan or series of masterplans covering development across the entirety of the land within the Order Limits during both construction and operational phases.

3.3.5 In the first instance, this would help give credence to AHPL's current position (i.e. that an 'interim development scenario' does not give rise to more significant environmental effects than have already been assessed for the AMEP scheme as proposed).

3.3.6 C.RO is of the view that publication of a series of updated masterplans would also help C.RO, the Examining Body and other interested parties to consider the AMEP proposals on a holistic basis - acknowledging as AHPL has itself set out in recent correspondence, the rapid pace of change within the renewable energy sector over the last decade.

3.4 **Additional Construction Vessel Movements**

3.4.1 C.RO has sought to ascertain whether AHPL's proposed amendments to the construction methodology for AMEP will result in changes to construction vessel movements within the Humber Estuary.

3.4.2 Whilst AHPL has confirmed that there will be no additional construction vessel movements resulting from the proposed construction sequencing changes, a satisfactory explanation of the technical data and modelling underpinning this conclusion has only recently been forthcoming. Hence, C.RO has not yet had sufficient opportunity to review this data with the benefit of that explanation in order to ascertain the potential for other operational impacts as a result of future construction vessel movements within the Humber Estuary more generally.

3.4.3 In any event, C.RO's position remains that the existing management plan must continue to be utilised, alongside C.RO's current protective provisions and further provisions within the Deemed Marine Licence, to ensure that construction vessel movements are controlled and that scheduled commercial traffic retains river priority.

3.4.4 C.RO also reserves the right to request further protections within the DCO in the event that concerns are identified following further review of the technical data and modelling provided by AHPL or if it becomes apparent that changes to construction sequencing are likely to give rise to a reasonable prospect of foreseeable impacts on vessels accessing the C.RO facility.

3.4.5 The parties are continuing to discuss this topic.

3.5 **Use of the Barge Berth**

3.5.1 C.RO has requested further information on the types of vessels which would use the relocated barge berth and how that berth will be operated.

3.5.2 Whilst information on the types of vessels that could use the barge berth to the north of the quay are contained in Section 2.2.2 of the Navigation Risk Assessment (NRA) submitted as Appendix UES 14-1 (APP-144), assessment has only been undertaken with reference to load-on load-off (Lo-Lo) vessels rather than roll-on roll-off (Ro-Ro) vessels.

3.5.3 This is an important point of difference since, in C.RO's opinion, Ro-Ro vessels will be required to turn and approach the barge berth in a completely different manner compared to vessels berthing on the main quay. This is because the barge berth is set back from the main quay, with vessels needing to align their stern with the rear quay wall of the berth. Ro-Ro vessels typically unload from the stern. This is a restricted space to manoeuvre into. It would therefore increase the amount of

time such vessels would remain within the approach channel to the existing C.RO facility.

- 3.5.4 At times of adverse weather and/or tide conditions, this manoeuvre may be more difficult to execute, with the potential to impact on C.RO's operations by interrupting scheduled vessel sailing. It may also create unacceptable navigational safety risks, including collision between a vessel manoeuvring at AMEP and a vessel approaching/leaving CPK, or a vessel being compromised in its approach to the CPK berth.
- 3.5.5 These risks are currently unknown, and not assessed, because AMEP has not carried out modelling of the use of the barge berth by any vessels, including Ro-Ro vessels.
- 3.5.6 Although, it has been agreed to carry out a navigation simulation exercise at the South Tyneside Marine College on 6 January 2022, C.RO remains particularly concerned that:
- (a) the intended future use of the barge berth has still not been fully explained or assessed by AHPL, including the rationale for relocating that berth from its current authorised location to the south;
 - (b) AHPL has not yet confirmed either the type of vessels which are likely to make use of the relocated barge berth, or indeed the intended frequency of such future use; and
 - (c) the modelling data relating to the future use of the barge berth will not be available until almost mid-way through the current Examination, leaving C.RO (and others) with very limited opportunity to properly identify the likely safety, operational and other impacts arising from the current proposals, and for the Examining Body to consider the same. Indeed, C.RO would have expected that the feasibility of relocating the barge berth in navigational and operational terms would have been simulated by AHPL well in advance of submission of the Proposed Material Change application.
- 3.5.7 Whilst AHPL's position remains that the Proposed Material Change will not give rise to any significantly different effects on the operation of CPK compared to the consented AMEP scheme (understood to be on the basis of advice provided by its advisor in marine matters, Captain Mike Nicholson), no justification or written evidence has been provided to C.RO in this respect. In C.RO's opinion, limited weight can be attributed to this conclusion as matters stand.
- 3.5.8 Therefore, C.RO considers that each of its current concerns could be most appropriately addressed, and any adverse impacts avoided, by retaining the barge berth in its existing authorised location to the south of the quay, the operational and environmental suitability of that location having already been established.
- 3.5.9 In the alternative, and to the extent that further information is made available by AHPL to satisfy each of the concerns above, C.RO would request that additional conditions be imposed within the draft DCO Amendment Order to, for example, restrict the use of the barge berth and thereby avoid any adverse effects on existing navigation to and from C.RO's and other facilities in the area.

4 PROTECTIVE PROVISIONS

- 4.1 As explained above, C.RO's primary concern is to ensure that the Protective Provisions continue to remain fit for purpose.

4.2 Noting that there are certain matters not yet agreed between the parties, and also substantive points of clarification yet to be provided by AHPL, it remains the case that amendments to the Protective Provisions may need to be sought by C.RO where necessary to control and/or ameliorate any impacts on C.RO's operations likely to arise as a result of the draft DCO Amendment Order.

4.3 C.RO remains committed to collaborating with AHPL to identify and appropriately mitigate any such impacts at the earliest opportunity.

5 **NEXT STEPS**

5.1 C.RO continues to engage with AHPL in respect of the matters set out in this Written Representation.

5.2 However, should it not be possible to reach agreement with AHPL in respect of the matters set out above, C.RO reserves the right to submit further representations and/or to attend any hearing(s) to address *inter alia* the required format of the Protective Provisions and any further necessary or consequential amendments to the Draft Amendment Order.

5.3 If this is necessary, C.RO also reserves the right to provide the Secretary of State and/or the Examining Body with further written information in advance in support of any detailed issues remaining in dispute between the parties at that stage.

6 **OTHER MATTERS**

6.1 C.RO confirms that it wishes to be represented at the Accompanied Site Inspection ("**ASI**") currently scheduled for 10 February 2022.

6.2 In that context, C.RO requests that the following location is visited as part of the ASI:

(a) the proposed barge berth relative to CPK.

7 **RESPONSES TO WRITTEN QUESTIONS**

7.1 Appendix 1 to this Written Representation contains C.RO's responses to the Examining Body's First Written Questions.

7.2 C.RO would be pleased to provide the Examining Body with further clarification in respect of matters set out in those enclosed responses.

Bryan Cave Leighton Paisner LLP

On Behalf of C.RO Ports Killingholme Limited

14 December 2021

Appendix 1

Responses to First Written Questions

ExQ1:	Question To:	Question:	Response:
General & Cross-Topic Questions			
Q1.0.9	App, C.RO, C.GEN	<p>Will the Able Marine Energy Project be fully built out?</p> <p>If not, what would the implications of mixed, retained, alternative, or interim uses be for other parties?</p>	<p>C.RO:</p> <p>Whilst C.RO is not in a position to comment on the Applicant’s future intentions, it is noted that the Applicant has already obtained (and implemented) various planning permissions within the existing Order Limits for uses and development wholly unrelated to the Able Marine Energy Park (“AMEP”).</p> <p>Although certain alternative use permissions have recently expired, C.RO is aware that the Applicant has previously taken steps to renew such temporary change of use permissions where they have lapsed. C.RO is of the view that there is no reason to suggest this would not or could not happen again. Indeed, whilst other permissions remain extant, C.RO notes the potential future permanence in respect of alternative uses within the Order Limits which are currently authorised for a temporary period only.</p> <p>Therefore, and based on information made available by the Applicant to date, it is not improbable so far as C.RO is concerned that the implementation of later stages of the AMEP will be prevented by other permanent uses of areas of land within the Order Limits.</p> <p>As the Examining Body (“ExB”) will recognise, the ongoing implementation of the AMEP scheme is tightly regulated by the existing DCO (and other control documents) so as to prevent or mitigate adverse impacts on a range of sensitive environmental and other receptors, as well as <i>inter alia</i> to minimise interference with existing users of the Humber Estuary. For those controls to continue function properly (and for their ongoing fitness for purpose to be assessed in light of the proposed amendments to which this Examination relates), there must be greater clarity as to the Applicant’s future intentions.</p>

ExQ1:	Question To:	Question:	Response:
			<p>Without sight of an updated masterplan or series of masterplans covering intended development across the entirety of the land within the Order Limits during both construction and operational phases, it is impossible for C.RO and other interested parties to properly consider the likely future impacts from the AMEP proposals alongside other mixed, alternative and/or interim uses on a holistic basis.</p> <p>Publication of a series of updated masterplans will enable C.RO to identify likely implications on their existing statutory undertakings and future operational functions capable of arising in a 'partial-implementation' scenario.</p>
The Draft Amendment Order			
Q2.0.4	App and other parties	Are new, additional, or amended protective provisions envisaged. Please report on progress in negotiations with the various parties.	<p>C.RO:</p> <p>C.RO and the Applicant are both agreed that the existing protective provisions in the DCO for which C.RO has the benefit should continue to remain in force. As previously noted in C.RO's Relevant Representation, the need for any further amendments to those protective provisions will ultimately be determined by the outcome of C.RO's ongoing engagement with the Applicant.</p> <p>As things stand, there are substantive points of clarification yet to be provided by the Applicant including, for example, in respect of the types of vessels likely to use the proposed barge berth (see the response to Q3.0.2).</p> <p>It therefore remains the case that amendments to the protective provisions may need to be sought by C.RO where necessary to control and/or ameliorate any impacts on C.RO's operations likely to arise as a result of the draft DCO Amendment Order.</p> <p>C.RO remains committed to collaborating with the Applicant to identify and appropriately mitigate any such impacts at the earliest opportunity.</p>
Operations & Harbour Operations			
Q3.0.1	App, C.RO	Please summarise the methods by which the co-	<p>C.RO:</p>

ExQ1:	Question To:	Question:	Response:
		<p>ordination of river traffic would take place, in the context of slower moving dredger and deposition vessels, and possible shortage of pilots.</p> <p>How would vessels be prioritised?</p> <p>How would arrangements be secured?</p>	<p>The consented DCO includes various protections and operational controls previously sought by C.RO, agreed by the Applicant and considered by the Examining Authority and Secretary of State in respect of vessel movements within the Humber Estuary.</p> <p>For example, Schedule 8 includes protections to ensure that a vessel movement management plan is agreed with the MMO at least 4 weeks prior to the carrying out of any activities to which the Deemed Marine Licence ("DML") relates (and following consultation with C.RO).</p> <p>In this context, it is noted that the DML included at Schedule 8 to the DCO has now expired (referencing the temporal limitations imposed by Paragraph 14(3) to Schedule 8 of the DCO). The Applicant has since confirmed that a second extension to the Licence was confirmed by the MMO in September 2020. It is anticipated that equivalent safeguards and conditions will continue to be included within any future DML sought by the Applicant.</p> <p>There are also further extant operational safeguards within the protective provisions included at Part 6, Schedule 10 to the DCO for the benefit of C.RO (see, for example, Para. 66(1) and (2) of the same).</p> <p>C.RO is satisfied that this approach in totality provides sufficient protection in respect of the authorised development as it currently stands. However, C.RO reserves the right to request further protections within the DCO in the event that there is a reasonable prospect of additional construction vessel movements within the Humber Estuary and/or other reasonably foreseeable impacts on vessels accessing the C.RO facility. C.RO and the Applicant are continuing to discuss this topic.</p>
Q3.0.2	App, C.RO	<p>What types of vessel would use the berth bay?</p> <p>What frequency of movement would occur and how would this interact with C.RO and other operator's vessel</p>	<p>C.RO:</p> <p>As matters stand, the Applicant has not provided definitive confirmation as to the types of vessels likely to use the barge berth or how it will be operated. C.RO has requested further information from the Applicant in this respect.</p> <p>Whilst some information on the types of vessels that could use the barge berth to the north of the quay are contained in Section 2.2.2 of the Navigation Risk Assessment (NRA), assessment has only been undertaken with reference to load-on load-off (Lo-Lo) vessels rather than roll-on</p>

ExQ1:	Question To:	Question:	Response:
		movements?	<p>roll-off (Ro-Ro) vessels.</p> <p>This is an important point of difference since, in C.RO's opinion, Ro-Ro vessels will be required to turn and approach the barge berth in a completely different manner compared to vessels berthing on the main quay. This is because the barge berth is set back from the main quay, with vessels needing to align their stern with the rear quay wall of the berth. Ro-Ro vessels typically unload from the stern. This is a restricted space to manoeuvre into. It would therefore increase the amount of time such vessels would remain within the approach channel to the existing C.RO facility.</p> <p>At times of adverse weather and/or tide conditions, this manoeuvre may be more difficult to execute, with the potential to impact on C.RO's operations by interrupting scheduled vessel sailing. It may also create unacceptable navigational safety risks, including collision between a vessel manoeuvring at AMEP and a vessel approaching/leaving CPK, or a vessel being compromised in its approach to the CPK berth.</p> <p>These risks are currently unknown, and not assessed, because AMEP has not carried out modelling of the use of the barge berth by any vessels, including Ro-Ro vessels.</p> <p>Although, it has been agreed to carry out a navigation simulation exercise at the South Tyneside Marine College on 6 January 2022, C.RO remains particularly concerned that:</p> <ul style="list-style-type: none"> a) the intended future use of the barge berth has still not been fully explained or assessed by AHPL, including the rationale for relocating that berth from its current authorised location to the south; b) the Applicant has not yet confirmed either the type of vessels which are likely to make use of the relocated barge berth, or indeed the intended frequency of such future use; and c) the modelling data relating to the future use of the barge berth will not be available until almost mid-way through the current Examination, leaving C.RO (and others) with very limited opportunity to properly identify the likely safety, operational and other impacts arising from the current proposals, and for the Examining Body to consider the same. Indeed, C.RO would have expected that the feasibility of relocating the barge

ExQ1:	Question To:	Question:	Response:
			<p>berth in navigational and operational terms would have been simulated by the Applicant well in advance of submission of the Proposed Material Change application.</p> <p>Whilst the Applicant’s position remains that the Proposed Material Change will not give rise to any significantly different effects on the operation of CPK compared to the consented AMEP scheme (understood to be on the basis of advice provided by its advisor in marine matters, Captain Mike Nicholson), no justification or written evidence has been provided to C.RO in this respect. In C.RO’s opinion, limited weight can be attributed to this conclusion as matters stand.</p> <p>Therefore, C.RO considers that each of its current concerns could be most appropriately addressed, and any adverse impacts avoided, by retaining the barge berth in its existing authorised location to the south of the quay, the operational and environmental suitability of that location having already been established.</p> <p>In the alternative, and to the extent that further information is made available by the Applicant to satisfy each of the concerns above, C.RO would request that additional conditions be imposed within the draft DCO Amendment Order to, for example, restrict the use of the barge berth and thereby avoid any adverse effects on existing navigation to and from C.RO’s and other facilities in the area.</p>
Q3.0.5	App, C.RO	Please set out the details of any potential additional impacts on C.RO’s operations arising from the Proposed Changes during construction and operation.	<p>C.RO:</p> <p>The potential impacts from C.RO’s perspective in relation to the Applicant’s future use of the barge berth are set out above in response to Q3.0.2.</p> <p>In addition, C.RO has previously sought clarification from the Applicant as to the extent to which the proposed changes to the construction methodology for AMEP would result in changes to construction vessel movements within the Humber Estuary.</p> <p>Whilst the Applicant has confirmed that there will be no additional construction vessel movements resulting from the proposed construction sequencing changes, a satisfactory explanation of the technical data and modelling underpinning this conclusion has only recently been forthcoming. Hence, C.RO has not yet had sufficient opportunity to review this data with the benefit of that explanation in order to ascertain the potential for other operational impacts</p>

ExQ1:	Question To:	Question:	Response:
			<p>as a result of future construction vessel movements within the Humber Estuary more generally.</p> <p>In any event, C.RO's position remains that the existing management plan must continue to be utilised, alongside C.RO's current protective provisions and further provisions within the Deemed Marine Licence, to ensure that construction vessel movements are controlled and that scheduled commercial traffic retains river priority.</p> <p>C.RO also reserves the right to request further protections within the DCO in the event that concerns are identified following further review of the technical data and modelling provided by the Applicant or if it becomes apparent that changes to construction sequencing are likely to give rise to a reasonable prospect of foreseeable impacts on vessels accessing the C.RO facility.</p>
Q3.0.6	App, C.RO	Are these impacts covered by existing protective provisions? If not please agree amended provisions.	<p>C.RO:</p> <p>As explained in response to Q2.0.4, C.RO considers that amendments to the protective provisions may need to be sought by C.RO where necessary to control and/or ameliorate any impacts on C.RO's operations likely to arise as a result of the draft DCO Amendment Order.</p> <p>The extent of any such amendments will be determined by the Applicant's anticipated response to certain substantive points of clarification requested by C.RO, including, for example, in respect of the types of vessels likely to use the proposed barge berth (see the response to Q3.0.2) and the likely number of construction vessel movements within the Humber Estuary (see the response to Q3.0.5).</p>



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